

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

THE CLUB AT EUSTIS VILLAGE
PARTNERS, LTD., a Florida limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

APPLICATION NO. 2006-0938

ORIGINAL RECEIVED
FLORIDA HOUSING FINANCE CORPORATION
FEB 21 11:05 AM '06

**AMENDED
PETITION FOR WAIVER FROM RULES
67-48.004(1)(a), 67-48.004(14)(a) and (b) AND 67-48.004(15), F.A.C.**

THE CLUB AT EUSTIS VILLAGE PARTNERS, LTD., a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for waiver from Rules 67-48.004(1)(a), 67-48.004(14)(a) and (b) and 67-48.004(15), Florida Administrative Code (2006). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

The Club at Eustis Village Partners, Ltd.
c/o Atlantic Housing
329 North Park Avenue, Suite 300
Winter Park, FL 32789

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

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

3. Petitioner successfully applied for financing from the State Apartment Incentive Loan (“SAIL”) Program in the 2006 Universal Application Cycle Multi-Family Mortgage Revenue Bonds (“MMRB”) Program; Home Investment Partnership (“HOME”); Rental Program and Housing Credit (“HC”) Program (the “Universal Cycle”). The Petitioner’s Application number is 2006-093S (the “Application”). Petitioner applied for SAIL funds to finance the costs to develop a multi-family 96-unit garden apartment complex in Lake County, Florida, to be known as The Club at Eustis Village (the “Development”).

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from various sections of Rule 67-48.004(1)(a) and Rule 67-48.004(14), and Rule 67-48.004(15), Florida Administrative Code. More specifically, Petitioner is seeking a Waiver from what is designated as the “Application and Selection Procedures for Development,” subsection (1)(a) and subsections (14)(a)-(b) and (15) of Rule 67-48.004.

5. Rule 67-48.004(1)(a) provides:

(1)

(a) The Universal Application Package or UA1016 (Rev. 1-06) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, for a fee at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, or available, without charge on the Corporation’s Website under the 2006 Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC or SAIL and HC Programs(s).

6. The Specific Instructions of the Universal Application Instructions provides under Part II A.2.a.(2):

(2) 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 or a material change (33.33% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named 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.

* * *

B. Development Team.

* * *

1. Developer or principal of Developer (Threshold).

The identity of the Developer(s) listed in this Application may not change until the construction or Rehabilitation/Substantial Rehabilitation of the Development is complete, unless approved by the Board.

7. Rule 67-48.004(14)(a) and (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) Identity of each Developer, including all Co-Developers;

8. Rule 67-48.004(15) provides:

(15) 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 RULE

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the SAIL program. Section 420.5087, Florida Statutes.

10. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and 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 principals of fairness², and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

11. Petitioner requests a waiver of Rules 67-48.004(1)(a) and (14)(a), restricting the ability to change the name of the Applicant prior to closing.³ The Applicant Entity is The Club at Eustis Village Partners, Ltd., with an ownership structure as reflected on the attached Exhibit A. The Petitioner desires this Waiver to change the Applicant Entity to Club at Eustis Partners, Ltd., with an ownership structure as reflected on the attached Exhibit B. In spite of this change in Applicant Entity, the identity of the underlying managers of Club at Eustis Group Managers, L.L.C. (the general partner of Club at Eustis Partners, Ltd.) are the same as the majority of the underlying managers of CED Capital Holdings 2004 O, L.L.C. (the general partner of The Club at Eustis Village Partners, Ltd.), and a majority of the ultimate owners of Petitioner will continue

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.516, Florida Statutes.

² “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or 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 the Rule. Section 120.542(2), Florida Statutes.

³ This Board approved a similar request to change the name of the Applicant entity in FHFC Case No. 2006-074VW at its January 2007 Board meeting.

to serve in an ownership or guarantor capacity in Club at Eustis Partners, Ltd. (whether individually or through entities controlled by such persons, or through trusts created for the benefit of those persons or their families). The change in the Applicant Entity and its ownership structure are necessary for the estate planning purposes of Alan H. Ginsburg and Michael J. Sciarrino.

