

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2006-008VW

ALABASTER GARDENS, LTD.

Petitioner,
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR WAIVER OF
RULES 67-48.002(31), AND 67-48.004(14)(b)**

Petitioner Alabaster Gardens, Ltd., petitions Respondent Florida Housing Finance Corporation ("Corporation") for waivers of restrictions on changing developers before construction of a development is completed. *See* Rules 67-48.002(31), and 67-48.004(14)(b), F.A.C. (collectively the "Rules"). In support of its Petition, Petitioner states:

1. Pursuant to Section 120.542, Fla. Stat. (2001) and Rules 28-104.001 through 28-104.006, F.A.C., Petitioner requests waivers of the Rules to allow a change in the Developer Entity for Alabaster Garden (the "Development") from Carlisle Development Group, LLC ("CDG") to Alabaster Garden Development, LLC (the "Proposed Developer"), a single purpose wholly-owned subsidiary of CDG.

2. The requested waivers are made for tax, accounting and corporate liability issues, and concerns. At the advice of its legal counsel and tax accountants, Petitioner determined that it would be beneficial to transfer the development rights and obligations from CDG, to an individual entity, in which CDG is the sole member. The net effect for the Development will be that the same individuals will be developing the Development, albeit in a wholly-owned subsidiary of CDG.

3. The principals of the Proposed Developer will be identical to CDG's principals, and CDG will be the sole member of the Proposed Developer's limited liability company.

4. The requested change will not adversely affect the Development as the Proposed Developer-subsiary of CDG has the requisite expertise and experience to develop successful low-income rental developments. However, a denial of the waiver requests would violate principles of fairness and subject CDG to substantial hardship as a result of increased tax, accounting and corporate liability caused by the bringing of often frivolous lawsuits which, if brought against CDG directly, could cause it to be unable to properly and efficiently develop, not only this Development, but other affordable housing developments being developed by CDG and financed by the Corporation.

5. Petitioner's name, address, telephone and facsimile numbers are:

ALABASTER GARDENS, LTD.
c/o Alabaster Gardens, LLC, General Partner
Attention: Arthur L. Fletcher, President
939 Massachusetts Avenue
Pensacola, FL 32505
Telephone: 850-432-3902
Facsimile: 850-435-7210

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

Brian J. McDonough, Esquire
Mimi L. Sall, Esquire
STEARNS WEAVER MILLER WEISSLER
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6. The 2004 Combined Rental Cycle Applications, Rule 67-48.002(31), sets forth one of the applicable rules which is the subject of this Petition. Rule 67-48.002(31) defines a "developer" under Applications submitted to the Corporation for, in this instance, financing under the State Apartment Incentive Loan Program ("SAIL Program"), and for allocations of housing tax credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program"). Fla. Stat. §§ 420.5087 and 420.5099 (2004). In addition to defining "developer," Rule 67-48.002(31) precludes any change of developer until construction of the particular "Development" is completed. More specifically, Rule 67-48.002(31) defines a developer as follows:

"Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing pursuant to this rule chapter. **The Developer, as identified in an Application, may not change until the construction of the Development is complete.** (Emphasis added)

7. The second rule subject to this Petition is Rule 67-48.004(14)(b). This Rule establishes specific items and information that (a) must be included in the 2004 Combined Rental Cycle Applications; and (b) cannot be changed:

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:

(b) Name of each Developer, including all co-Developers

Id. (emphasis added)

8. The Florida Housing Finance Corporation Act¹ designates the Corporation as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). §§ 420.5099(1) and (2), Fla. Stat. (2004). The Allocation Procedures were established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rules which are the subject of Petitioner's waiver requests, are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2004).

9. The purpose of the HC Program is to encourage the development of low-income housing by raising equity through the sale of housing credits to investors by developers of low-income housing.

10. For petitioners seeking SAIL funding, the Rules are implementing the specific statute that created the SAIL program. *See* § 420.5087, Fla. Stat. (2004). 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 very-low-income housing throughout the State. §§ 420.5087 and 420.5087(1), Fla. Stat. (2004).

11. Petitioner requests waivers of the Rules' restrictions against changing the developer identified in the Application before construction is completed and/or after the

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").

Application is submitted. Specifically, Petitioner requests waivers of the Rules to allow the replacement of CDG, the current developer, with the Proposed Developer. The Proposed Developer is a single purpose, wholly-owned subsidiary of CDG. The requested change will not have any effect on the Development's construction, but is necessary to avoid violations of/and protect principles of fairness.

12. The following facts demonstrate the circumstances which justify a waiver of the Rules' restrictions against changing developers:

- a. The express purpose of the Rules prohibiting changing developers is to prevent (1) a deterioration in the development team's ability to develop a development and (2) an Applicant from "flipping" its interest in a development to a third party;
- b. In connection with the financing of the Development, Petitioner applied for allocations of housing credits from the Corporation through the HC program and SAIL funding;
- c. In its Application, Petitioner identified CDG as the Developer Entity for the Development;
- d. CDG would remain involved with the Development as the sole member and owner of the Proposed Developer. As such, the Proposed Developer will rely upon and benefit from the identical expertise, experience, services, resources and support personnel of CDG. Accordingly, the continuity, progress and quality of the Development will not be disrupted or otherwise effected by substituting the Proposed Developer for CDG, and the Proposed Developer will have the benefit of CDG's extensive expertise, experience and knowledge of and access to resources for all aspects of development of quality affordable rental housing developments for low-income or very-low-income persons or households. The scope of CDG's skill and expertise includes, but is not limited to, hiring and monitoring professional consultants, construction contracts, obtaining financing commitments and closing the transactions, and monitoring construction progress. Moreover, CDG has developed, constructed and managed more than 26 successful affordable rental housing Developments with some 4,293 units. Through its efforts, CDG has established, with the Corporation, a successful record in the specialized area of developing and managing much needed, quality affordable rental housing Developments;
- e. The requested Rule waivers will have no negative impact upon the completion of the Development; and

- f. A denial of the waiver requests would violate principles of fairness and subject CDG to substantial hardship as a result of increased tax, accounting and corporate liability caused by the bringing of often frivolous lawsuits which, if brought against CDG directly, could cause it to be unable to properly and efficiently develop, not only this Development, but other affordable housing developments being developed by CDG and financed by the Corporation.

13. A waiver of the Rules' restrictions on changing developers would serve the purposes of Sections 420.5087 and 420.5099, Fla. Stat., 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 very-low-income persons and households. By granting the waivers and permitting the substitution of the Proposed Developer for CDG, the Corporation would recognize principles of fundamental fairness in the development and construction of affordable rental housing. Permitting the substitution of CDG for its wholly-owned Proposed Developer will have no effect on any of the Developments.

14. The waivers being sought are permanent in nature.

15. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of this Petition.

WHEREFORE, Petitioner Alabaster Gardens, Ltd., respectfully requests that:

- A. The Corporation grant the Petition and all the relief requested therein;
- B. Waive the restrictions in Rules 67-48.002(31), and 67-48.004(14)(b), F.A.C., against changing developers before completion of a Development and/or after an Application is submitted by permitting the substitution of Alabaster Garden Development, LLC, for Carlisle Development Group, LLC.; and

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

ALABASTER GARDENS, LTD., a Florida
limited partnership

By: Alabaster Gardens, LLC, a Florida
limited liability company, its General
Partner

By:  X
Arthur L. Fletcher, President

CERTIFICATE OF SERVICE

The Original Petition is being served by facsimile 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, this 22 of March, 2006.

By: Elizabeth Wong
ELIZABETH WONG