

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2008-114VW  
Application No. 2000-041S

HIDDEN GROVE, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.010(6)(a)'S REQUIREMENT  
TO PROVIDE THE 2006 FINANCIAL STATEMENT**

Petitioner Hidden Grove, Ltd., a Florida limited partnership ("Hidden Grove"), petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of the requirement to provide a 2006 certification of financial information for the year ending December 31, 2006. *See* Rule 67-48.010(6)(a), F.A.C. (2000) (the "Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2008), Hidden Grove requests that the Corporation waive the requirement to provide a certification of information, including an audited financial statement and the SAIL annual reporting form, for the year ending December 31, 2006 (collectively "2006 Financial Statement").

**A. The Petitioner and The Development**

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

Hidden Grove, Ltd.  
Attention: Stephen Roger  
c/o Centerline Capital  
625 Madison Avenue  
New York, NY 10022  
Office: (212) 521-6355  
Facsimile: (212) 202-4447

3. The name, address, telephone and facsimile numbers, and e-mail addresses of Hidden Grove's attorneys are:

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STEARNS WEAVER MILLER  
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4. Hidden Grove submitted its 2000 Combined Rental Application Package ("Combined Application") for the SAIL Program, and was awarded a SAIL Loan in the amount of \$2,239,000. See Application No. 2000-041S.

5. As identified in its Combined Application, the SAIL Loan was used for construction of a new multi-building 222-unit apartment complex known as Hidden Grove Apartments (the "Development") in Miami-Dade County, Florida. The Development serves the Family demographic, including extremely low and low income families.

6. The requested waiver will not adversely affect the Development, but would allow Hidden Grove to comply with financial monitoring requirements for the year ending December 31, 2006, as provided under the Rule.

7. However, a denial of this Petition (a) would result in substantial economic hardship to Hidden Grove; (b) could deprive Miami-Dade County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2007).

8. The waiver being sought is permanent in nature.

**B. The Rule from which Relief is Requested and the Statute Implementing the Rules**

9. Hidden Grove requests a waiver of Rule 67-48.010(6)(a) that provides:

By April 15 of each year of the SAIL loan term, the Developer shall provide the Corporation and its servicer with a certification detailing the information needed to determine the annual payment to be made.

...

Failure to submit the required financial certification by April 15 of each year of the SAIL loan term shall constitute an event of default on the SAIL loan.

Rule 67-48.010(6)(a), F.A.C. (2000).

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),<sup>1</sup> the statute that created the SAIL Program. *See* § 420.5087, Fla Stat. (2000). The 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." *Id.* Accordingly, the Rule is implementing Florida Housing's statutory authorization to establish the requirements, rules, and procedures for the SAIL Program. *Id.*

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<sup>1</sup>The Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes (2000).

**C. Justification for Hidden Grove's Requested Waiver**

11. Florida Housing 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 these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness<sup>1</sup>, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2007).

12. Hidden Grove requests a waiver of the Rule's requirement to provide the 2006 Financial Statement.

13. The following facts justify the requested Rule waiver.

14. Greater Miami Neighborhoods, Inc. ("GMN"), Hidden Grove's parent entity, suffered significant financial and administrative issues that culminated with its seeking protection under Chapter 11 of the United States Bankruptcy Code.

15. Because Hidden Grove was and remains a viable provider of affordable housing to residents in the Development, it is not part of the bankruptcy proceedings. Other entities affiliated with Hidden Grove are committed to ensuring the continuing and ongoing operations of the Development.

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<sup>1</sup> "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 (2007).

16. Despite GMN's issues, Hidden Grove has provided to the Corporation a certification of information, including an audited financial statement and the SAIL annual reporting form, for the year ending December 31, 2007

17. However, as consequence of GMN's financial issues and resultant administrative turmoil, Hidden Grove was unable to provide the 2006 Financial Statement to the Corporation and has been unable to reconstruct the information necessary for the 2006 Financial Statement.

18. As a result, Hidden Grove is in technical default of its SAIL Loan.

19. The requested waiver of the requirement for the 2006 Financial Statement would remedy the technical default, enable Hidden Grove to continue the Development's operations and avoid any potential damage or harm to the Development and its residents.

**D. Conclusion**

20. 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) 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. (2007).

21. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 222 affordable housing units will be available for families and individuals in Miami-Dade County, Florida.

22. However, a denial of the requested waiver would result in a substantial hardship for Hidden Grove. More significantly, Hidden Grove could be denied the ability provide decent, safe,

and affordable housing units to a market in desperate need of extremely low and low income housing.

23. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of Florida Housing Finance Corporation Act<sup>1</sup> in an economical and efficient manner.

24. Should Florida Housing require additional information, Hidden Grove is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.010(6)(a).

WHEREFORE, Petitioner Hidden Grove, LLC, respectfully requests that the Florida Housing Finance Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive the requirement for providing the 2006 Financial Statement; and

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<sup>1</sup> See §§ 420.501 through 420.516, Fla. Stat. (2006).

C. Grant 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 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 10th day of December, 2008.

By:   
Mimi L. Sall