

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

2006 MAR 30 PM 4:54

FLORIDA HOUSING
FINANCE CORPORATION

SUMMERSET SENIOR, LLC,
a Florida limited partnership

Petitioner,

vs.

APPLICATION NO. 2004-094S

CASE NO. 2006-010VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER FROM RULES 67-48.002(111) AND 67-48.004(14)

SUMMERSET SENIOR, LLC, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rules 67-48.002(111) and 67-48.004(14), Florida Administrative Code (2004). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Summerset Senior, LLC
c/o Renee Sandell
8226 North Wickham Road, Ste 200
Melbourne, Florida 32940
(321)-242-9917
(321)-242-9536

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
(850)681-6810
(850)521-1478 Facsimile

3. Petitioner successfully applied for financing from the State Apartment Incentive Loan (SAIL) program in the 2004 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s application number is 2004-094S (the “Application”). Petitioner applied for SAIL Funds to finance the portion of the costs to develop a multifamily rental apartment complex in St. Johns County, Florida, to be known as Summerset Village Apartments (the “Development”). The Development will include a mix of senior and family apartment units on two campuses. The senior campus will have 132 units. The Application for SAIL funds was approved for funding of the senior housing campus at the October 24, 2004 Board meeting.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.002(111) and 67-48.004(14), Florida Administrative Code. Rule 67-48.002(111) is within the definition section of the rule and incorporates the 2004 Universal Application package into the 2004 Rule. It provides:

“Universal Application Package” or “UA1016 (Rev. 3-04)” means the forms and instructions, . . . which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest Amendment to this rule chapter.

5. The 2004 Universal Application Instructions, Specific Instructions, Part II, A.2(2) provide:

If applying for MMRB, SAIL or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant . . . prior to this time shall

10. This change in the Applicant will not adversely impact the Development since the sole member of the Petitioner will now serve as the Applicant. The Petitioner believes it was not the intent of the Rules to prohibit this type of change, but rather to preclude people from “flipping deals.” The change in the Applicant as outlined above will ensure the continuity, progress and quality of the Development will not be disrupted.

11. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principals of fairness², and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.54 (2), Florida Statutes. Denial of Petitioner’s request for waiver will result in substantial hardship to the Petitioner and will frustrate the underlying purpose of the statute. Denial of the Petitioner’s request will result in the Petitioner not being in compliance with the Fair Housing Act and unable to maintain this Development.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

12. Petitioner believes that a waiver of these rules will serve the purposes of the statute which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The State Apartment Incentive Loan Program authorizes the Corporation to, among other things, make and participate in the making of first, second or other

² “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to Rule 120.542(2), Florida Statutes.

result in disqualification from receiving funding and shall be deemed a material misrepresentation.

6. Rule 67-48.004(14) is within the Application and Selection Procedures for Developments Section of the SAIL Rule and provides as follows:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of Applicant;

* * *

STATUTES IMPLEMENTED BY THE RULES

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the SAIL Program. See §420.5087, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

8. Petitioner requests a waiver of Rules 67-48.002(111) and 67-48.004(14) restricting the ability to change the Applicant prior to the completion of construction of the Development. Petitioner is seeking the waiver so that it may change the Applicant entity from Summerset Senior, LLC to Summerset Village, LLC (its Sole Member).

9. The sole member of the Petitioner, Summerset Senior, LLC, is Summerset Village, LLC. Due to structuring issues required to comply with the Fair Housing Act, the Petitioner's financing was acquired by and through its sole member, Summerset Village, LLC. As a result of this the SAIL loan should also be in the name of Summerset Village, LLC.

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

subordinated mortgage loans or loan guarantees to sponsors, including for-profit, not-for-profit and public entities, to provide affordable housing to very low income persons. The legislative intent will be served by the granting of this waiver. By granting this waiver request and permitting Petitioner to change the Applicant to the Applicant's Sole Member the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

13. The waiver being sought is permanent in nature.
14. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

ACTION REQUESTED

15. Petitioner requests the following:
 - a. That the Corporation grant the Petitioner a waiver from Rule 67-48.002(111) and 67-48.004(14) such that the Corporation allow a change to the Applicant from Summerset Senior, LLC to its sole member, Summerset Village, LLC.
16. This waiver would be permanent as to the Petitioner.
17. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 30 day of March, 2006.



MAUREEN McCARTHY DAUGHTON

Fla. Bar No. 0655805

Broad and Cassel

215 S. Monroe Street, Suite 400

Tallahassee, FL 32301

(850)681-6810

(850)521-1478 Facsimile

Counsel for Petitioner