

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

SHA ASSOCIATES, LTD.,  
a Florida limited partnership,

Petitioner,

vs.

FHFC CASE NO. 2005-030VW

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 67-21.008(1)(g),**  
**FLORIDA ADMINISTRATIVE CODE**

SHA ASSOCIATES, LTD., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver of Rules 67-21.008(1)(g) Florida Administrative Code, which impose certain financial reporting requirements on holders of loans issued by the Corporation under its Multi-Family Mortgage Revenue Bond ("MMRB") Program affordable housing finance program. In support, Petitioner states the following:

**THE PETITIONER**

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

**SHA Associates, Ltd.**  
**c/o JDF, LLC**  
**340 Pemberwick Road**  
**Greenwich, CT 06831**

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

**THE RULE FROM WHICH WAIVER IS SOUGHT**

3. Petitioner requests waiver of Rule 67-21.008(1)(g). Rule 67-21.008(1)(g), F.A.C., requires submittal of an annual audited financial statement for developments financed by the Corporation under the MMRB Program.

**STATUTES IMPLEMENTED BY RULE  
67-21.008(1)(g), F.A.C.**

4. Rule 67-21.008(1)(g), F.A.C., implements Sections 420.507 and 420.508, Florida Statutes. Section 420.507, Florida Statutes, authorizes the Corporation to, among other things, issue bonds for the provision of affordable housing; make conditions respecting the grant of mortgage loans and to enter into regulatory and other agreements and contracts in connection with such loans; and makes rules to carry out the purposes of and exercise any power granted by the Florida Housing Finance Corporation Act, Part V, of Chapter 420, Florida Statutes.<sup>1</sup> Section 420.508, Florida Statutes, authorizes the Corporation to, among other things, make and participate in the making of mortgage loans for permanent or construction financing of development costs of projects subject to specified conditions, and to establish terms of mortgage loans funded pursuant to Part V of Chapter 420, Florida Statutes. Pursuant to these provisions, the Corporation has adopted Rule 67-21.008, F.A.C., entitled "Terms and Conditions of MMRB

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

Loans.” One of the terms and conditions of MMRB loans is to submit an annual audited financial statement pursuant to Rule 67-21.008(1)(g), F.A.C.

**JUSTIFICATION FOR GRANTING WAIVER OF  
RULE 67-21.008(1)(g), F.A.C.**

5. Petitioner proposed a new construction development in the Spring Hill area of unincorporated Hernando County, Florida. The closing of the FHFC loans was delayed until the spring of 2004 due to issues with Hernando County and the Florida Department of Environmental Protection.<sup>2</sup> Construction of the subject development, known as Spring Haven Apartments (“Spring Haven”) is now complete. Due to the financing closing delays, construction of Spring Haven was not completed in 2004. As a result, Spring Haven was not operational in 2004, and units did not begin leasing until January of 2005. The fact that Spring Haven was not operational in 2004 means that the preparation of audited financials for that same time period will provide little, if any, useful information and will instead create unnecessary expense for Spring Haven.

7. The Corporation is authorized by Section 120.54(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principles of fairness<sup>3</sup>; and (2) the

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<sup>2</sup> The Petitioner applied for funding in 2002.

<sup>3</sup> “Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver. “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to Rule 120.542(2), Florida Statutes.

purpose of the underlying statute has been or will be achieved by other means by the person.

Section 120.542(2), Florida Statutes.

6. In this case, strict application of Rule 67-21.008(1)(g) will lead to unreasonable and unintended consequences. To require Petitioner to provide audited financial information for a fiscal year in which Spring Haven was not operational would be unreasonable, as the audited financials for a year in which there were no operations would provide no material information to the Corporation, and would cause unnecessary expense to the development, which is also an unintended consequence of the application of the Rules. Moreover, there will be an economic hardship to Petitioner if it is required to have audited financials prepared for a fiscal year in which Spring Haven had no operations.

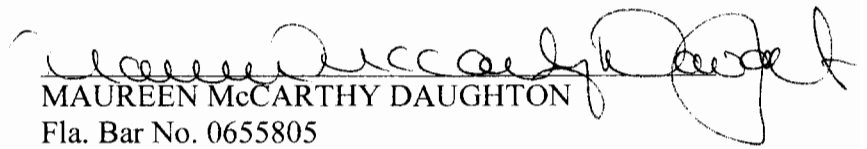
7. Further, the purposes of Section 420.507, 420.508 and 420.5087 will be achieved by other means. These statutes authorize the Corporation to provide affordable housing financial terms and conditions of such loans. The Petitioner is able to provide other financial documentation to the Corporation which will provide the information to enable the Corporation to monitor Petitioner's continued financial capability and credit worthiness and its compliance with the terms and conditions of the MMRB Loan.

#### **ACTION REQUESTED**

8. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested waiver of Rule 67-21.008(1)(g) , F.A.C., for the Spring Haven Apartments for the fiscal year 2004.

9. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300-, as required by Section 120.542(5), Florida Statutes.

Respectfully submitted this 12 day of September, 2005.



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