

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO: 2009-007YVW

Application Nos. 2005-037C/RFP/2006-003C

DIXIE COURT ASSOCIATES, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

\_\_\_\_\_ /

**PETITION FOR WAIVER**

Dixie Court Associates, Ltd. (the "Petitioner") petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of the requirement that a bathroom with shower be provided in at least 90% of the units in the Petitioner's Development known as "Dixie Court Apartments." See Part III.B.1., General Instructions of the 2005 Universal Application Instructions ("2005 Instruction") and Part III.B.1.b, 2005 Universal Application ("2005 Application").

In support of its petition, the Petitioner states:

1. Pursuant to Section 120.542, Fla. Stat. (2008), and Rules 28-104.001 through 28.104.006, F.A.C. (2008), Petitioner requests waivers of the applicable provisions of the 2005 Instructions and from the 2005 Application as set forth below.
2. The address, telephone number, facsimile number and e-mail address of the Petitioner and its qualified representative are:

Dixie Court Associates, Ltd.  
Dixie Court Development, LLC  
Attention: Lloyd J. Boggio  
2950 S.W. 27<sup>th</sup> Avenue, Suite 200  
Miami, Florida 33133  
Telephone: 305-476-8118  
Facsimile: 305-476-1557  
E-mail: \_\_\_\_\_

3. For purposes of this Petition, the name, address, telephone and facsimile numbers and e-mail address for Petitioner's attorney are:

Brian J. McDonough, Esquire  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Telephone: 305-789-3200  
Facsimile: 305-789-3395  
E-mail: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

4. During the 2005 eyele, the Petitioner timely submitted its Universal Application (Application No. 2005-037C) to obtain financieg for new construction of a development "Dixie Court Apartments" (the "Development").

5. As a consequence of the impact of Hurricane Wilma, Florida Housing offered additional funding through its SAIL Program's Hurriecane Wilma Go-Zone SAIL Cycle (RFP 2006-03) ("Wilma Go-Zone Funding"). Petitioner submitted its request for Wilma Go-Zone Funding to Florida Housing, and was awarded a SAIL loan of \$1,025,000.

6. The Development is comprised of 4 buildings with a total of 122 units. The Development is also immediately adjacent to and will be operated, for all practical purposes, jointly with two affiliated Developments known as Dixie Court Apartments II (consisting of 32 units) and Dixie Court Apartments III (consisting of 100 units). The combined 254 units at Dixie Court will, in large part, serve an existing tenant base which is being relocated from other Housing Authority of the City of Fort Lauderdale ("HACFL") sites. Although the Development will primarily serve families (as will Phases II and III of Dixie Court), the Petitioner, in consultation with HACFL, has determined that the market it serves has a significant number of elderly residents. As further support for this request, in connection with the credit underwriting which was performed by Seltzer Management Group ("SMG") with respect to this Development, SMG confirmed that one of buildings in the Development containing 66 units would bc marketed to the elderly.

7. In order to operate more cffieiently and to more adequately serve a portion of its residents, Petitioner has provided showers in one building (as opposed to bathtubs with showers) in order to create easier access for its elderly tenants. Petitioner did not select the elderly demographie; however, it anticipates serving the elderly as a sizable minority of its residential population. Elimination by the Petitioner of the "bathtub" requirement in one building is requested in order to decrease the number of potential "slip and fall" incidents involving eldercly residents. Finally, based on the Petitioner's experience, older residents frequently suffer serious depth prception issues which are aggravated by having to step into a bathtub as opposed to walking into a shower.

8. Part III.B.1 of the 2005 Instructions<sup>1</sup> requires that:

Required Features and Amenities for All Developments. In addition to meeting all building code, Fair Housing Act, and Americans with Disabilities Act requirements for MMRB, SAIL, HOME and HC Applications, and the HQS Guidelines and Section 504 of the Rehabilitation Act of 1973 for HOME Applications, all units for the type of Development indicated must have the itemized features and amenities.

9. Part III B.1.b. of the 2005 Application provides that, with respect to all units in all developments, except SRO, there be provided "Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units."

