

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. _____
Application No. 2007-147S

RENAISSANCE PRESERVE I, LLLP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULES 67-48.0072(11) AND 67-48.0072(18)

Petitioner Renaissance Preserve I, LLLP (“Renaissance Preserve”), petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of Rules 67-48.0072(11) and 67-48.0072(18) of the Florida Administrative Code (2007) (collectively the “Rules”).

1. Pursuant to Section 120.542, Fla. Stat.(2006) and Rules 28-104.001 through 28-104.006, F.A.C. (2007), and under the circumstances described below, Renaissance Preserve requests a waiver of the combined debt service coverage (“DSC”) requirements under the State Apartment Incentive Loan (“SAIL”) Program. *See* Rules 67-48.0072(11) and 67048.0072(18) (F.A.C. 2007).

A. The Petitioner

2. The name, address, and telephone and facsimile numbers for Renaissance Preserve and its qualified representative are:

Renaissance Preserve I, LLLP
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3. The name, address, telephone and facsimile numbers of Renaissance Preserve's attorneys are:

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4. Renaissance Preserve submitted its 2007 Universal Application for a loan of up to \$6,150,000 under the SAIL Program, and for an ELI Supplemental Loan in the amount of \$1,020,000. The funds will be used to finance a portion of the costs for the development of Renaissance Preserve Senior, a new 120-unit apartment development (the "Development") to serve the elderly population in Fort Myers, Lee County, Florida, with 10% of the units set aside for extremely low income residents.

5. Additional funding will be provided through, among other sources, tax-exempt mortgage bonds issued by the Housing Finance Authority of Lee County (the "Housing Authority"), as well as a loan provided through the Housing Authority.

6. Because there will be no mortgage debt, the Development qualified for and will be supported by a HUD-based Annual Contributions Contract (“ACC”) that covers 100% of the units within this Development. The ACC is a zero-based budget rental assistance contract that guarantees rents calculated to meet a zero-balanced budget. The ACC is similar to the rental assistance program provided through the United States Department of Agriculture Rural Development program (“USDA-RD Program”).

7. The requested Rule waivers will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Renaissance Preserve; (b) could deprive Lee County of essential housing units for the extremely low and low income elderly individuals; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2007).

8. The waivers being sought are permanent in nature.

B. Rules from Which Relief is Requested and Statute Implemented by the Rules

9. Renaissance Preserve requests a waiver of the following Rules:

67-48.0072 Credit Underwriting and Loan Procedures.

(11) . . . For SAIL Applications, the minimum debt service coverage shall be 1.10 for the SAIL loan, including all superior mortgages. However, if the Applicant defers at least 35 percent of its developer fee for at least 6 months following construction completion, the minimum debt service coverage shall be 1.00 for the SAIL loan, including all superior mortgages. . . . Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) are not required to meet the debt service coverage standards if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the first and second mortgages; and

(18) For SAIL and HOME Applications, the Credit Underwriter shall require an operating deficit guarantee, to be released upon achievement of 1.10 debt service coverage for a minimum of six (6) consecutive months for the combined permanent first mortgage and SAIL or HOME loan. An

operating deficit guarantee, to be released upon achievement of 1.00 debt service coverage for a minimum of six (6) consecutive months for the combined permanent first mortgage and SAIL or HOME loan will be required for Developments receiving first mortgage funding from the United States Department of Agriculture Rural Development (RD) if RD is providing rental assistance and has acknowledged that rents will be set at an amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the SAIL or HOME loan and all superior mortgages.

10. The Rules for which the waivers are sought implement, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the SAIL Program. *See* § 420.5087, Fla. Stat. (2006). 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 elderly citizens. Consequently, the SAIL Program encourages the development of low-income housing to ensure the availability of housing affordable to very-low-income persons throughout the State. §§ 420.5087(1) and (3)(c), Fla. Stat. (2006).

C. Justification for Petitioner’s Requested Rule Waivers

11. Florida Corporation has recognized the economic realities of funding provided through the USDA-RD Program, a rental assistance program that is similar to the ACC’s zero-based rental assistance program.

12. Developments receiving first mortgage funding from the USDA-RD Program are exempt from the minimum DSC requirements for SAIL Loans, and the DSC required to be achieved for the release of their operating deficit guarantees is reduced from 1.10 to 1.00, when the USDA-RD Program provides rental assistance and has acknowledged that rents will be set at

¹ /The 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.

amount sufficient to pay all operating expenses, replacement reserve requirements and debt service on the SAIL or HOME loan and all superior mortgages. *See* Rules 67-48.0072(11) and 67-48.0072(18).

13. Renaissance Preserve recognized the need for supportive rental assistance for extremely low income and low income elderly persons who will rent units in the Development. As a result, and because there will be no mortgage debt,² the Development will be supported by the ACC that will cover 100% of its units.

14. As stated previously, the ACC is a zero-based budget rental assistance program that is similar to the USDA-RD Program and, like USDA-RD developments, should be afforded the same DSC exemption provided for USDA-RD developments under Rule 67-48.0072(11).

15. However, unlike the USDA-RD Program, the ACC cannot provide first mortgage financing. Instead, the ACC guarantees rents calculated to meet a zero balanced budget. As a result, the Development can never and will never achieve the 1.0 DSC required for the release of the Development's operating deficit guarantee under Rule 67-48.0072(18).

16. More significantly, the DSC requirement under Rule 67-48.0072(18), should be waived as it is contrary to the intent of the ACC's zero-based budget program and could prevent any development from ever qualifying for the ACC rental assistance program.

17. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a)

²HUD does not permit any mortgage debt on 100% ACC developments.

create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2006).

18. Florida Housing generally approves such waivers when they would not affect the scoring of an application or otherwise allow an applicant to gain an unfair competitive advantage.

19. The requested Rule waivers would not have impacted the scoring of Renaissance Preserve's Universal Application and would not have provided an unfair advantage over other applicants.

20. The requested relief also will not adversely impact the 120-unit Development or Florida Housing. However, a denial of the Petition would violate principles of fairness and subject Renaissance Preserve to substantial hardship that could cause Renaissance Preserve to be unable to properly and efficiently develop its Development. More importantly, the denial of the relief requested herein could deprive Lee County of essential rental units for extremely low income and low income elderly persons.

21. Finally, by granting the requested relief, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of safe, affordable rental housing for extremely low and low income individuals. This recognition would promote participation by experienced developer entities in meeting the purpose of the Florida Housing Finance Corporation Act.

22. Should Florida Housing require additional information, Renaissance Preserve is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rules 67-48.0072(11) and 67-48.0072(18).

D. Conclusion

WHEREFORE, Petitioner Renaissance Preserve I, LLLP, respectfully requests that Florida Housing Finance Corporation grant the Petition and all the relief requested herein by:

A. Waiving the minimum combined debt service coverage requirement under Rule 67-48.0072(11);

B. Waiving the debt service coverage requirement for the release of the operating deficit guarantee under Rule 67-48.0072(18), and requiring the Development to maintain a zero-based budget under which operating income will be sufficient to cover operating expenses, exclusive of debt service coverage; and

C. Granting such further relief as may be deemed appropriate.

Respectfully submitted,

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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 North 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 27th day of February, 2008.

By: Mimi L. Sall
Mimi L. Sall