

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

VILLA AURORA, LLLP,

Petitioner,

vs.

CASE NO.: 2013-009VW

**FLORIDA HOUSING FINANCE
CORPORATION**

**APPLICATION NO. 2005-020CS/
2007-004CS**

Respondent.
_____ /

**PETITION FOR WAIVER OF RULES 67-48.010(3)(b) and
67-48.010(5), AS IN EFFECT ON JANUARY 29, 2006**

Villa Aurora, LLLP (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver from Rules 67-48.010(3)(b) and 67-48.010(5), Florida Administrative Code (2006).

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Villa Aurora, LLLP
c/o Carrfour Supportive Housing, Inc.
1398 S.W. First Street
12th Floor
Miami, Florida 33135
(305) 371-8300
(305) 371-1376 (fax)
sberman@carrfour.org

2. The contact person, along with contact information and relationship, for the Petitioner's Application (the "Application") is:

Villa Aurora, LLLP
c/o Carrfour Supportive Housing
1398 S.W. First Street
12th Floor
Miami, Florida 33135
(305) 371-8300
(305) 371-1376 (fax)

sberman@carrfour.org
Chief Executive Officer/President of Petitioner's General Partner

3. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney are:

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

4. The Petitioner submitted its application in the 2005 cycle (Application #2005-020CS) for the development named "Villa Aurora". Corporation awarded an allocation of \$2,189,896 of Housing Credits and a commitment for a \$3,000,000.00 SAIL loan in connection with that same application.

5. Applicant has successfully completed construction of the 76 unit low-income housing tax credit development for the homeless known as Villa Aurora (the "Development"), located in Miami-Dade County, Florida, in the "East Little Havana" section of Miami. Over 50% of the units in the Development are set aside for and rented to homeless individuals and/or families, as per Petitioner's selection of the Homeless demographic in its 2005 Application. The "head of household" with respect to each of the Homeless units is either physically disabled, suffers from mental illness or has a history of chronic substance abuse. The Development has consistently operated at a high occupancy rate; however, due to its provision of housing to the Homeless, the Development's cash flow from operations has not been sufficient to currently pay the three (3%) percent stated interest rate on Petitioner's \$3,000,000.00 promissory note (dated December 4, 2007) owed to the Corporation.

6. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner, (b) could deprive Miami-Dade County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2012).

7. The waivers being sought are permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rules 67-48.010(3)(b) and 67-48.010(5), Florida Administrative Code (2006). Specifically, Petitioner is seeking a waiver of Rule 67-48.010(3)(b) to allow the interest rate on the SAIL loan to be reduced from three (3%) percent to a blended rate between 0% and 1%, based upon the pro rata share of units set aside for homeless, as per the current SAIL rule (Rule 67-48.010(3)(b) (2011)). In addition, Petitioner is

seeking a waiver from Rule 67-48.010(5) to allow interest on the SAIL loan to be paid after payment of operating expenses of the Development.

9. Rule 67-48.010(3)(b) (2006) sets forth the interest rate for the SAIL loan as follows: “3% simple interest per annum on loans to Developments other than those identified in paragraph (a) above” (the Rule provides for a 1% interest rate for developments maintaining an 80% Homeless occupancy; Petitioner’s Development maintains a Homeless occupancy of 50% or greater but less than 80%,and does not qualify for the 1% rate).

10. Rule 67-48.010(5) (2006) provides as follows:

“(5) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of subsection (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and interest payment on SAIL loan balance equal to 1% as stated in paragraph (3)(a) above and equal to 3% as stated in paragraph (3)(b) above over the life of the SAIL loan;

(b) Development Expenses on the SAIL loan including up to 20% of total Developer fees per year ...;”

11. The Development in this case is described in Rule 67-48.010(3)(b) above. It is a Homeless development wherein at least 50% (but less than 80%) of the total units are set aside for Homeless residents. Pursuant to the SAIL Rules effective on the date that Petitioner’s application was filed and when the SAIL loan was closed, the interest rate on the SAIL loan was 3% simple interest per annum. This is also evidenced in the promissory note executed by Petitioner dated December 4, 2007 in favor of Corporation.

12. On or about April 1, 2007, Rule 67-48.010 was amended to read as follows:

“(3) the loans shall be non-amortizing and shall have interest rates as follows:

(a) Zero percent simple interest per annum on loans to Developments that set aside at least 80% of their total units for residents qualifying as Farmworkers, Commercial Fishing Workers or Homeless, over the life of the loan;

(b) Zero percent simple interest per annum on loans based on the pro rata share of units set aside for Homeless residents if the total of such units is less than 80% of the units and 1 percent simple interest per annum on the remaining units;

(c) One percent simple interest per annum on loans to Developments other than those identified in paragraphs (a) and (b) above.”

13. The SAIL loan for this Development has a stated annual interest rate of 3%. If this waiver is granted, the SAIL loan would carry an annual interest rate equal to a blended rate between 0% and 1%, based on the number of Homeless units contained in the Development.

14. Rule 67-48.010(5) (2006) has not been amended since the date of Petitioner's application and the closing of the SAIL loan in question. Such section provides, in the event the SAIL loan is in the first mortgage position, that "Development Cash Flow" shall be applied first to pay first mortgage fees and interest on the SAIL loan balance, and then to pay "Development Expenses". Rule 67-48.010(6) provides, in part, that "Any payments of accrued and unpaid interest due annually on SAIL loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this rule chapter." It is the interpretation of the Corporation that foregoing Rule requires payment of SAIL interest from gross revenues of the Development, prior to the payment of the Development's operating expenses.

