

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2009-0571W  
Application No. 2007-009

MBCDC: VILLA MARIA, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF PART III.A.5.a.(2)(d) OF THE 2007 FARMWORKER  
HOUSING RECOVERY AND SPECIAL HOUSING DEVELOPMENT APPLICATION  
INSTRUCTIONS TO PROVIDE SPECIFIC FEATURES IN UNITS DEVELOPED FOR  
ELDERLY RESIDENTS**

Petitioner MBCDC: Villa Maria, LLC, a Florida limited liability company ("Villa Maria") petitions Respondent Florida Housing Finance Corporation ("FHFC") for a waiver of the requirement to provide specific flooring in units developed for elderly residents. See Part III.A.5.a.(2)(d), 2007 Farmworker Housing Recovery and Special Housing Development Application Instructions (the "Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Villa Maria requests a waiver of the Rule to allow for the use of non-skid ceramic floor tile ("Non-Skid Flooring") in lieu of tight-napped Berber-type carpet ("Carpet").

**A. THE PETITIONER**

2. The name, address, telephone and facsimile numbers for Villa Maria and its

qualified representative are:

MBCDC: Villa Maria, LLC  
c/o Miami Beach Community Development Corporation  
Attention: Roberto Datorre  
945 Pennsylvania Avenue  
Miami Beach, Florida 33139  
Telephone: 305-538-0090  
Facsimile: 305-538-2863

3. The name, address, telephone and facsimile numbers, and e-mail address of Villa

Maria's attorney, for the purposes of this Petition, are:

Legal Services of Greater Miami, Inc.  
Attention: Shahrzad Emami, Esq.  
3000 Biscayne Blvd. Suite 500  
Miami, Florida 33137  
Telephone: 305-438-2425  
Facsimile: 305-573-5800  
E-mail: [Semami@lsgmi.org](mailto:Semami@lsgmi.org)

4. Pursuant to the 2007 Farmworker Housing Recovery and Special Housing and Development Application (Form 67ER07) effective April 2007, Villa Maria submitted its Application for the Special Housing Assistance and Development Program ("SHADP"). *See* Application No. 2007-009.

5. FHFC issued its allocation under the SHAD Program in the amount of \$2,000,000.00 (the "Allocation Amount").

6. The Allocation Amount is being used for the acquisition and rehabilitation of a 34-unit apartment complex (the "Development") intended to serve extremely-low and low-income elderly and frail elderly individuals in the City of Miami Beach, Miami-Dade County, Florida.

7. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition would (a) result in substantial economic hardship to Villa Maria; (b) could deprive Miami-Dade County of essential, affordable housing units in a timely manner; and (c)

would violate principles of fairness. §120.542 (2), Fla. Stat. (2006).

8. The waiver being sought is permanent in nature.

**B. Rule from Which Relief is Requested and Statute Implemented by the Rule**

9. Villa Maria requests a waiver of Part III.A.5.a.(2)(d) of the Farmworker Housing Recovery and Special Housing and Development Application Instructions, which provides the following:

5. Demographic Commitment (Threshold)

All commitments will be included in the Land Use Restriction Agreement and must be maintained in order for the Development to remain in compliance, unless the Board approves a change.

a. All Applicants must select one of the following Demographic Commitments. If an Applicant selects more than one commitment, fails to select a commitment, or fails to qualify for the selected commitment, the Application will fail threshold.

(2) Frail Elders - 80% of the units/beds set aside for elders of which a minimum of 50% shall be set-aside for Frail Elders. Selection of the Frail Elders Demographic Commitment will be included in the Land Use Restriction Agreement and must be maintained in order for the Development to remain in compliance, unless the Board approves a change. In order for a proposed Development to be classified as Frail Elders (ALF or non-ALF), the Development must meet the following requirements:

(d) The Applicant must provide the following features in the specified percentages of all units in new construction (NC) and Rehabilitation (R) Developments.. 2007 FHRSHAD (7-18) 9

The requirement to provide the following features is in addition to the features committed to by the Applicant in the Construction Features and Amenities section of this Application...

**Tight-napped Berber-type carpet...**

10. The applicable Rule<sup>1</sup> for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that created the SHAD Program. §420.55, Fla. Stat. (2006).<sup>2</sup> The Act designates Florida Housing as the designated agency responsible for and authorized to establish procedures for the allocation and distribution of SHAD Program Funds. Accordingly, the Rule that is the subject of Villa Maria's waiver request is implementing, among other sections of the Act, the statutory authorization for FHFC's establishment of Allocation Procedures for the SHAD Program. §420.55, Fla. Stat. (2006).

**C. Justification for Villa Maria's Requested Waiver**

11. Pursuant to the Rule, Carpet is required in all units intended to serve the elderly populace. However, as a result of its experience in developing affordable housing units, the developer for the Development has found that Non-Skid Flooring, an upgraded amenity for which the developer will bear the increased cost, allows for greater mobility by elderly individuals who rely on walkers, wheelchairs, and other forms of assistance to ambulate within their residential units.

12. Additionally, whereas carpeting can accumulate dust, molds, bacteria, and other pollutants that can effect an individual's health, Non-Skid Flooring is easier to maintain and provides a cleaner environment that is more beneficial for elderly residents suffering from allergies, asthma, respiratory ailments, and other health issues.

13. The use of Non-Skid Flooring, therefore, would be more effective in meeting the health, safety, and daily living needs of the elderly residents for whom the Development is

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<sup>1</sup>Pursuant to Emergency Rule 67ER07-01 through 67ER07-10, F.A.C. (2007), the 2007 SHAD Program Application Instructions are incorporated into Rule Chapter 67.

<sup>2</sup>The Florida Housing Finance Corporation Act (the "Act") is set forth in Sections 420.501 through 420.516 of the Florida Statutes. *See also* Rule 67-40-020(1), F.A.C. (2006).

intended.

14. Because the use of Carpet is a threshold requirement for an Application seeking SHAD Program Funds for developments designated for elderly residents, a waiver is necessary to permit the use of Non-Skid Flooring. However, the requested waiver is necessary to permit the use of Non-Skid Flooring. However, the requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and will provide upgraded features and amenities within the units for the Development's elderly residents.

**D. Conclusion.**

15. The requested waiver will not adversely impact the Development or FHFC, and will ensure that 34 affordable housing units will be available for the elderly population in Miami-Dade County, Florida.

16. Controlling statutes and FHFC Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant.

17. The requested waiver serves the purposes of Section 420.55, Florida Statutes (2006), and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low-income persons and households.

18. Finally, by granting the requested waiver, FHFC would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing for the elderly. 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, as well as providing safer, upgraded features and amenities within residential units developed for elderly residents.

19. Should FHFC require additional information, Villa Maria is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part III.A.5.a.(2)(d) of the 2007 Farmworker Housing Recovery and Special Housing Development Application Instructions to Provide Specific Features in Units Developed for Elderly Residents.

WHEREFORE, Petitioner MBCDC: Villa Maria, LLC, respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Waive Part III.A.5.a.(2)(d) of the 2007 Farmworker Housing Recovery and Special Housing Development Application Instructions that requires the use of tight-napped Berber-type carpet in residential developments for the elderly, and allow the use of non-skid ceramic floor tile by Villa Maria in its Development; and
- B. Grant such further relief as may be deemed appropriate.


Respectfully submitted,

LEGAL SERVICES OF GREATER MIAMI, INC.  
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By:   
SHAHZRAD EMAMI, ESQ.

**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, Suite 5000, 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 2<sup>nd</sup> day of December 2009.

  
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Shahrzad Emami, Esq.