10. Consequently, waivers of Part III B.1. of the 2005 Instructions and Part III B.1.b. of the 2005 Application are necessary to permit construction of the Development with showers in 66 of the units in the Development.

11. Sections 420.501 through 420.516 of the Florida Statutes set forth the Florida Housing Corporation Act (the "Act"), which designates Florida Housing as the State of Florida administrator for the State Housing Tax Credit Program to establish procedures necessary for the proper allocation of tax credits and to ensure the maximum use of available credits in order to encourage development of low-income housing and associated mixed-use projects in urban areas (the "Procedures"). See §§ 420.501, 420.5093, Fla. Stat. (2005). These Procedures are established in Rule Chapter 67, Florida Administrative Code (2005). Accordingly, as set forth herein, the applicable requirements subject to Petitioner's waiver requests are implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Procedures for the State Housing Tax Credit Program. *Id.*

12. The facts and information provided in Paragraphs 6 through 10 above demonstrate the circumstances that justify the waiver to permit 66 of the units in the Development to have showers, rather than bathtubs with showers. Construction of the Development is bringing 122 units of much needed affordable housing for very-low and low-income seniors and families in Broward County, Florida. Operation of the Development with 66 of the units utilizing showers, as opposed to bathtubs with showers, is crucial to allow the Development to most effectively serve the demographics of the overall Dixie Court Apartments development.

13. The requested waiver will not adversely impact the Development or Florida Housing or be prejudicial to the Development or to the market to be served by the Development. However, a denial of the requested waiver could deprive Broward County of affordable housing for residents in dire need of housing that meets their safety and functionality requirements.

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<sup>1</sup> Rule 67-48.004(1)(a) incorporates the Universal Application Package into Rule 67-48, F.A.C. (2005).

Further, because 66 of the units (all located in one building as described in the Credit Underwriting Report prepared by SMG) have already been constructed by the Petitioner with showers rather than bathtubs with showers the cost of retrofitting the units to accommodate bathtubs would be prohibitive and would also be less desirable for the elderly tenants of such units. Such additional costs would impose substantial hardship on the Petitioner and would not benefit the elderly tenants residing in the Development.

14. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

15. Finally, by granting the requested waiver, 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 Act through new construction in an economical and efficient manner.

16. The waivers being sought are permanent in nature.

17. Should Florida Housing require additional information, the Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part III.B.1. of the 2005 General Instructions and Part III.B.1.b. of the 2005 Universal Application.

**WHEREFORE**, the Petitioner Dixie Court Associates, Ltd., respectfully requests that the Florida Housing Finance Corporation:

- A. Consider this Petition in conjunction with the Petitioner's Application;
- B. Grant this Petition and all the relief requested herein;
- C. Waive the requirement that all units contain "bathtub with shower in at least one bathroom" and permit 66 of the units in the Development to contain showers in at least one bathroom; and

D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

Brian J. McDonough, Esquire  
Stearns Weaver Miller Weissler Alhadeff &  
Sitterson, P.A.

Attorney for Dixie Court Associates, Ltd.

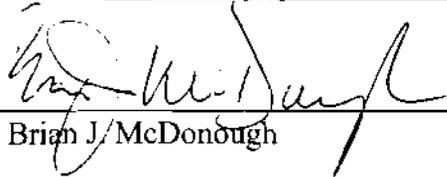
150 West Flagler Street, Suite 2200

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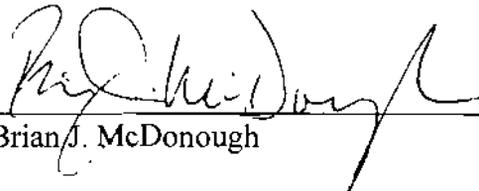
Facsimile: (305) 789-3395

E-mail: [bmcDonough@swmwas.com](mailto:bmcDonough@swmwas.com)

By:   
Brian J. McDonough

**CERTIFICATE OF SERVICE**

The Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, on March \_\_, 2009.

  
Brian J. McDonough