15. If this waiver is granted, the payment of interest on the SAIL loan of this homeless development would be made after payment of the Development's operating expenses.

STATUTES IMPLEMENTED BY THE RULES

16. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program and the SAIL Program. See Sections 420.5099 and 420.5087, Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

17. Petitioner requests a waiver from Rule 67-48.010(3)(b), Florida Administrative Code (2006), which requires, with respect to the interest rate of the SAIL loan, that such rate be 3% per annum. Due to the negative financial impact on this homeless development, Petitioner specifically requests that the provisions of Rule 67-48.010(3)(b) (2011) be applied to this loan and the interest rate be reduced to a blended rate between 0% and 1%, based on the number of homeless units in the Development. In other words, Petitioner would like to receive the benefit of the lower interest rate which Corporation provides to all other Homeless transactions since 2007.

18. Petitioner is requesting that it be permitted to utilize Development Cash Flow to pay operating expenses of the Development, prior to paying interest on the SAIL loan. Due to the nature of the residents at this Development (predominantly homeless and disabled), rental revenues of the Development are limited. Notwithstanding the foregoing, operating expenses of the Development are the same (or higher) than other affordable housing developments. As such, Development Cash Flow is limited. If interest on the SAIL loan is required to be paid prior to payment of Development operating expenses, the result will be that the Development will not have sufficient cash flow to pay all of its operating expenses. This is an untenable situation for the Development and Petitioner. The Development is the landmark homeless development of Carrfour Supportive Housing, Inc. (the developer and principal behind this Development), and provides much needed affordable housing to homeless and disabled residents of Miami-Dade County. Operating expenses for this development are also increased by virtue of the high-rise nature of the Development; in Miami-Dade County it is difficult to construct homeless affordable housing other than as a high-rise, which structure lends itself to higher operating expenses than garden or mid-rise developments.

19. By permitting a decrease in the interest rate on the SAIL loan, and payment of such SAIL interest after first paying the Development's operating expenses, Petitioner would be able to better secure the ongoing financial security and feasibility of the Development. The Development is a leading example of how utilization of state, local and federal resources can be combined for the provision of quality housing for the formerly homeless in Miami-Dade County. Ensuring the long-term feasibility of this Development is in the best interests of all parties concerned.

20. The Corporation has the authority pursuant to Section 120.542(2), Florida Statutes to provide relief from its rules if application of the rules will create a substantial hardship or would violate principles of fairness. "Principles of fairness" are violated when application of the 2006 Rule to Petitioner (requiring a 3% interest rate) affects Petitioner in a manner significantly different from the way it affects other similarly situated persons (that is, developers constructing homeless housing in subsequent years) who receive the benefit of a blended interest rate between 0% and 1%. "Substantial hardship" would result in the event SAIL interest is required to be paid prior to operating expenses of the Development. A demonstrated economic hardship (that is, inability to pay the Development's operating expenses) would result if the rule is applied to require payment of SAIL loan interest prior to payment of operating expenses, particularly in the context of a Homeless development. If this Application were filed today, the provisions of Rule 67-48.010(3)(b) would apply and this Development would receive the benefit of a blended interest rate between 0% and 1% and would be assured of greater financial stability.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

21. Petitioner believes that a waiver of these Rules will serve the purposes of Section 420.5087, which is implemented by the rule in question. The Florida Housing Finance Corporation Act (Section 420.501, et. seq.) was passed in order to encourage private and public investment in persons of low income. The SAIL program was enacted to allow for state funds at a lower interest rate cost to allow affordable housing developments to operate more efficiently and to allow rents for those units to remain at the lowest level possible. In April 2007, the Corporation recognized the developers of homeless developments need additional incentives and amended Rule 67-48.010(3)(b) to allow for an even lower interest rate if the development was predominantly housing homeless tenants. By granting this request, the Corporation would recognize the goal of assisting the Development and operation of housing for formerly homeless persons.

TYPE OF WAIVER

22. The waiver being sought as permitted in nature.

ACTION REQUESTED

23. Petitioner requests the following:

- (a) grant the Petition and all the relief requested therein;

(b) provide a variance or clarification of Rule 67-48.010(5), Florida Administrative Code (2006) to allow the cash flow of the Development to first be utilized to pay operating expenses prior to the payment of interest on the SAIL loan;

(c) provide a variance from the application of Rule 67-48.010(3)(b) (2006) to allow an interest rate equal to a blended rate between 0% and 1% based upon the number of Homeless units in the Development;

(d) provide for the foregoing relief to be effective with respect to interest owed on the SAIL loan commencing with fiscal year 2011; and

(e) grant such further relief as may be deemed appropriate.

Respectfully submitted,

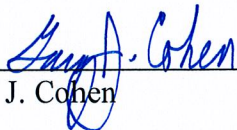
SHUTTS & BOWEN LLP
Counsel for Villa Aurora, LLLP
201 S. Biscayne Blvd.
Suite 1500 Miami Center
Miami, Florida 33131
Tel.: (305) 347-7308
Fax.: (305) 347-7808
e-mail: gcohen@shutts.com

By: _____


Gary J. Cohen

CERTIFICATE OF SERVICE

The 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 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 20th day of May, 2013.



Gary J. Cohen