12. Petitioner similarly requests a waiver of Rules 67-48.004(1)(a), (14)(b) and (15) to change the name of the Developer from Atlantic Housing Group, L.L.L.P. to Atlantic Housing Partners, L.L.L.P., as well as to file name changes for certain other entities within the Developer's ownership structure. The Developer further wishes to transfer one of the limited partner interests of the Developer (currently held by NV Housing & Development Trust) to Florida CIS Housing Advisors, L.P. None of the above requested changes will adversely impact the Development because the members of the Developer entities remain the same and continue to have the requisite expertise and experience to successfully develop and complete the Development. Accordingly, the continuity, progress and quality of the Development will not be disrupted.

13. 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 changes as outlined above, certain unreasonable, unfair and unintended consequences will occur, resulting in a substantial hardship to the Applicant and the Developer entities. Specifically, the purpose of the Rule was to prevent "flipping" applications to third party owners/developers once funds have been awarded to an applicant. The unintended consequence of the rules implemented to prevent "flipping", including the Rule that is the subject of this Petition, is that internal structuring changes within the originally contemplated development and

ownership teams cannot be implemented. In this particular case, denying Petitioner's request will result in a substantial hardship beyond simply being prohibited from engaging in internal structuring for estate planning and other purposes. Alan H. Ginsburg, who holds an ownership interest in Petitioner as well as serving as a Guarantor for Petitioner, will proceed only in a guarantor capacity in this transaction. In furtherance of certain estate planning and other structuring efforts, Mr. Ginsburg wishes to serve only as a guarantor, rather than as an owner of this Development. Additionally, Michael J. Sciarrino has requested certain structuring changes for his estate planning, that, if not made, would impact his estate planning. Accordingly, if this Petition is denied, the SAIL loan transaction cannot proceed under the current ownership structures, which is certainly an unfair and unintended consequence of the Rule, and creates a substantial hardship for Petitioner and for the Corporation. Petitioner has requested the change in Applicant entity and in the Developer to allow this transaction to go forward. The Corporation will not be harmed in the granting of this Petition, as the intent of the Rule will not be violated. The Rule was implemented to prevent third parties entering the transaction after the application process. No third parties are entering the transaction; only internal restructuring will occur.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

14. Petitioner believes that a waiver of this rule 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 creation of the SAIL program was to provide first, second or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, non-profit and public entities, to provide affordable housing to very low income persons. By granting this Waiver requesting and permitting Petitioner to change its applicant entity in furtherance of Mr.

Ginsburg's direction, to change its Developer entity in furtherance of Mr. Sciarrino's direction, and other internal restructuring, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, without violating the intent and purposes of the Rule for which waiver is sought.

TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

16. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

ACTION REQUESTED

17. Petitioner requests the following:

a. A waiver from Rules 67-48.004(a) and 67-48.004(14)(a) and (b) and 67-48.004(15), F.A.C., to allow a change in the Applicant from The Club at Eustis Village Partners, Ltd. to Club at Eustis Partners, Ltd. and to allow a change in the name of Developer entity from Atlantic Housing Group, L.L.L.P. to Atlantic Housing Partners, L.L.L.P, similar name changes within that structure, and a change in one of the limited partners of the Developer from NV Housing & Development Trust to Florida CIS Housing Advisors, L.P.

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 23 day of February, 2007.



MAUREEN McCARTHY DAUGHTON

Fla. Bar No. 0655805

Broad and Cassel

215 S. Monroe Street, Suite 400

Tallahassee, FL 32301

(850)681-6810

(850)521-1478 Facsimile

Counsel for Petitioner

APPLICANT:

**THE CLUB AT EUSTIS VILLAGE PARTNERS, LTD
A FLORIDA LIMITED PARTNERSHIP**

.01% Sole General Partner – CED Capital Holdings 2004 O, L.L.C., a Florida limited liability company

Managers: Jay P. Brock
Tricia Doody
Paul M. Missigman
Michael J. Sciarrino

100% - Sole Member – CED Capital Holdings XVII, Ltd., a Florida limited partnership

