

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
CASE NO. 2005-04 RW

CARRFOUR SUPPORTIVE HOUSING, INC.,

Petitioner,

Agency Case: Riverwalk I

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR VARIANCE/WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 9I-28.006(7)

Pursuant to Section 120.542, Florida Statutes, Rule 9I-28.006(7), Florida Administrative Code ("FAC") governing State Apartment Incentive Loans ("SAIL") awarded in SAIL Cycle III for year 1990-91 and Rule 28-104.001 through 28-104.006, Florida Administrative Code ("FAC"), Petitioner, CARRFOUR SUPPORTIVE HOUSING, INC. ("Petitioner") requests the FLORIDA HOUSING FINANCE CORPORATION ("FHFC") to grant a waiver from the provisions of FAC Rule 9I-28.006(7) and to grant the relief requested herein. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file number with respect to this matter is known as "Riverwalk I".

PETITIONER

2. The Petitioner is Carrfour Supportive Housing, Inc., a Florida non-profit corporation. The address of Petitioner is 155 South Miami Avenue, Suite 1150, Miami, Florida 33131, telephone number (305) 371-8300. Petitioner's attorney is Gary J. Cohen, Esq., Shutts & Bowen LLP, whose address is 201 South Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308, facsimile number (305) 347-7808.

RULE WITH RESPECT TO WHICH A WAIVER IS SOUGHT

3. The Rule with respect to which a waiver is sought is FAC Rule 9I-28.006(7), as in effect for SAIL Cycle III for years 1990-91. Rule 9I-28.006(7) provides that "If, in its application, the Applicant agrees to a very low-income set-aside for a term longer than that required by law, the deferred SAIL interest due pursuant to 9I-28.006(6)(h) shall be forgiven in an amount equal to the amount of interest due pursuant to 9I-28.006(6)(h) multiplied by .05 multiplied by the number of years, not to exceed 15, that the very low-income set-aside was extended beyond that required by law".

4. Rule 9I-28.006(7) implements the provisions of Florida Statute §420.507 and §420.5087, which statute designates FHFC to establish and administer the SAIL Program and to establish procedures necessary for the proper award and servicing of SAIL loans.

TYPE OF ACTION REQUESTED

5. Petitioner requests that FHFC grant a waiver and variance from the provisions of FAC Rule 9I-28.006(7), as in effect and governing the SAIL Cycle III in 1990-91 and SAIL loans issued thereunder. The provisions of the foregoing Rule permit forgiveness of up to 75%

of the deferred 6% portion of the interest under a SAIL loan, provided the initial applicant for such loan agreed to extend the very low-income set-aside from 15 years to 30 years.

FACTS

6. The specific facts that demonstrate a substantial hardship or a violation of principles of fairness which justify a waiver or variance for Petitioner, as requested above, are as follows:

a. The original SAIL application filed by Homestead Apartments Associates, Ltd. (the "Original Borrower") for the project known as "Riverwalk I" only provided for a 15 year set-aside. Petitioner (a non-profit corporation) has contracted to acquire "Riverwalk I" and "Riverwalk II" (such second acquisition not a part of this Petition request) pursuant to an executed purchase and sale agreement. In connection with its proposed acquisition of Riverwalk I, Respondent has advised that the interest accrued and deferred on such SAIL loan (in the original principal amount of \$843,000) in excess of the 3% base interest is not eligible for forgiveness, due to the fact that the Original Borrower did not in its original application for such SAIL financing agree to a very low-income set-aside beyond 15 years.

b. In connection with Petitioner's acquisition of Riverwalk I, Petitioner has (as required by applicable F.A.C. Rule) filed an application utilizing the form of SAIL application in effect for SAIL Cycle III. In that application, Petitioner has committed to extension of the very low-income set-aside for at least an additional 15 years. Petitioner has already applied to Respondent for approval of the sale of Riverwalk I and Riverwalk II to limited liability companies wholly owned by it. Petitioner has also requested FHFC extend the maturity date of the SAIL loans encumbering Riverwalk I and II to a date which is coterminous with the new first mortgage financing to be placed upon those properties. Petitioner has also requested

FHFC consent to assumption of the SAIL loans on Riverwalk I and II. In connection with such requested approvals, Petitioner has filed SAIL applications for Riverwalk I and II all as required by appropriate F.A.C. Rule.

c. In such applications, Petitioner has agreed to extend the set-asides currently imposed upon Riverwalk I and II (by the applicable land use restriction agreement and extended low-income housing agreement currently encumbering such properties) for an additional period of years. With respect to Riverwalk I, the "affordability restrictions" contained in the land use restriction agreement would have otherwise lapsed in 2007. Petitioner is a non-profit corporation devoted exclusively to the development and preservation of affordable housing.

d. The violation or principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of F.A.C. Rule 9I-28.006(7) would be as follows. Unless the forgoing request is granted, Petitioner will not be able to acquire Riverwalk I and II from their current owners. The substantial hardship which would result from strict compliance with the forgoing Rule are as follows; Petitioner will be unable to finance the acquisition of such properties. In addition, the affordability restrictions with respect to Riverwalk I (if not extended pursuant to Petitioner's acquisition of such property) will lapse in 2007, resulting in a loss of affordable housing units in a community (Miami-Dade County) sorely in need of affordable units.

e. A waiver of the Rules' restriction on forgiveness of SAIL interest would serve the purpose of Florida Statute §420.507 and 420.5087 which provide that Respondent shall adopt procedures in order to encourage development of low-income housing in the state.

f. The requested Rule waiver will not adversely impact completion of the development.

g. By granting a waiver and permitting Petitioner to be eligible for forgiveness of interest of the SAIL loan encumbering Riverwalk I, Respondent would recognize the economic realities of maintenance and preservation of affordable rental housing in Miami-Dade County. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through preservation of existing affordable housing, in an economical and efficient manner.

7. The waiver being sought is permanent in nature.

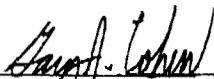
RELIEF SOUGHT

8. The specific variance/waiver which Petitioner wishes Respondent to grant is to waive the requirements of Rule 9I-28.006(7) and to permit Petitioner (upon acquisition of the Riverwalk I project and assumption of the SAIL loan thereon) to be eligible for forgiveness of SAIL loan interest thereon as provided in Rule 9I-28.006(7).

WHEREFORE, Petitioner respectfully requests FHFC:

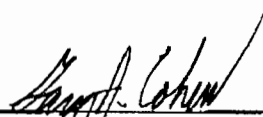
1. Waive the requirement, as set forth in F.A.C. Rule 9I-28.006(7) that the very low-income set-aside must be extended beyond that required by law in the original SAIL loan application in order to be eligible for forgiveness of SAIL loan interest in excess of the "base interest" accruing on such loan, in such circumstance where the proposed purchaser of the property encumbered by such loan agrees to extend the very low-income set-aside with respect to such property for at least an additional 15 years.

Respectfully Submitted,

By: 
 GARY J. COHEN, ESQ.
 Florida Bar No.353302
 SHUTTS & BOWEN LLP
 201 South Biscayne Boulevard
 1500 Miami Center
 Miami, Florida 33131
 (305) 347-7308

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Maelene Tyson, Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.


 GARY J. COHEN, ESQ.