

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MARBELLA POINTE DEVELOPMENT
GROUP, L.L.L.P.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

APPLICATION NO. 2006-0898

FHFC Case No. 2007-011VW

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FINANCE CORPORATION

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

MARBELLA POINTE DEVELOPMENT GROUP, L.L.L.P. ("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)(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:

Marbella Pointe Development Group, L.L.L.P.
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 Housing Tax Credit (“HC”) Program in the 2006 Universal Application Cycle; Multi-Family Mortgage Revenue Bonds (“MMRB”) Program; State Apartment Incentive Loan (“SAIL”) Program; Home Investment Partnership (“HOME”) Rental Program; and Housing Credit (“HC”) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s Application number is 2006-089S (the “Application”). Petitioner applied for SAIL funds to finance a portion of the costs to develop a multi-family rental apartment complex in Orange County, Florida, to be known as Marbella Pointe (the “Development”). The Development is a 120-unit apartment complex.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from various sections of Rules 67-48.004(1)(a) and 67-48.004(14)(b), 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 (14) 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.

* * *

7. The Specific Instructions of the Universal Application Instructions provides under

Part II.B.1.:

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.

8. Rule 67-48.004(14)(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:

* * *

(b) Name of Each Developer – including each Co-Developer;

9. 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

10. 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.

11. 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

12. Petitioner requests a waiver of Rules 67-48.004(1)(a) restricting the ability of Petitioner to make a material change in the ownership structure of the Applicant Entity prior to loan closing. The Applicant Entity is Marbella Pointe Development Group, L.L.P. and its sole general partner is Marbella Pointe Development Group Managers, L.L.C. (the “General Partner”). The Petitioner desires this Waiver to change the managing member of the General Partner from Marbella Pointe Development, L.L.C. to Florida CIS Housing Advisors, L.P. Both Marbella Pointe Development, L.L.C. and Florida CIS Housing Advisors, L.P. are ultimately controlled by the same person or entity (either individually, or through trusts created for his

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.

benefit and/or the benefit of his family). These changes to the ownership structure of the General Partner of the Applicant Entity are necessary for the estate planning purposes of Michael J. Sciarrino.

13. Petitioner also requests a waiver of Rules 67-48.004(1)(a), 67-48.004(1)(b) and 67-48.004(15) to change the Developer from Atlantic Housing Group, L.L.L.P. to Atlantic Housing Partners, L.L.L.P. These changes will not adversely impact the Development because the members of the Developer entities remain the same and continue to have the requisite experience. This change will not adversely impact the Development because the Developer continues 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.

14. 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 result. Specifically, Michael J. Sciarrino, the ultimate owner of or holder of a controlling interest in (individually, or through trusts created for his benefit and/or the benefit of his family) various entities in the Atlantic Housing Partners entities (“Atlantic”), is engaged in certain estate planning strategies to protect his individual interests and the interests of family members. If the Corporation were to deny Petitioner’s request to make these changes to the Applicant and Developer entities the result would preclude Mr. Sciarrino from effecting certain of his estate planning strategies resulting in negative tax consequences, which is an unreasonable, unfair and unintended consequence of the rule.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

15. 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 the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

16. The waiver being sought is permanent in nature.

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

ACTION REQUESTED

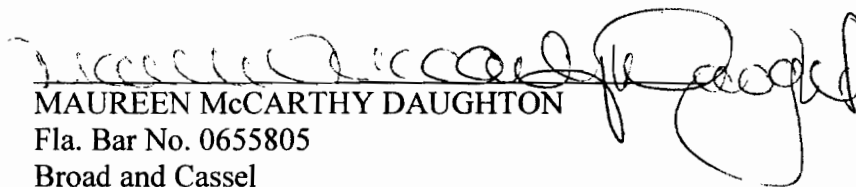
18. Petitioner requests the following:

a. A waiver from Rules 67-48.004(1)(a), F.A.C. and the Specific Instructions of the Universal Cycle Instructions to allow a change in the managing member of the General Partner of the Applicant Entity from Marbella Pointe Development, L.L.C. to Florida CIS Housing Advisors, L.P.

b. A waiver from Rules 67-48.004(1)(a), 67-48.004(14)(b) and 67-48.004(15), F.A.C., and the Specific Instructions of the Universal Cycle Instructions to allow the change in the Developer entity from Atlantic Housing Group, L.L.L.P to Atlantic Housing Group Partners, L.L.L.P.

19. 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 14 day of February, 2007.



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