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STATE OF FLORIDA
HOUSING FINANCE CORPORATION

**STATE OF FLORIDA
THE FLORIDA HOUSING FINANCE CORPORATION**

350 NW, LLC,

Petitioner,

vs.

FHFC Case No. 2009-060 VW
**APPLICATION NO. 2007-081C &
2006-074CS**

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**AMENDED PETITION FOR WAIVER FROM RULE
67-48.0010(3) (b), as in effect on January 29, 2006**

350 NW, LLC ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67-48.010 (3)(b), Florida Administrative Code (2006). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

350 NW, LLC
150 S.E. 2nd Avenue, #1202
Miami, Florida 33131
(305) 372-5765
(305) 372-5797

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

Lynn Washington, Esq
Washington & Associates, P.A.
4 Midtown
3301 N.E. 1st Avenue, M-501
Miami, Florida 33137
(305) 573-2929
(305) 748-8988

BACKGROUND

3. Pursuant to the 2006 Combined Universal Cycle, Petitioner submitted its Universal Application for Housing Credits under the Low Income Housing Tax Credit program for financing from the Housing Tax Credit ("HC") Program and for SAIL funding in the 2006 Combined Universal Application Cycle (the "2006 Universal Cycle"). The Corporation administers the 2006 University Cycle pursuant to Chapter 67-48, Florida Administrative Code.

4. Petitioner was awarded Housing Credits and a \$4,000,000.00 allocation of SAIL funding in connection with the 2006 Universal Cycle. The Petitioner's Application number for the application submitted in the 2006 Universal Cycle is 2006-074CS (the "2006 Application").

5. On or about August 11, 2009, Petitioner filed a response to the Notice of Award for Request for Proposals (RFP) #2009-04 Tax Credit Exchange Program (Exchange) Funding Only or Exchange Funding With Tax Credit Assistance Program (TCAP) Funding and a Nominal Amount of Nine Percent Low-Income Housing Tax Credits For Applicants that, as of February 17, 2009, had an Active Award of 9 Percent Housing Credits (the "2009 Exchanged RFP"). Petitioner received an award of Exchange Funds.

6. Respondent's underwriter has recommended that Petitioner received TCAP funding of \$18,310,182 and a SAIL Loan of \$4,000,000 for the new construction and permanent financing of this development.

THE RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner is seeking a waiver or variance of paragraph 67-48.010(3)(b)(2006), Florida Administrative Code, to allow the interest rate on the SAIL loan to be reduced from three percent (3%) to .44%, based on the pro rata share of units set aside for homeless, as per the latest SAIL rule, Rule 67-48.010(3)(b) (2007).

8. The SAIL Rules applicable to applications file in the 2006 Combined Universal Cycle (Rule 67-48.010(3) 2006)) provided as follows:

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

(a) 1% simple interest per annum on loans to Developments that maintain an 80% occupancy of residents qualifying as Farmworkers, Commercial Fishing Workers or Homeless, over the life of the loan;

(b) 3% simple interest per annum on loans to Developments other than those identified in paragraph (a) above;

9. The Development in this case is for a Development identified in Section 3(b) above. Pursuant to the SAIL Rules effective on the date that Petitioner's application was filed, the interest rate on the SAIL loan would be 3% simple interest per annum.

10. 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) 0 percent simple interest per annum on loans to Developments that set aside at least 80 percent of their units for residents qualifying as Farmworkers, Commercial Fishing Workers or Homeless, over the life of the loan;

(b) 0 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 percent of the units and 1 percent simple interest per annum on the remaining units;

(c) 1 percent simple interest per annum on loans to Developments other than those identified in paragraphs (a) and (b) above;

11. The SAIL loan for this homeless development, without this waiver, would carry an annual interest rate of three (3%) percent and be subject to the provisions of 67-48.010(3)(b) (2006).

12. If this waiver is granted, the SAIL loan of this homeless development would carry an annual interest rate of .44%.

STATUTES IMPLEMENTED BY THE RULES

13. Pursuant to the Florida Administrative Code, Rule 67-48.0075(7)(a)1, referenced above implements the provisions of Section 34 of Chapter 2006-69 (H.B. No. 1363), the Corporation has the authority and the responsibility for administering the SAIL programs.

14. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirement 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", 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.

15. Petitioner requests a waiver of that portion of Rule 67-48.0010 (2006), which requires, with respect to the terms of the SAIL loan, that the interest rate on the loan be three percent (3%) per annum. Due to potential negative financial impact on this homeless development, Petitioner specifically request that the provisions of Rules 67-48.0010 (2007) be applied to this loan and that the interest rate be reduce to .44%.

16. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of the rule will lead to unreasonable, unfair

and unintended consequences in particular instances. If this application were filed today, the provision of 67-48.010(3)(b) (2007) would apply and this Homeless development would be assured of a greater potential of success.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

17. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the Rules, because one of their goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida.

18. 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 development to operate more efficient and to allow the rents for those units to remain at the lowest level possible. In April 2007, the Corporation recognized that developers of homeless developments need additional incentives and amended Rule 67-48.010 to allow for an lower even interest rate if the development was predominately a development for previously homeless individuals. By granting this request, the Corporation would recognize the goal of increasing the supply of affordable housing and further assisting the development of housing for formally homeless individuals.

19. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from the rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair or unintended results, Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of

the underlying statute has been or will be achieved by other means. Section 120.542(2), Fla. Stat, (2006).

20. The requested waiver will not adversely impact the development or Florida Housing and will ensure that the 90 affordable housing units will be available for previously homeless families and individuals with special needs in Miami-Dade County, Florida.

21. However, a denial of the requested waiver would result in substantial hardship for this development. In order to carry the higher interest rate that would be required, there is a possibility that the rents would have to be increased and some of the intended families would be unable to afford the units. This would be as a result of the timing of the filing of the application.

TYPE OF WAIVER

22. The waiver being sought is permanent in nature.

23. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

ACTION REQUESTED

24. Petitioner requests the following:

(a) Grant the Petition and all relief requested herein;

(b) That the Corporation grants this waiver to allow the interest rate on the SAIL Loan to be reduced from 3% to .44%.

25. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee FL 32399-1300.


Respectfully submitted this 27th day of January, 2010.



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CERTIFICATE OF SERVICE

The Amended Petition is being served this 27th day of January, 2010 by electronic mail delivery to della.harrell@floridahousing.org for filing with the Corporation Clerk for the Florida Housing.



Lynn Washington, Esq.