

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

LIBERTY GATEWAY, LTD., a Florida  
limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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FHFC CASE NO. \_\_\_\_\_

APPLICATION NO. 2007-036CS

**PETITION FOR WAIVER OF  
RULE 67-48.0075(7)(a)(1), FLORIDA ADMINISTRATIVE CODE (2007)**

LIBERTY GATEWAY, LTD., a Florida limited partnership (“Petitioner”), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code (“F.A.C.”), hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver of that portion of Rule 67-48.0075(7)(a)(1) which requires the principal of a supplemental loan awarded in the 2007 Universal Application Cycle to be forgivable. In support, Petitioner states the following:

**THE PETITIONER**

1. The address, telephone number and facsimile number of the Petitioner is:

Liberty Gateway, Ltd.  
c/o Carrfour Supportive Housing, Inc.  
2828 Coral Way, Suite 500  
Miami, FL 33145  
305-371-8300  
305-405-8489 (Fax)  
sberman@carrfour.org

2. The address, telephone number and facsimile number of the Petitioner's counsel is:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
1500 Miami Center  
201 S. Biscayne Blvd.  
Miami, FL 33131  
305-347-7308  
305-347-7808 (Fax)

**THE RULE FROM WHICH WAIVER IS SOUGHT**

3. Petitioner requests a waiver of that portion of Rule 67-48.0075(7)(a)(1), F.A.C. (2007) which mandates that the principal of a supplemental loan awarded in the 2007 Universal Application Cycle be forgivable provided the units for which the supplemental loan amount is awarded are targeted to Extremely Low Income ("ELI") Households for at least 15 years.

**STATUTES IMPLEMENTED BY RULE 67-48.0075(7)(a)(1), F.A.C.**

4. Rule 67-48.0075(7)(a)(1), F.A.C. (2007), implements Sections 420.5087, Florida Statutes, and the provisions of Section 34 of Chapter 2006-69 (H.B. No. 1363). Section 420.5087, Florida Statutes, authorizes the Corporation to, among other things, make mortgage loans for financing of development costs of projects under the State Apartment Incentive Loan ("SAIL") Program subject to specified conditions, and to establish terms of such loans funded pursuant to the Florida Housing Finance Corporation Act, Part V. of Chapter 420, Florida Statutes<sup>1</sup>. Section 34 of Chapter 2006-69 (H.B. No. 1363) appropriated funds to assist in the production of housing units for ELI Households. Pursuant to these provisions, the Corporation has adopted Rule 67-48.0075(7)(a)(1), F.A.C. (2007), entitled "Miscellaneous Criteria" which provides:

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

(7) Supplemental loans will be subject to the credit underwriting provisions outlined in Rule 67-48.0072 and the loan provisions outlined below:

(a) The terms and conditions of the supplemental loan shall be as follows: (1) The supplemental loan shall be (i) based on each ELI Set-Aside unit above the minimum ELI-Set Aside threshold requirement in the Universal Application instructions; and (ii) non-amortizing at 0 percent simple interest per annum over the life of the loan, with principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years.

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**JUSTIFICATION FOR GRANTING WAIVER OF RULE 67-48.0075(7)(a)(1), F.A.C.**

5. Petitioner applied for Low Income Housing Tax Credits (“HC”), State Apartment Incentive Loan Funds (“SAIL”) and supplemental loan financing in the 2007 Universal Application Cycle (Application Number 2007-036CS) was awarded an allocation of HC, SAIL and supplemental loan funds for the acquisition, construction and development of a 90 unit multifamily apartment complex to serve homeless individuals and families in Miami-Dade County, Florida (the “Development”). By subsequent petition, the size of the Development has increased to 100 units. The financing for the Development is structured such that the Petitioner will receive equity from syndication of the HC, SAIL loan funds and supplemental loan funds (the “ELI Loan”). In its application, Petitioner agreed to target ELI Households with respect to a specified percentage of units in the Development for at least 15 years. However, the Rule requires that the principal of such loan be forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years. A forgivable loan will have negative federal income tax consequences for the Petitioner, and Petitioner therefore seeks a waiver of that portion of Rule 67-48.0075(7)(a)(1), F.A.C. (2007) that provides “with principal forgivable provided the units for which the supplemental loan

amount is awarded as targeted to ELI Households for at least 15 years.” Petitioner requests that instead of being forgivable at the end of the initial 15-year period, that at the end of the initial 15-year period Petitioner be given an automatic extension of maturity date of the ELI Loan to a date coterminous with the maturity of the SAIL loan, if the units for which the ELI Loan was awarded were targeted to ELI Households during that initial 15-year period. The Corporation is authorized by Section 120.542(1), Florida Statutes, and Rule 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 principles 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. The application of this rule will result in a substantial financial burden to the Petitioner.

6. In this case, strict application of Rule 67-48.0075(7)(a)(1), F.A.C. (2007) in this case will create a substantial financial hardship for Petitioner. The designation of the ELI Loan as forgivable may, whether forgiven or not, cause the Internal Revenue Service to consider the loan as “phantom” taxable income, and the Petitioner may be subject to taxes on the ELI Loan even though it has not yet received the benefit of the ELI Loan being forgiven. In addition, the designation of the ELI Loan as forgivable may, whether forgiven or not, cause the full amount of the loan to be deducted from eligible basis, thereby reducing the net tax credit for the Development. Further, the waiver will serve the underlying purpose of the statutes because the waiver will ensure the viability of this affordable housing development by allowing Petitioner to

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<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.

proceed with a viable financing structure in a timely manner to acquire and construct the Development and thus continue the Corporation's purpose to provide decent, safe and affordable housing in Florida.

**ACTION REQUESTED**

7. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested waiver of that portion of Rule 67-48.0075(7)(a)(1), F.A.C. (2007), to forgo the automatic forgiveness of the supplemental loan's principal balance provided the units for which the supplemental loan amount was awarded were targeted to ELI Households for at least 15 years, and to instead cause the maturity date at the end of the initial 15-year period to be automatically extended to a date coterminous with the SAIL loan, if the units for which the ELI Loan was awarded were targeted to ELI Households during that initial 15-year period.

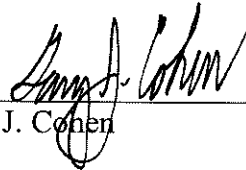
8. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, as required by Section 120.542(5), Florida Statutes.

Respectfully submitted this 2<sup>nd</sup> day of October, 2008.

  
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GARY J. COHEN  
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201 S. Biscayne Boulevard  
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**CERTIFICATE OF SERVICE**

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 7<sup>th</sup> day of October, 2008.

  
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Gary J. Cohen