

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

CORNERSTONE PORTOFINO, LLC,  
a Florida limited liability company,

Petitioner,

vs.

FHFC CASE NO. 2009-022VW

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR WAIVER/VARIANCE FROM  
RULE 67-48.004(14)(j) AND 67-48.004(14)(k)**

CORNERSTONE PORTOFINO, LLC, a Florida limited liability company (“Petitioner”), by and through its undersigned Managing Member, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver/variance from Rule 67-48.004(14)(j), Florida Administrative Code (2004) and 67-48.004(14)(k), 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 and facsimile number of the Petitioner is:

Cornerstone Portofino, LLC  
Mara S. Mades  
Managing Member  
c/o The Cornerstone Group  
2121 Ponce de Leon Blvd., P.H.  
Coral Gables, FL 33134  
Telephone: 305.443.8288  
Facsimile: 305.443.9339

FHFC  
12/1/09

2. Cornerstone Portofino, LLC. is the general partner of Portofino Associates, Ltd., the partnership that was formed on March 7, 2002 under the laws of the State of Florida for the purpose of acquiring, constructing, developing, and operating Portofino Apartments located in Palm Springs, Florida. Cornerstone Portofino, LLC. is an affiliate of The Cornerstone Group (“Cornerstone”), a housing developer of multifamily properties since 1993 with affordable project developments located throughout the state of Florida.

3. In 2004, the Petitioner successfully applied, was awarded and closed on a \$20,020,000 FHFC Multifamily MRB issuance and a \$3,000,000 SAIL Program funding for the 270-unit Portofino Apartments. The unit set-aside requirements for the mortgage revenue bonds was 85% and the set-aside requirement for the Guarantee Fund and the 4% tax credits was 94% 94% of the units (or 254 units) reserved for families earning up to 60% of the area median income, adjusted for family size. When the SAIL land use restriction agreement (LURA) was executed the set-aside was set at 100% of the units reserved for families earning up to 60% of area median income adjusted for family size.

4. Cornerstone Portofino, LLC. desires to amend the SAIL LURA to match the Guarantee Fund and tax credit set aside of 94% of the units being set aside for households earning up to 60% of the County median income, adjusted for family size, as was originally intended.

**THE RULE FOR WHICH WAIVER/VARIANCE IS SOUGHT**

5. Petitioner requests a waiver/variance from Rule 67-47, Florida Administrative Code (the “SAIL Rule”). More specifically, the rule Petitioner is seeking a waiver/variance from Rule 67-48.004(14)(j), Florida Administrative Code (2004) and 67-48.004(14)(k), Florida Administrative Code (2005), which provides:

*“67-48.004(14)(j);F.A.C.(2004) With regard to the SAIL and HC Programs, the Total Set-aside Percentage as stated in the last row of the total set-aside breakdown chart for the Program(s) applied for in the total set-aside commitment section of the Application.”*

*“67-48.004(14)(k);F.A.C.(2005) With regard to the SAIL and HC Programs, the Total Set-aside Percentage as stated in the last row of the total set-aside breakdown chart for the Program(s) applied for in the total set-aside commitment section of the Application.”*

#### **STATUTES IMPLEMENTED BY THE RULE**

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act<sup>1</sup>, the Statute that specific authority for the SAIL program. See §420.507(12),(22), Florida Statutes.

7. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant waivers/variances to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers/variances 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 fairness,<sup>2</sup> 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. Denial

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

<sup>2</sup> “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance “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.

of Petitioner's request for a rule waiver/variance in this case will present substantial hardship to the Petitioner and will frustrate the underlying purpose of the statute.

**FACTS DEMONSTRATING ENTITLEMENT TO WAIVER/VARIANCE**

8. Petitioner is attempting to provide affordable rentals while maintaining the economic viability of the apartment community and the Guarantee Fund at its property located in Palm Beach County.

9. The waiver/variance will allow the SAIL LURA to match the Guarantee Fund and tax credit set-aside as was originally intended by the Petitioner.

10. The waiver/variance does not change original application scoring or leveraging.

**WAIVER AND/OR VARIANCE WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

11. Petitioner believes that a waiver/variance 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 a subordinated mortgage loan to affordable rental developments that serve low-income persons and families. Waiver and/or variance of the rule will allow Cornerstone Portofino, LLC. to provide affordable rental opportunities to families in Palm Beach County, Florida.

12. The purpose of the rule is to provide features that will enhance the economic viability and original intent of the SAIL LURA. Cornerstone Portofino, LLC will still meet the purpose and intent of this rule.

**TYPE OF WAIVER/VARIANCE**

13. The waiver/variance being sought is permanent in nature.

14. Should the Corporation have questions or require any additional information necessary for consideration of the Petition.

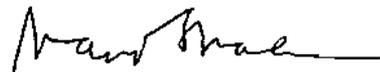
**ACTION REQUESTED**

15. Petitioner requests a waiver/variance from Rule 67-48.004(14)(j), Florida Administrative Code (2004) and 67-48.004(14)(k), Florida Administrative Code (2005) to allow:

- (a) The unit set-aside requirements for the SAIL LURA be amended to match as originally intended the tax credits and Guarantee Fund set-asides with 94% of the units (or 254 units) reserved for families earning up to 60% of the area median income adjusted for family size.

16. 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 19th day of June, 2009.



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