

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

LAKE HARRIS COVE PARTNERS, LTD.,
a Florida limited partnership

Petitioner,

vs.

APPLICATION NO. 2005-077S
CASE NO. 2005-032vw

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER FROM RULES 67-48.002(31), 67-48.004(14) and (15)

LAKE HARRIS COVE PARTNERS, LTD., a Florida limited partnership (“Petitioner”),
by and through its undersigned counsel, hereby petitions the Florida Housing Finance
Corporation (the “Corporation”) for a waiver from Rules 67-48.002(31), 67-48.004(14) and (15),
Florida Administrative Code (2005) This Petition is filed pursuant to Section 120.542, Florida
Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

Lake Harris Cove Partners, Ltd.
c/o The CED Companies
1551 Sandspur Road
Maitland, Florida 32751
(407)741-8500

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

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
(850)681-6810
(850)521-1478 Facsimile

3. Petitioner successfully applied for financing from the State Apartment Incentive Loan (SAIL) program in the 2005 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s application number is 2005-077S (the “Application”). Petitioner applied for SAIL Funds to finance a portion of the costs to develop a multifamily rental apartment complex in Lake County, Florida, to be known as Lake Harris Cove Apartments (the “Development”). The Development will have 152 units. The Application for SAIL Funds was approved for funding at the August 25, 2005 Board meeting.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.002(31), 67-48.004(14) and (15). Florida Administrative Code. More specifically, Petitioner is seeking a waiver from what is designated as the “Application and Selection Procedures for Development”, subsections (14) and (15) of Rule 67-48.004 and the definition of “Developer” as set forth in subsection (31) of Rule 67-48.002.

5. Rule 67-48.002(31) defines “Developer” as follows:

... 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.

6. Rule 67-48.004(14)(B) provides:

(14) 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:

- (a) Name of Applicant;
- (b) Name of each Developer, including each co-Developers;

* * *

7. Rule 67-48.004(15) provides:

(15)(A) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the Board determines that the Applicant's Development or Development Team is no longer the Development or Development Team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

STATUTES IMPLEMENTED BY THE RULES

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the SAIL Program. See §420.5087, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

9. Petitioner requests a waiver of Rules 67-48.002(31), 67-48.004(14) and (15), restricting the ability to change the Developer prior to the completion of construction of the Development. Petitioner is seeking the waiver so that it may change the Developer entity from Sandspur Housing Partners, Ltd. to Sandspur Housing Group, Ltd.

10. Petitioner requests this waiver to accommodate changes to the structure of both the limited and general partners of Sandspur Housing Partners, Ltd. for estate planning purposes of Alan H. Ginsburg. In spite of these changes to the corporate structure, the identity of the

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

underlying officers, directors and managers of Sandspur Housing Partners, Ltd. as compared to Sandspur Housing Group, Ltd. are substantially the same.

11. This change will not adversely impact the Development because the Developer continues to have the requisite expertise and experience to successfully develop and complete the Development. Moreover, this change will not result in any distribution of funds or other compensation. Sandspur Housing Group, Ltd. can rely upon and benefit from the identical expertise, services, resources and support available to Sandspur Housing Partners, Ltd. Accordingly, the continuity, progress and quality of the Development will not be disrupted.

12. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rule if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the rule is waived to allow the change in Developer, certain unreasonable, unfair and unintended consequences will result. Specifically, Alan H. Ginsburg, the ultimate owner (individually, or through trusts created for his benefit and/or the benefit of his family) of various entities in the CED Companies family of entities ("CED"), is engaged in certain estate planning strategies to protect his interests and the interests of his family members. One of the actions in furtherance of Mr. Ginsburg's estate planning strategies is the creation of a new developer entity to develop future affordable housing projects by CED. The new developer entity would replace Sandspur Housing Partners, Ltd., which has served as the developer entity on a multitude of affordable housing transactions constructed by The CED Companies, on developments on a going-forward basis, including this Development. If the Corporation were to deny Petitioner's request to allow Sandspur Housing Group, Ltd. to replace Sandspur Housing Partners, Ltd. as the developer for the Development, the result would preclude Mr. Ginsburg from effecting certain of his estate planning strategies.

resulting in negative tax consequences, which is an unreasonable, unfair and an unintended consequence of the Rule.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

13. Petitioner believes that a waiver of these rules will serve the purposes of the statute which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The State Apartment Incentive Loan Program authorizes the Corporation to, among other things, make and participate in the making of first, second or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, not-for-profit and public entities, to provide affordable housing to very low income persons. By granting this waiver requesting and permitting Petitioner to change its Developer, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

14. The waiver being sought is 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 the Petition.

ACTION REQUESTED

16. Petitioner requests the following:

a. That the Corporation grant the Petitioner a waiver from Rule 67-48.002(31) , 67-48.004(14) and (15) such that the Corporation allow a change to the Developer.

17. This waiver would be permanent as to the Petitioner.

18. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 13 day of September, 2005.



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