

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2006-0460W

Application 2005-048S

ROYALTON APARTMENTS, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OR VARIANCE OF RULES 67-48.002(30), 67-48.002(32),
67-68.010(5) AND 67-48.0072(10) (2005)**

Petitioner Royalton Apartments, Ltd. ("Petitioner") petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for (1) a variance, modification or clarification of the definition of "Development Expenses" and thereby allow for the deposit of all Development Cash Flow into a reserve account ("Supplemental Operating Reserve"); and (2) a waiver of minimum combined debt service coverage ("DSC") requirements. See Rules 67-48.002(30) and (32), 67-48.010(5), and 67-48.0072(10) F.A.C. (2005) (collectively the "Rules").

**I. FACTUAL AND LEGAL REPRESENTATIONS COMMON TO REQUEST
FOR VARIANCE OF THE DEFINITION OF "DEVELOPMENT EXPENSES"
AND WAIVER OF DSC REQUIREMENTS**

1. Pursuant to Section 120.542, Fla. Stat.(2005) and Rules 28-104.001 through 28-104.006, F.A.C., Petitioner requests waivers and/or variance of the Rules to allow for the deposit of all net cash flow generated by the Development (as hereinafter defined) into the Supplemental Operating Reserve and to waive the requisite DSC.

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

ROYALTON APARTMENTS, LTD.
c/o TCG Royalton Apartments, LLC,
Managing General Partner
Attention: Lloyd J. Boggio, President
2950 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

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

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3336
Facsimile: 305-789-3395
E-mail: bmcDonough@swmwas.com

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON, P.A.
200 East Las Olas Blvd., Suite 2100
Fort Lauderdale, Florida 33301
Telephone: 954-462-9575
Facsimile: 954-462-9524
E-mail: msall@swmwas.com

4. Petitioner seeks waivers and variances under the 2005 Application wherein Petitioner was awarded an allocation of \$1,000,000 in SAIL funding.

5. Petitioner is developing a 100-unit rental apartment complex to be known as the Royalton Apartments (the "Development"). The Development will provide housing for low income families, including homeless persons in Miami-Dade County, Florida, and surrounding areas.

6. Recognizing the need for supportive rental assistance for homeless persons who will rent units in the Development, Petitioner, through the parent of its non-profit general partner C4 Royalton Apartments, LLC, applied for and was awarded a five-year sponsor-based Shelter Plus Care Program ("Shelter Care") rental assistance contract by Miami-Dade County.

7. Although Petitioner will seek a renewal of the Shelter Care contract, Petitioner is uncertain whether the initial five-year contract, in fact, will be renewed.

8. Because the financial performance and viability of the Development is dependent upon Shelter Care rental assistance, the non-renewal of the Shelter Care contract will result in significant revenue shortages, and could result in Petitioner's inability to meet its operating expenses, including debt service.

9. These adverse results can be avoided through the establishment of a Supplemental Operating Reserve¹ in an amount in an amount up to \$2,500,000, to ensure the continuing economic viability of the Development, taking into account the possible availability of Shelter Care funds beyond the initial five-year commitment period. In no event will the deposits into the Supplemental Operating Reserve continue beyond 15 years.

10. The Supplemental Operating Reserve would be funded with (a) \$400,000 from the investor limited partner's second equity installment, and (b) the balance from Development Cash Flow, with the following conditions:

- a. The funding of all net cash flow from the Development, until the Supplemental Operating Reserve has reached its full funding level of up to \$2,500,000, will be treated as an expense for purposes of calculating Development Cash Flow available to make interest payment on the SAIL loans; and
- b. Neither Petitioner nor any of its affiliates will receive any funds from the Supplemental Operating Reserve prior to these funds being used for operating shortfalls caused by the loss of Shelter Care rental assistance or for full payment of any accrued and/or deferred SAIL loan interest due to Florida Housing.

11. The funding of the Supplemental Operating Reserve should not impair the 1.10 DSC requirement. The funding of the Supplemental Operating Reserve with all net cash flow of the

¹Authority for establishing a Supplemental Operating Reserve is found in Rule 67-48.0072(12) (2005). Under these Rules, the Credit Underwriter "must include an estimate for ... operating expense reserves deemed appropriate by the Credit Underwriter ..."

Development may be treated as an “expense” thereby causing the Development to technically have no net operating income for purposes of meeting the requirement that the Development demonstrate a 1.10 DSC on its first and second mortgages. In such event, and to avoid any possible impairment of the DSC, Petitioner requests that Florida Housing waive the 1.10 DSC requirement under these unique circumstances.

