

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: LIBERTY GATEWAY, LTD.

FHFC Case No.: 2008-070VW
Application No. 2007-036CS

**ORDER GRANTING AMENDED PETITION FOR WAIVER OF RULE
67-48.004(14)(i), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on September 26, 2008, pursuant to an "Amended Petition for Waiver of Rule 67-48.004(14)" (the "Amended Petition"). On August 25, 2008, Florida Housing received a "Petition for Waiver of Rule 67-48.004(14); Petitioner for Waiver of Rule 67-48.002(88) and Section 11 of the 2007 Qualified Allocation Plan" (the "Petition"), from Petitioner. Subsequently, on September 11, 2008, Petitioner submitted an Amended Petition. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. During the 2007 Universal Cycle, Florida Housing awarded a preliminary allocation of \$2,561,000 in Housing Credits and a preliminary award of

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HOUSING FINANCE CORPORATION

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\$2,974,923.50 in State Apartment Incentive Loan (“SAIL”) funds to Petitioner, to finance the construction of Dr. Barbara Carey-Shuler Manor, a 90-unit apartment community to be located in Miami-Dade County, Florida (“the Development”).

3. Rule 67-48.004(14)(j), Florida Administrative Code, provides in pertinent part:

(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:

...(j) Total number of units

4. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

5. In Petitioner’s original Application, Petitioner indicated that the Development would contain 90 apartment units. Subsequent events including the negative commercial environment in Miami-Dade County, has caused Petitioner to not develop the retail/commercial component of the Development. This change

would allow for a 10 unit increase in the number of residential apartments.

Therefore, Petitioner requests a waiver of R. 67-48.004(14)(j), F.A.C. to allow it to increase the number of units in the development from 90 to 100.

6. Approving the requested waiver serves the underlying purpose of Section 420.5087, Florida Statute and the HC and SAIL Programs by facilitating and stimulating affordable multi-family rental housing. Since Petitioner's endeavor exceeds its current obligation, approving the unit increase furthers Respondent's purpose.

7. Petitioner has demonstrated that failure to grant this Amended Petition will violate principles of fairness in that Petitioner will be precluded from providing additional set aside units without additional burden to Respondent's limited resources. Petitioner has demonstrated that strict application of the above Rule under these circumstances will violate the principles of fairness in that unless the Amended Petition is granted, Petitioner will underutilize the available land.

8. Since approval will fail to affect application scoring, Petitioner derives no unfair advantage over its competitors in an application cycle. Ultimately, 67-48.004(14) is used to prevent an applicant from changing certain key elements in its application after reviewing its competitors' applications. Such preclusion circumvents the possibility of an applicant gaining a competitive advantage. Under

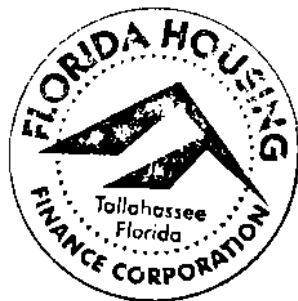
these circumstances, however, approving Petitioner's request fails to provide any such advantage.

IT IS THEREFORE ORDERED:

Amended Petition for Waiver of R. 67-48.004(14)(j), Fla. Admin. Code is hereby **GRANTED**, to allow Petitioner to increase the number of units in the development from 90 to 100.

DONE and ORDERED this 26th day of September, 2008.

Florida Housing Finance Corporation



By: *Lynn M. Stally*
Chairperson

Copies furnished to:

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NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.