

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. \_\_\_\_\_

EASTRIDGE PARTNERS, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR VARIANCE FROM RULE 67-21.018(4)(f)**

Petitioner Eastridge Partners, Ltd., a Florida limited partnership ("Eastridge"), petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a variance from the requirement for full amortization for the refunding of previously issued Multifamily Mortgage Revenue Bonds. See Rule 67-21.018(4)(f), F.A.C. (2007) (the "Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2007), Eastridge requests a variance from the Rule to allow for a five-year period of interest only payments, followed by an amortization period for the remaining life of the refunding bonds.

**A. The Petitioner**

2. The name, address, and telephone and facsimile numbers for Eastridge and its qualified representative are:

Eastridge Partners, Ltd.  
Attention: Tony Del Pozzo  
315 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: 305-460-9900  
Facsimile: 305-460-9911

3. The name, address, telephone and facsimile numbers, and e-mail addresses of Eastridge's attorneys, for purposes of this Petition, are:

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**B. The Development and its Original Financing**

4. Eastridge is the owner of Villas of Capri Apartments, a 235-unit multifamily residential project located in Naples, Collier County, Florida (the "Development").

5. The Development was initially financed with Housing Revenue Bonds, 1996 Series H, in the original principal amount of \$9.8 million (the "Original Bonds"), and a HOME loan in the original amount of \$2,585,000 (the "HOME Loan").

6. As of October 30, 2007, the outstanding principal balance of the Original Bonds was \$8,588,060, and their latest maturity date is April 1, 2017.

7. Eastridge is not in financial default of its obligations under the Original Bonds or the HOME Loan.

**C. Refunding of the Original Bonds**

8. On June 13, 2007, Eastridge submitted its written request to refund the Original Bonds with a new tax-exempt bond issuance in an amount sufficient to, among other things, pay

the outstanding principal of the tax-exempt bonds, satisfy the existing first mortgage, and obtain new mortgage financing at a more favorable interest rate than its current mortgage.<sup>1</sup>

9. The financing structure is detailed in the Credit Underwriting Report currently being prepared by AmeriNational Community Services, Inc., for submittal to Florida Housing, with an anticipated closing to take place in February 2008.

10. The requested Rule variance will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Eastridge; (b) could deprive Collier County of essential, quality affordable housing units; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

11. The requested variance is permanent in nature.

**D. The Rule from Which Relief is Requested**

13. Eastridge requests a variance of Rule 67-21.018(4)(d) that provides:

(4) In connection with all refundings, the following shall apply:

(f) The MMRB Loan shall immediately, on the earlier of 24 months after closing or stabilized occupancy in the case of major rehabilitation, begin full amortization over the remaining life of the Bonds; and in no event shall it exceed the economic remaining life of the property, provided that, in the case of a refunding relating to a pending financial default, such amortization may be delayed to the extent recommended in the Credit Underwriting Report;

**E. The Statute Implemented by the Rule**

14. The MMRB Rule implements sections 420.507 and 420.508, Florida Statutes, which empower Florida Housing to issue revenue bonds for the purpose of funding the development of affordable housing for low-income individuals and families.

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<sup>1</sup>Eastridge understands that set-asides required by the original MMRB Land Use Restriction Agreement may be increased by an amount and extended for a period determined by Florida Housing. See Rule 67-21.018(4)(b), F.A.C. (2007).

**F. Justification for Eastridge's Request for Rule Variance**

15. Eastridge has requested Florida Housing's consent to refinance the Development through the refunding of the Original Bonds. Through this Petition, Eastridge seeks a five-year interest only period with an amortization period thereafter.

16. The requested variance will not adversely impact the Development or Florida Housing, and will ensure that 235 quality affordable housing units remain available for very low and low-income families and individuals in Collier County, Florida.

17. In fact, the refunding will reduce annual debt service costs by an estimated \$370,000, which can then be used for maintenance of and improvements for the Development.

18. The purpose of the underlying statute will be served by granting the requested Rule variance as it will further Florida Housing's statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida.

19. However, a denial of this variance will create a substantial hardship for Eastridge as it may be subjected to negative and unintended economic effects from having to pay the fully amortized payment throughout the life of the New Bonds and may affect the viability of the Development to remain as affordable housing in Collier County, Florida.

20. Finally, by granting the requested variance, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Florida Housing Finance Corporation Act (the "Act").<sup>2</sup>

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<sup>2</sup>See §§ 420.501 through 420.516, Fla. Stat. (2006).

**G. Conclusion**

21. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Variances should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2006).

22. In this instance, Carver Park submits that the requested variance for a five-year interest payment only period meets the purpose of the Act, and should be granted.

23. Should Florida Housing require additional information, Eastridge is available to answer questions and to provide all information necessary for consideration of its Petition for Variance of Rule 67-21.018(4)(f) to allow for a five-year interest payment only period for the requested refunding of the Original Bonds.

WHEREFORE, Petitioner Eastridge Partners, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition for the following relief:

A. A variance from the requirement for amortization for the refunding of previously issued Multifamily Mortgage Revenue Bonds;

B. A five-year interest free period for the New Bonds, and thereafter, provide for full amortization for the remaining life of the New Bonds; and

C. Such further relief as may be deemed appropriate.


Respectfully submitted,

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By:  \_\_\_\_\_  
MIMI L. SALL

**CERTIFICATE OF SERVICE**

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 24<sup>th</sup> day of December, 2007.

By:  \_\_\_\_\_  
Mimi L. Sall