12. The requested Rule waivers and variances will not adversely affect the Development or Florida Housing. However, a denial of the waiver and variance requests would violate principles of fairness and subject Petitioner to substantial hardship as a result of potential defaults and/or breaches of Petitioner’s obligations under the 2005 Application that (a) could cause Petitioner to be unable to properly and efficiently develop this Development; (b) could adversely impact other affordable housing developments being developed by entities affiliated with Petitioner, and financed by Florida Housing; and (c) could prevent Petitioner and affiliated entities from successfully applying for future financing awards available from Florida Housing.

13. Most importantly, the denial of the relief requested herein could deprive Miami-Dade County of essential affordable rental units for homeless persons.

14. The Rules for which waivers and variances are sought implement, among other sections of the Florida Housing Finance Corporation Act,² the statute that created the SAIL Program. *See* § 420.5087, Fla Stat. (2005). The express 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,” including Florida’s homeless persons. The SAIL Program encourages the development of low-income housing

²The 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.

to ensure the availability of housing affordable to very-low-income persons throughout the State. §§ 420.5087(1) and (3)(c), Fla. Stat. (2005).

15. A waiver of the Rules 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 requested waivers, Florida Housing would recognize principles of fundamental fairness in the development and construction of affordable rental housing.

16. The Rules waivers and variances being sought are permanent in nature.

II. RULES SUBJECT TO PETITIONER'S REQUESTED WAIVERS AND VARIANCES

17. Petitioner realleges and incorporates Paragraphs 1 through 16 as though fully set forth herein.

18. Petitioner seeks (a) a variance, modification or clarification of the definition of "Development Expenses" under the 2005 Application to allow Petitioner to deposit all "Development Cash Flow" into the Supplemental Operating Reserve, and (b) a Rule waiver of the required DSC.

A. **2005 Rules Applicable to Request for a Variance, Modification or Clarification of the Definition of Development Expenses.**

19. Under the 2005 Combined Rental Cycle Application, Rules 67-48.002(30) and (32), and 67-48.010(5) are the applicable Rules for waivers and variances requested by Petitioner.

20. Rules 67-48.002(30) and (32) specifically define "Development Cash Flow" and "Development Expenses." Under the unique circumstances described above, Petitioner requests a variance, modification or clarification of "Development Expenses" to allow for the deposit of all "Development Cash Flow" into the Supplemental Operating Reserve.

21. Consequently, a waiver of Rule 67-48.010(5)'s priorities for payment from Development Cash Flow also is requested to allow for disbursements of "Development Cash Flow" in accordance with Paragraph 10 above.

D. 2005 Rules Applicable to Request for a Waiver of DSC Requirements.

22. Under the 2005 Combined Rental Cycle Application, Rule 67-48.0072(10), of the SAIL Credit Underwriting and Loan Procedures, is the applicable Rule governing DSC requirements. As a consequence of the unique circumstances described above, Petitioner requests a waiver of Rule 67-48.0072(10)'s requirement that "the minimum debt service coverage shall be 1.10 for the SAIL loan."

III. CONCLUSION

23. For the reasons set forth above, Petitioner requests waivers and variances of the Rules.

24. Should Florida Housing have questions or require any additional information, Petitioner is available to provide additional information necessary for consideration of this Petition.

WHEREFORE, Petitioner Royalton Apartments, Ltd., respectfully requests that the Florida Housing Finance Corporation :

- A. Grant the Petition and all the relief requested therein;
- B. Provide a variance, modification or clarification of the definition of "Development Expenses" under of Rules 67-48.002(30), 67-48.002(32), and 67-48.010(5), F.A.C. (2005), and thereby allow all net cash flow to be deposited into the Supplemental Operating Reserve and disbursed in accordance with Paragraphs 9 and 10 above;
- C. Waive the minimum combined debt service coverage requirements under Rule 67-48.0072(10) F.A.C. (2005); and

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

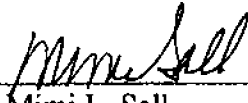
Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Royalton Apartments, Ltd.
200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301
Tel: (954) 462-9575
Fax: (954) 462-9567

By:  _____
MIMI L. SALL

CERTIFICATE OF SERVICE

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, 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 8th day of August, 2006.

By: 
Mimi L. Sall