

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

SLEEPY HOLLOW APARTMENTS, LTD.,  
a Florida limited partnership,

Petitioner,

vs.

FHFC CASE NO. 2009-005VW

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.010(3),  
FLORIDA ADMINISTRATIVE CODE (2007)**

SLEEPY HOLLOW APARTMENTS, LTD., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of that portion of Rule 67-48.010(3) which requires a loan under the State Apartment Incentive Loan ("SAIL") Program to be non-amortizing. In support, Petitioner states the following:

**THE PETITIONER**

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

**Sleepy Hollow Apartments, Ltd.  
c/o JDF, LLC  
340 Pemberwick Road  
Greenwich, CT 06831**

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

Maureen McCarthy Daughton  
Broad and Cassel  
Suite 400  
215 South Monroe Street (32301)

Post Office Drawer 11300  
Tallahassee, Florida 32302  
Phone: (850) 681-6810  
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**THE RULE FROM WHICH WAIVER IS SOUGHT**

3. As required by the Corporation, Petitioner requests a waiver of that portion of Rule 67-48.010(3), F.A.C. (2007) which mandates that SAIL loans be non-amortizing.

**STATUTE IMPLEMENTED BY RULE 67-48.0075(7)(a)(I), F.A.C.**

4. Rule 67-48.010, F.A.C. (2007), implements Sections 420.5087, Florida Statutes. Section 420.5087, Florida Statutes, authorizes the Corporation to, among other things, make mortgage loans for financing of development costs of projects under the SAIL Program subject to specified conditions, and to establish terms of such loans funded pursuant to Part V of the Florida Housing Finance Corporation Act, Chapter 420, Florida Statutes.<sup>1</sup> Pursuant to these provisions, the Corporation has adopted Rule 67-48.010(3), F.A.C. (2007), entitled “Terms and Conditions of SAIL Loans”, which provides in relevant part:

(3) The loans shall be non-amortizing. . . .

\* \* \*

**JUSTIFICATION FOR GRANTING WAIVER  
OF RULE 67-48.010(3), F.A.C.**

5. Petitioner applied for SAIL loan financing in the 2007 Universal Application Cycle (Application Number 2007-167S), and was awarded an allocation of SAIL funds for the acquisition, construction and development of a 144-unit multifamily apartment complex located in Lake County, Florida, and known as Laurel Oaks Apartments (the “Development”). The

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516, Florida Statutes.

financing for the Development was structured with tax-exempt bonds provided by the Orange County Housing Finance Authority, and SAIL funds.

6. Petitioner's tax-exempt bond financing is cross-collateralized with an adjacent development owned by an affiliate of Petitioner (the "Phase II Property"). Accordingly, during credit underwriting for the SAIL loan, the Corporation required that Petitioner cross-collateralize the SAIL loan with the Phase II Property, and that the SAIL loan amortize, rather than be payable out of Development cash flow. However, the Rule requires that SAIL loans be non-amortizing, and at the request of the Corporation, Petitioner therefore seeks a waiver of that portion of Rule 67-48.010(3), F.A.C. (2007) that provides the SAIL loans "shall be non-amortizing....", and instead requests that the SAIL loan be allowed to amortize as required by the Corporation and its underwriting of the SAIL loan. The Corporation is authorized by Section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant waivers to 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 principles of fairness; and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes. The application of this rule will result in a substantial financial burden to the Petitioner.

7. In this case, strict application of Rule 67-48.010(3), F.A.C. (2007) will create a substantial hardship for Petitioner. The Corporation approved the SAIL loan as an amortizing loan, and Petitioner is required to obtain a waiver to allow its SAIL loan to amortize. The denial of this Petition would create a substantial hardship for Petitioner in that Petitioner would be unable to meet the requirement imposed by the Corporation to obtain a waiver of the Rule.

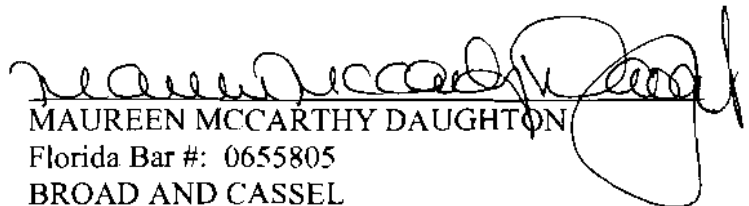
Further, the waiver will serve the underlying purpose of the statute because the waiver will ensure the financial viability of this affordable housing development and thus continue the Corporation's purpose to provide decent, safe and affordable housing in Florida.

**ACTION REQUESTED**

8. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested waiver of that portion of Rule 67-48.010(3), F.A.C. (2007), to allow the SAIL loan to amortize as required by the Corporation in connection with the credit underwriting for the Development.

9. A copy of the Petition has been provided to the Joint Administrative Proceedings Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, as required by Section 120.542(5), Florida Statutes.

Respectfully submitted this 24 day of February, 2009.



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