

2004-041VW

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

In Re: Petition for Waiver of Rule 9I-35.006,)
Administrative Code.)
Filed September 15, 2004.)
_____)

Application No. 97S-004

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FLORIDA HOUSING FINANCE CORPORATION

**NATIONAL DEVELOPMENT FOUNDATION, INC's
PETITION FOR WAIVER OF RULE 9I-35.006
FLORIDA ADMINISTRATIVE CODE**

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), National Development Foundation, Inc. ("NDF"), through its undersigned counsel, files this Petition for Waiver of Rule 9I-35.006, Florida Administrative Code, Terms and Conditions of Loans, and in support, states the following:

1. The name, address, and telephone number of Petitioner, National Development Foundation, Inc. ("NDF") are:

National Development Foundation, Inc.
4250 Alafaya Trail
Suite 212-330
Oviedo, Fl. 32765-9424
(407) 432-7052
2. The name, address, and telephone number of NDF's attorney in this matter

is:

Jon C. Moyle, Jr.
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828

All filings, correspondence, and other documents and communications should be directed to Mr. Moyle at this address and phone number.

3. Affordable Housing Solutions for Florida, Inc. ("AHSF") is a Florida not-for-profit corporation. AHSF received a SAIL loan from the Florida Housing Finance Corporation ("FHFC") of One Million Two Hundred Thirty Thousand Dollars (\$1,230,000) evidenced by a promissory note dated December 15, 1997. This loan provided funds for the construction, rehabilitation and permanent financing of Baker Manor Apartments, a 50 unit affordable housing development located in Baker County, Florida.

4. AHSF has been delinquent in providing FHFC with reports and other information as required by FHFC Rule 9I-35.006. Specifically, the most recent FHFC past due report, reflects that the since 2000, the project has been past due in providing FHFC with required information. An excerpted copy of the August 31, 2004 non-compliance report, which details AHSF's non-compliance, is attached hereto as Exhibit 1.

5. Petitioner, NDF, a Florida not-for-profit corporation in the business of developing and providing affordable housing in Florida, recently entered into a purchase and sale agreement with AHSF to acquire the Baker Manor Apartments, subject to and contingent upon FHFC approval. FHFC was only recently contacted by NDF concerning this transaction, after the parties had reached an agreement between themselves. NDF, in seeking FHFC Board approval of this transaction, is working with FHFC to put in place a payment schedule which will bring current certain interest payments due to FHFC under

its SAIL originally loan made to AHSF and to otherwise achieve a workout for this development.

6. As a successor in interest to AHSF as it relates to the Baker Manor Apartments, NDF seeks a waiver of all past due reporting requirements for the property to provide NDF with a “fresh start” once it assumes ownership of the property and the work out of this matter is completed. Specifically, NDF seeks to focus its efforts to ensure that the property is properly managed on a going forward basis. NDF fully intends to comply with all FHFC rules and reporting requirements once it assumes ownership of the development. However, it would prove to be unfair and a hardship to require NDF to spend considerable sums of money to gather information (some of which is not likely to be available or otherwise readily assessable) and hire professionals to review and compile past due reports for the Baker Manor property. NDF estimates that it could cost it in the tens of thousands of dollars to comply with past due reporting requirements, presenting a hardship for NDF. Accordingly, NDF is asking that all past due reporting requirements for Baker Manor set forth in Rule 9I-35.006, as well as any other requirements of Rule 9I-35.006 that would impair FHFC and NDF from working out the SAIL loan originally made to AHSF be waived and that NDF be permitted a “fresh start” once it assumes ownership of the development.

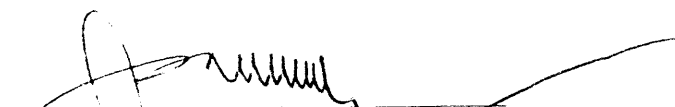
7. Section 120.542, F.S., provides that a waiver to a rule shall be granted when the person subject to the rule demonstrates that application of the rule would create a substantial hardship or violate principles of fairness, and the purpose of the underlying statute will be achieved by other means. Here, NDF has demonstrated that requiring it, as the new owner to the Baker Manor Apartment property, to spend considerable sums of

money to gather, compile and report information to FHFC for past years would create a substantial hardship. NDF, as a Florida not-for-profit corporation, has limited resources that would be better spent working to manage properly the property. Additionally, requiring NDF to comply with the provisions of Rule 91-35.006 that no longer reflect the FHFC rule or policy with respect to terms and conditions of SAIL loans provided to developers of affordable housing is unfair to NDF, and should also be waived to the extent necessary to complete a work out of this troubled development.

8. Waiving Rule 91-35.006 as requested in paragraph six above is consistent with and achieves the purpose of Section 420.5087, Florida Statutes, entitled State Apartment Incentive Loan Program, the statute that is implemented by Rule 91-35.006. Specifically, this statute promotes affordable housing by making state dollars available to finance affordable housing development. NDF will continue to use the Baker Manor as an affordable housing property, thus serving the underlying purpose of the SAIL loan statute, section 420.5087. Additionally, Section 420.5087(8) expressly contemplates FHFC taking this type of action, arguably including the granting of rule waiver requests such as the one put forward by NDF, to recover accrued interest on behalf of the SAIL fund. Thus, the purpose of the underlying statute will be achieved by the granting of NDF's rule waiver request.

9. NDF seeks a rule waiver that will apply to its workout of the matter with FHFC and the time period prior to NDF's acquisition of the Baker Manor property. Thus, the rule waiver is of the nature of a one-time, permanent request. Additionally, as a condition precedent to this rule waiver request, NDF will be seeking Board approval of the sale of Baker Manor from AHSF to NDF.

Respectfully submitted this 15th day of September, 2004.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this day the 15th day of September, 2004.

*Matt Sirmons
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Joint Administrative Procedures Committee
600 S. Calhoun Street
Room 120 Holland Building
Tallahassee, FL 32399-1300



Jon C. Moyle, Jr.

FHFC

As of August 31, 2004
1 of 6

Past Due Report
Subject to Further Verification

Developer	Property Name	Funding Source(s)	County	Loan Amount	Lien Position	Servicer/Trustee	Comments
A & S Development Thomas Shepherd Affordable Housing Solutions for Florida Barry G. Haman	Regency Gardens Baker Manor	SAIL 2002 0903 HC 2000 033C SAIL 1997S-004	Broward	\$700,000.00 \$1,230,000.00	General Mortgage First Mortgage	FHFC SMG	SAIL - Failure to submit 2004 budget due 12/1/03 SAIL - Failure to provide audited financials for 1999-2003. Owees \$500 per year for 2002 & 2003 late filing fee due 9/30/03 & 7/1/04 for a total of \$1,000. Owees \$5,425 for 2003 consulting fees due 3/1/04. Owees \$33,492 for 2000 interest and 536,909.00 for 2001-2002 for a total of \$167,700.00 due 8/2/03. Failure to submit 2004 budget due 12/1/03 and 2003 mid-year report due 8/15/03. Failure to submit 2004 budget & capital expenditures report due 12/1/03. Failure to submit 2003 year-end operating results due 2/1/04. Failure to submit 2004 mid-year report due 8/15/04. Failure to pay monthly, escrow payments of \$3,372.18 for March-August, totaling \$20,233.08 as of 8/15/04. Owees replacement reserve payments for March-August of \$883 each for a total of \$4,998.99 due as of 8/15/04. Failure to submit 2003 SAIL cash flow reporting form due 6/1/04.

