

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2003-026

ISLAND PLACE APARTMENTS, LLC,
a Florida limited liability company,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITIONER ISLAND PLACE'S PETITION FOR WAIVER OF
RULE 67-48.006(9)(a)'S COMPLIANCE PERIOD**

Petitioner Island Place Apartments, LLC, a Florida limited liability company ("Island Place") petitions Respondent Florida Housing Finance Corporation ("Corporation") for a waiver of the compliance period for a SAIL loan under Rule 67-48.006(9)(a), Florida Administrative Code ("F.A.C") (the "Rule"). In support of its Petition, Island Place states:

1. Pursuant to Section 120.542, Fla. Stat.(2001) and Chapter 28-104, F.A.C., Island Place requests a waiver of the Compliance Period so that it commences prior to and as a condition for final disbursement of proceeds from a \$2,800,000 loan ("SAIL Loan") awarded by the Corporation to Island Place. The SAIL Loan, and other funding, were obtained for the purpose of rehabilitating a 199-unit multifamily residential rental housing project ("the Development"). The requested change will not adversely effect the SAIL Loan or the

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HOUSING FINANCE CORPORATION

M. J. [Signature] / DATE: 7/7/03

Development, but a denial of the request would result in a substantial economic hardship to Island Place.

2. The name, address, telephone and facsimile numbers of the Petitioner are:

Island Place Apartments, LLC
Attention: Agustin Dominguez, President
300 N.W. 12th Avenue
Miami, Florida 33128
Office: 305-324-5505
Facsimile: 305-324-5506

The name, address, telephone and facsimile numbers of Petitioner's attorney are:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Suite 2200
Museum Tower
150 West Flagler Street
Miami, Florida 33130
Telephone: 305 - 789-3200
Facsimile: 305 - 789-3395

3. Rule 67-48.002(24), F.A.C. defines the Compliance Period for SAIL loans as follows:

"Compliance Period" means, with respect to a SAIL Development, a minimum period of 15 years from the date the first residential unit is occupied; . . . However, for SAIL . . . Developments which contain occupied units to be rehabilitated, the Compliance Period shall begin at closing of the SAIL . . . loan.

4. Rule 67-48.006(9)(a) establishes compliance and reporting requirements for SAIL loans. The relevant provisions of Rule 67-48.006 provide as follows:

(7) The Applicant shall submit Program Reports pursuant to the following:

(c) The Initial SAIL Program Report shall be submitted prior to the time of loan closing, if the Development is occupied, or by the 25th of the month following rental of the initial unit in the Development. . . . The Program Reports shall be accompanied by copies of all Tenant Income Certifications executed since the last Program Report.

(9) Compliance monitoring for [the SAIL] program will begin:

(a) For the SAIL Program, regardless of whether the Development also received an HC allocation, following the SAIL loan closing or, if the Development is occupied, prior to the SAIL loan closing.

5. The above Rules are implementing, among other sections of the Florida Housing Finance Corporation Act,¹ section 420.5087, Florida Statutes (2002), which created the SAIL Program. The purpose of the SAIL Program is to provide "first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons" and to meet the needs and demands for low and very-low-income housing throughout the State. §§ 420.5087 and 420.5087(1), Fla. Stat. (2002).

6. Island Place requests that the Rule's Compliance Period be waived, and that the Compliance Period for Island Place's SAIL Loan commence prior to and as a condition for final disbursement of SAIL Loan proceeds.

¹The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes.").

7. The following facts demonstrate the economic hardship and other circumstances which justify Island Place's requested waiver of the Compliance Period:

- a. On August 30, 2000, Bank of America, N.A. a national banking association, made a \$7,900,000 loan to Island Place to finance the acquisition and rehabilitation of the Development (the "Initial Financing");
- b. On October 24, 2002, the Corporation and Island Place closed on the SAIL Loan. The SAIL Loan is evidenced by a Promissory Note, is secured by a second mortgage on the Development, and its maturity date is October 24, 2019;
- c. As required for the SAIL Loan, Island Place is bringing the Development into compliance by, among other things, meeting the set-aside requirements for housing units for low-income and very-low income persons or households;
- d. On November 12, 2002, Island Place obtained a loan (the "Island Loan") from the issuance and sale by the Housing Authority of Miami-Dade County, Florida of its \$6,200,000 Multifamily Housing Revenue Bonds, Series 2002-9 (the "Series 2002-9 Bonds") for, among other approved uses, the refinancing the costs of acquiring and rehabilitating the Development. As required by the Island Loan, not less than 75% of the Development's residential rental units will be occupied by persons or families who are "Low-Income Persons" and not less than 20% of the Development's residential rental units will be occupied by "Very Low-Income Persons;"
- e. Under the Rule, the Compliance Period for the SAIL Loan should have commenced after the October 24th closing. However, Island Place's ability to bring the Development into compliance was dependent upon the funds provided under the SAIL Loan. In fact, since November 12, 2002, the Corporation has disbursed a total of \$2,454,095.12 from the SAIL Loan to Island Place. All proceeds disbursed through the SAIL Loan were used and are being used to bring the Development into compliance and to meet all set-aside requirements by providing housing to qualified individuals and families. However, while all individuals and families are qualified for housing at Island Place, and despite extraordinary efforts, Island Place is still in the process of obtaining third party verification of income for all qualified

individuals and households which is a requirement for compliance under the SAIL Loan. This process should be completed in or prior to September 2003; and

f. The final disbursement of funds from the SAIL Loan should occur in September 2003, and Island Place will be in full compliance with all obligations, including its set-aside requirements. Thus, the modification of the Compliance Period under the SAIL Loan will not adversely impact the Development. However, a denial of the requested waiver will result in substantial economic hardship to Island Place as it continues the rehabilitation, leasing, maintenance and management of the Development while meeting its performance and financial obligations under the SAIL Loan.

8. The requested Rule waiver would serve the purposes of Section 420.5087 and the Act, as a whole, because one of their primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low and very-low-income persons and households. The Corporation would recognize principles of fundamental fairness in the development of such affordable rental housing. This recognition would promote participation by nonprofit developer entities such as Island Place in meeting the purpose of the Act by providing affordable housing, through either new construction or rehabilitation of existing housing. By granting a waiver and allowing the Compliance Period to begin prior to and as a condition for final disbursement of SAIL Loan proceeds, Island Place will be in a position to continue offering housing to qualified individuals and families and to complete the rehabilitation of the Development in an efficient and economical manner. Finally, permitting the requested modification of the Compliance Period will have no adverse effect on the Development.

9. The waiver being sought is permanent in nature.

10. Should the Corporation have questions or require any additional information, Island Place is available to answer any questions and to provide any additional information necessary for consideration of this Petition.


WHEREFORE, Petitioner Island Place Apartments, LLC respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive Rule 67-48.006(9)(a)'s Compliance Period by providing that the Compliance Period begins prior to and as a condition for final disbursement of funds from the SAIL Loan; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

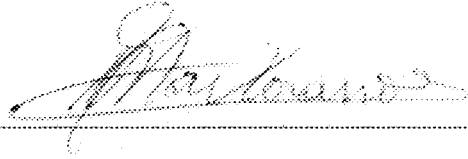
ISLAND PLACE APARTMENTS, LLC

By:


Salvatore Martorano, Vice President

CERTIFICATE OF SERVICE

The Original Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. 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, on July 1, 2003.



A handwritten signature in cursive script, appearing to read "J. H. Howard", is written above a horizontal dotted line.