

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SUMMERSET SENIOR, LLC.

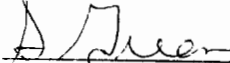
FHFC Case No.: 2006-010VW
Application No.: 2004-094S

**ORDER GRANTING WAIVER OF RULES 67-48.002(111)
AND 67-48.004(14)(a), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on June 9, 2006, pursuant to a Petition for Waiver of Rules 67-48.002(111) and 67-004(14), Fla. Admin. Code (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on March 30, 2006 from Summerset Senior, LLC, ("Petitioner"). On April 14, 2006, Florida Housing published the Notice of the Petition in Volume 32, Number 15, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. During the 2004 Universal Cycle, Florida Housing awarded \$1,500,000 in State Apartment Incentive Loan Program (SAIL) funding to Petitioner to construct a 132-unit multifamily rental apartment complex, known as Summerset Village Apartments, located in St. John's County, Florida (the "Development"). Petitioner has not closed on its SAIL loan.
3. Petitioner requests a waiver of Rules 67-48.002(111) and 67-004(14) to permit a change in the Applicant entity prior to the completion of construction and prior to the loan

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 6-12-06

closing. Specifically, Petitioner wishes to change the current Applicant entity, Summerset Senior, LLC, to a new legal entity, Summerset Village, LLC, in which is the sole member of Summerset Senior, LLC.

4. Rule 67-48.002(111), Florida Administrative Code (2004), states in pertinent part:

(111) “Universal Application Package” or “UA1016 (Rev. 3-04)” means the forms and instructions, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, 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.

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 result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

Rule 67-48.004(14)(b), Florida Administrative Code (2004), states in pertinent part:

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....those items are as follows:

(a) Name of Applicant;

5. Section 120.542(2), Florida Statutes provides in pertinent part:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

6. The Board finds that a waiver of the above Rules is necessary and that denial thereof would create a substantial hardship for Petitioner or violate principles of fairness. Petitioner demonstrated that due to structuring issues required to comply with the Fair Housing Act, Petitioner's financing was acquired by and through its sole member, Summerset Village, LLC. The Federal Fair Housing Act requires a complex to be designated as senior housing where substantially all of the units are leased to senior citizens. In order to comply, Petitioner divided the property into two complexes, Summerset Senior LLC, a seniors-only complex and Summerset Family, LLC, a family complex. Summerset Village, LLC, provides debt service on behalf of the two complexes. Petitioner's request reflects its economic circumstances. Petitioner further demonstrated that there will be no change of ownership by changing the current Applicant entity Summerset Senior, LLC, to a new legal entity, Summerset Village, LLC.

7. Petitioner demonstrated that failure to grant its Petition, will result in Petitioners not being in compliance with the Fair Housing Act and it will be unable to maintain the Development. Petitioner also demonstrated that it would violate the principles of fairness to deny its Petition as the underlying entities are the same.

8. The granting of a waiver of the aforementioned rules would serve the purpose of the underlying statute, Chapter 420, Part V, Fla. Stat., in that it would further the goal of facilitating the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households.

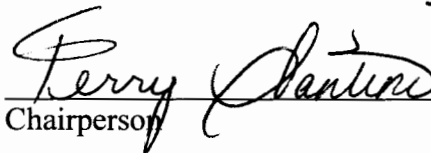
8. The granting of this waiver will not adversely affect the Development as the new entity, Summerset Village, LLC, is the sole member of Petitioner.

IT IS THEREFORE ORDERED:

The Petition for Waiver of Rules 67-48.002(111) and 67-48.004(14)(a), Florida Administrative Code, is hereby **GRANTED** specifically to permit a change of Applicant prior to the completion of construction and prior to its SAIL loan closing, from Summerset Senior, LLC, to Summerset Village, LLC.

DONE and ORDERED this 9th day of June, 2006.

Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Vicki Robinson
Deputy Development Officer
Florida Housing Finance Corporation
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Summerset Senior, LLC,
Attention: Rene Sandell
8226 North Wickham Road, Ste 200
Melbourne, Florida 32940

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, Florida 32301

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300



NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN L. KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.