

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**MCCURDY CENTER, LTD.**

**Petitioner,**

CASE NO.: 2006-032VW

vs.

**FLORIDA HOUSING FINANCE CORPORATION,**

**Respondent.**

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**PETITION FOR WAIVER OF RULE 67-48.028(3)**

McCurdy Center, Ltd. (the "Petitioner") hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's requirement that all supporting documentation referenced in Petitioner's Carryover Allocation Agreement be submitted to the Corporation within six months of the date of execution of the Carryover Allocation Agreement (the "Agreement"). See Rule 67-48.028(3).

In support of its petition, the Petitioner states:

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

McCurdy Center, Ltd.  
c/o Greater Miami Neighborhoods, Inc.  
300 N.W. 12<sup>th</sup> Avenue  
Miami, Florida 33128  
(305) 324-5505  
(305) 324-5506 (Fax)  
gdominguez@greatermiami.org

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

Mr. Agustin Dominguez  
c/o Greater Miami Neighborhoods, Inc.

300 N.W. 12<sup>th</sup> Avenue  
Miami, Florida 33128  
(305) 324-5505  
(305) 324-5506 (Fax)  
gdominguez@greatermiami.org  
President GMN-McCurdy, Inc. (one of Petitioner's Co-General Partners)

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-law.com

4. The Petitioner timely submitted its Application in the 2005 cycle (Application 2005-106CS) for the development named "McCurdy Center" (the "Development").

#### SITE CONTROL

5. As a result of Petitioner's being awarded a preliminary allocation of housing credits in the Corporation's 2005 competitive complication cycle, Petitioner entered into a Carryover Allocation Agreement with Corporation on December 21, 2005. Under Section 5.a.(ii) of the Agreement, Petitioner elected to provide evidence, within six months of execution of the Agreement, of its satisfaction of the requirement of site control.

6. Subsequent to Petitioner's submission of its application for an award of low income housing tax credits, it was determined that approval of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the "State") would be required in order to modify a deed restriction encumbering the property upon which Petitioner proposed to

construct the Development. The State (acting through the Cabinet of Governor Bush) approved the necessary modification to the deed restriction encumbering the property on May 31, 2006.

7. Due to the certain prohibitions contained in the Deed Restriction prior to its modification, Petitioner was unable to acquire the subject property until such time as the necessary modification to the Deed Restriction was obtained. Since the necessary modification was obtained, Petitioner has diligently been proceeding towards completing its acquisition of the subject property, and anticipates such closing will occur shortly. Petitioner shall continue to comply with all other deadlines and requirements contained in the Agreement without further amendment.

8. Rule 67-48.028(3) provides that “All supporting Carryover documentation and the signed certification evidencing the required basis must be submitted to the Corporation within six months of the date of execution of the Carryover Allocation Agreement or the Housing Credits will be deemed to be returned.”

9. For the reasons set forth above, a waiver of Rule 67-48.028(3) is necessary in order to permit Petitioner to acquire the property and proceed with the Development.

10. Section 420.501 through 420.516 of the Florida Statutes sets forth the Florida Housing Corporation Act (the “Act”), which designates the Corporation as the State of Florida administrator for the State Housing Tax Credit Program to establish procedures necessary for the proper allocation of tax credits and to ensure the maximum use of available credits in order to encourage development of low-income housing and associated mixed-use projects in urban areas (the “Procedures”). See §§420.501, 420.5093, Fla. Stat. (2004). These Procedures are established in Rule Chapter 67, Florida Administrative Code. Accordingly, as set forth below, the Rules and the Universal Application Instructions subject to Petitioner’s waiver request are

implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Procedures for the State Housing Tax Credit Program. *Id.*

11. The facts stated in Paragraphs 5 through 10 above demonstrate the circumstances that justify the waiver to permit Developer to satisfy the requirement of demonstrating satisfaction of the site control requirement contained in the Agreement.

12. The requested waiver to extend the deadline for satisfaction of the aforementioned site control requirement will not adversely impact the Development or the Corporation or be prejudicial to the Development or to the market to be served by the Development, because Petitioner continues to be obligated (under the Agreement) to complete the Development no later than December 31, 2007. Such required completion date is as required by Internal Revenue Code Section 42 and the Agreement. The requirement of Section 5.a.(ii) of the Agreement is imposed by the Corporation in order to demonstrate progress by an applicant (such as Petitioner) towards satisfaction of the ultimate December 31, 2007 completion deadline. However, the denial of the requested waiver will create a substantial hardship for the Petitioner, in that Rule 67-48.028(3) would deem the Housing Credits to be returned by Petitioner to Corporation. In such event, the Development would no longer be financially viable, since syndication of the Housing Credits is (as is the case with almost all development of affordable housing nationally) the key financial commitment in order for such development to proceed. Syndication of the Housing Credits is projected to provide approximately 85% of the total proceeds necessary for the Development to be constructed; without the Housing Credits, the Development will not be able to proceed. A provision of the foregoing relief would serve the purposes of Florida Statutes, §420.5099(2), which provides that Corporation shall adopt procedures in order to encourage development of low-income housing in the State, taking into consideration the ability of the

applicant to proceed to completion of the project in the calendar year for which the credit is sought.

13. The waivers being sought are permanent in nature.

14. Should the Corporation require additional information, the Petitioner is available to answer any questions and to provide any additional information necessary for consideration of this petition.

**WHEREFORE**, the Petitioner respectfully requests that the Corporation:

A. Consider this Petition in conjunction with the Petitioner's Carryover Allocation Agreement;

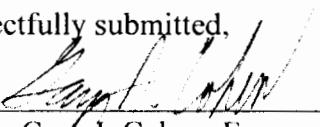
B. Grant this Petition and all the relief requested herein;

C. Waive the requirement of Rule 67-48.028(3) that Petitioner provide "all supporting Carryover documentation" within six months of the date of the execution of the Carryover Allocation Agreement, in order to allow Petitioner to deliver evidence of satisfaction of the aforementioned site control requirement after such six month period; and

D. Grant such further relief as may be deemed appropriate.

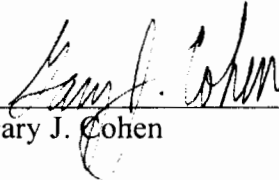
Respectfully submitted,

By: \_\_\_\_\_

  
Gary J. Cohen, Esq.  
Counsel for Petitioner  
Florida Bar No. 353302  
Shutts & Bowen LLP  
201 South Biscayne Boulevard  
1500 Miami Center  
Miami, Florida 33131

**CERTIFICATE OF SERVICE**

The Petition is being served by facsimile and 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, on June 27, 2006.

  
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Gary J. Cohen

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