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BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

LIBERTY GATEWAY, LTD., a Florida limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION.

Respondent.

FHFC CASE NO. 2009-033VW

APPLICATION NO. 2007-036CS

_____ /

**PETITION FOR WAIVER OF
RULE 67-48.0072(4)(c), 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 67-48.0072(4)(c) which requires that SAIL and supplemental loans must close within 24 months of the issuance of a preliminary commitment. 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 67-48.0072(4)(c), F.A.C. (2007) which dates that "In the event the loan (the SAIL and supplement loan) does not close within 24 months of the issuance of the preliminary commitment, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will deobligated".

STATUTES IMPLEMENTED BY RULE 67-48.0072(4)(c), F.A.C.

4. Rule 67-48.0072(4)(c), 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 Statutes¹. 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 67-48.0072(4)(c), F.A.C. (2007), which provides:

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

(4) If the credit underwriting invitation is accepted:

(c) For SAIL and HOME Applicants and Applicants eligible for a supplemental loan, the loan(s) must close within 14 months after the issuance of the preliminary commitment. Applicants may request one (1) extension of up to 10 months. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of one percent of each loan amount if the Board approves the request to extend the commitment beyond the initial 14 month period. In the event the loan does not close within 24 months of the issuance of the preliminary commitment, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be deobligated.

* * *

JUSTIFICATION FOR GRANTING WAIVER OF RULE 67-48.0072(4)(c), 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 was structured such that the Petitioner would receive equity from syndication of the HC, SAIL loan funds and supplemental loan funds (the "ELI Loan"). On September 28, 2007, Corporation staff issued a preliminary commitment letter and an invitation to enter credit underwriting for the SAIL loan and ELI loan. On October 31, 2008, the Corporation approved the final credit underwriting report for the

Development, and granted a 10 month extension (until September 28, 2009) to close the SAIL and ELI Loans as permitted by Rule 67-48.0072(4)(c).

6. On or about August 14, 2009, Petitioner submitted its response to Request for Proposal 2009-04, seeking to obtain "Tax Credit Exchange Program (Exchange) Funding" ("Exchange Funds"), due to the fact that Petitioner's original tax credit equity syndicator dropped out of the tax credit market in 2008 and Petitioner was unable to secure another tax credit equity investor. Petitioner's plight is not dissimilar to several other tax credit developers who were awarded tax credits in the 2007 and 2008 Universal Cycles but were unable to close on their equity commitments. The results of RFP 2009-04 were made available on or about August 20, 2009, and approximately 28 applicants under such RFP were preliminarily recommended for approval of Exchange Funds and were issued invitations to enter into credit underwriting. Petitioner's Development was one of the 28 developments invited into credit underwriting for Exchange Funds.

7. Due to the unavailability of tax credit equity from the investor market (as evidenced by Petitioner's Affidavit of Good Faith Effort submitted as part of its RFP submission), and due to the fact the Petitioner is currently in credit underwriting for Exchange Funds, Petitioner by necessity must request a further extension of the closing date for its SAIL and ELI Loans. Rule 67-48.0072(4)(c), however, does not permit any further extension to be requested. As such, Petitioner is requesting a waiver of the foregoing rule in order to permit the grant of a further extension of such closing date. Petitioner also is requesting a waiver of the foregoing rule in order to avoid application of the provisions thereof, which provide for deobligation of such funds in the event such loan(s) are not closed within 24 months of the issuance of the preliminary commitment.

8. 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 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. The application of this rule will result in a substantial financial burden to the Petitioner.

9. In this case, strict application of Rule 67.48-0072(4)(c), F.A.C. (2007) in this case will create an obvious substantial financial hardship for Petitioner. Petitioner has advanced substantial funds in the pre-development of the Development, including purchase of the land upon which the Development will be constructed. Through no fault of its own, Petitioner was unable to locate a tax credit investor to provide the equity funds necessary to close the SAIL and ELI Loans and construct the Development. As was evidenced by the response to RFP 2009-04, many other developers (including some of the most successful affordable housing developers in Florida) have found themselves in the same situation as Petitioner. Strict application of the foregoing rule will result in a substantial loss to Petitioner, whose affiliate (Carrfour Supportive Housing, Inc.) has advanced the pre-development funds to date, and is a non-profit organization providing housing to the formerly homeless. Carrfour Supportive Housing, Inc., by reason of its non-profit mission, operates on a thinner profit margin than do for-profit developers, and is not

² "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.

equipped to absorb the financial hardship which would occur if the Development were not allowed to move forward.

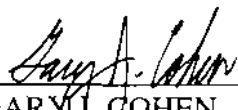
10. Further, the waiver will serve the underlying purpose of the statutes because the waiver will ensure the viability of this affordable housing development by allowing Petitioner to proceed with a viable financing structure in a timely manner to acquire and construct the Development and thus continue the Corporation's purpose to provide decent, safe and affordable housing in Florida.

ACTION REQUESTED

11. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested waiver of that portion of Rule 67-48.0072(4)(c), F.A.C. (2007) which requires the Corporation to deobligate SAIL and supplemental loan funds if not closed within 24 months of the preliminary commitment therefore, and to instead extend the closing date for such funds to a date reasonably consistent with the underwriting procedures of RFP 2009-04.

12. 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 18th day of September, 2009.



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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 Procddures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 18th day of September, 2009.



Gary J. Cohen