1% - Sole General Partner – CED Capital Holdings XVII, L.L.C., a Florida limited liability company

100% - Sole Member: Alan H. Ginsburg Family Trust Dated November 3, 1989

Managers: Jay P. Brock
Tricia Doody
Paul M. Missigman
Michael J. Sciarrino

99% - Limited Partners - 60% Class A Limited Partner and Alan H. Ginsburg Family Trust
60% Class B Limited Partner dated November 3, 1989, as
amended and restated

30% Class A Limited Partner Michael J. Sciarrino Revocable
Trust u/a/d December 2, 1994

30% Class B Limited Partner and Housing Management &
Development Advisors II, Ltd.

General Partner – Construction
Site Services, Inc., a Florida
corporation

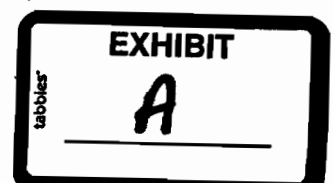
Limited Partner - Michael J.
Sciarrino Revocable Trust u/a/d
December 2, 1994

10% Class A Limited Partner and Thistlewood Partners, Ltd.
10% Class B Limited Partner

General Partner – Thistlewood
Partners, Inc., a Florida corporation

Limited Partner – Howard
Lefkowitz, as Trustee of the
Andrew Kleiman Irrevocable Trust
dated 11/5/98

Limited Partner – Howard
Lefkowitz, as Trustee of the
Jeffrey Kleiman Irrevocable Trust
dated 11/5/98



**Limited Partner – Howard
Lefkowitz, as Trustee of the
Steven Kleinman Irrevocable Trust
dated 11/5/98**

**Limited Partner – Howard
Lefkowitz, as Trustee of the
Robert Kleinman Irrevocable Trust
dated 11/5/98**

99.99% - Sole Limited Partner – CED Capital Holdings XVI, Ltd., a Florida limited partnership (to be replaced by purchaser of tax credits)

(ULTIMATE STRUCTURE)

**CLUB AT EUSTIS PARTNERS, LTD.
A FLORIDA LIMITED PARTNERSHIP**

0.01% Sole GP: Club at Eustis Group Managers, L.L.C., a Florida limited liability company

Managers: Paul M. Missigman
Jay P. Brock
Tricia Doody

98% - Member Florida CIS Housing Advisors, L.P., a Florida limited partnership

0.01% General Partner: Florida CIS Housing Advisors, L.L.C., a Florida limited liability company

Manager: Michael J. Sciarrino
Sole Member: Michael J. Sciarrino Revocable Trust Under Agreement Dated December 2, 1994

89.99% Limited Partner: Michael J. Sciarrino Irrevocable Trust Under Agreement Dated December 6, 1994

10% Limited Partner: Suzanne Sciarrino

1% - Member - Paul Missigman

1% - Member - W. Scott Culp

99.99% - Limited Partner - FL Capital Holdings Eustis, L.L.C., a Florida limited liability company

Managers: Paul M. Missigman
W. Scott Culp

Sole Member: FL Tax Holdings, Ltd., a Florida limited partnership

1% - General Partner - FL Tax Holdings, L.L.C., a Florida limited liability company

Managers: Paul M. Missigman
W. Scott Culp

Sole Member - Michael J. Sciarrino Revocable Trust Under Agreement dated December 2, 1994

Trustee: Michael J. Sciarrino

65.63% - Limited Partner - Michael J. Sciarrino Revocable Trust Under Agreement dated December 2, 1994

Trustee: Michael J. Sciarrino

33.37% - Limited Partner - FCH Partners, Ltd., a Florida limited partnership

.01% General Partner - FCHP, L.L.C., a Florida limited liability company

Managers: Paul M. Missigman
W. Scott Culp

Sole Member - Michael J. Sciarrino Revocable Trust Under Agreement dated December 2, 1994

Trustee - Michael J. Sciarrino

33.33% Limited Partner - Firenze Housing, L.L.C., a Florida limited liability company

66.66% Limited Partner - Jaks Trust, L.L.C., a Florida limited liability company

