

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: FLORIDA NON-PROFIT
SERVICES, INC.

FHFC Case No.: 2009-024VW

**ORDER GRANTING AMENDED PETITION OF WAIVER
OF RULE 67-48.0072(19) FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 18, 2009, pursuant to an “Amended Petition of Waiver of Rule 67-48.0072(19), Florida Administrative Code,” (the “Amended Petition”). Florida Housing Finance Corporation (“Florida Housing”) received a “Petition of Waiver of Rule 67-48.0072(19), Florida Administrative Code,” on July 6, 2009, from Florida Non-Profit Services, Inc. (“the Petitioner”). On July 17, 2009, the Notice of the Petition was published in Volume 35, Number 28, of the Florida Administrative Weekly. On August 21, 2009, Florida Housing received an “Amended Petition for Waiver of Rule 67-48.0072(19), Florida Administrative Code.”¹

¹ As the Amended Petition was substantially similar to the Petition and requested the same relief from the same rule, it was not necessary to file a notice in the FAW for the Amended Petition.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Harrell /DATE: *9/18/09*

Florida Housing received no comments regarding the Petition or Amended 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. On December 21, 2007, Florida Housing issued Request for Proposal #2007-10 for New Construction and Substantial Rehabilitation of Farmworker/Commerical Fishing Worker Housing (The “RFP”). Florida Non-Profit Services, Inc., (“Petitioner”) applied for and was awarded State Apartment Incentive Loan (“SAIL”) funds pursuant to the RFP on March 14, 2008, to finance the construction of Esperanza Place (the “Development”) in Collier County, Florida. As provided in the RFP, the terms of the award are governed by Rule Chapter 67-48, F.A.C., and Section 420.5087, Fla. Stat.

3. Rule 67-48.0072(19), Fla. Admin. Code states in pertinent part:

Contingency reserves which total no more than 5 percent of hard and soft costs for new construction...may be included within the Total Development Cost for Application and underwriting purposes. Contingency reserves shall not be paid from SAIL or HOME funds.

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

(2) Variances 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. Petitioner requests a waiver of the Rule which mandates that the contingency reserves total no more than five (5%) percent of hard and soft costs for new construction within the Total Development Cost for application and underwriting purposes. Specifically, Petitioner wishes to increase the contingency reserves from five (5%) percent to ten (10%) percent.

6. The Board finds that strict application of the above Rules under these circumstances will give rise to substantial hardship or otherwise violate the principles of fairness. Petitioner demonstrated that the construction contract was well below the average historic cost range and that it is expected that increases to the actual construction costs will occur and that a five percent contingency reserve is inadequate to address increased costs. Without adequate reserves, Petitioner may not be able to develop the Development. Granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for waivers of Rule 67-48.0072(19) Fla. Admin. Code (2007) is hereby **GRANTED** to increase the contingency reserves for hard and soft costs for new construction from five (5%) percent to ten (10%) percent for the Development.

DONE and ORDERED this 18th day of September, 2009.

Florida Housing Finance Corporation



By: Stuart Schaefer
Chairperson

Copies furnished to:
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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO JUDICIAL REVIEW

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.