

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CARIBBEAN VILLAGE, LTD.

Petitioner,

CASE NO.: 2016-035VW

v.

APPLICATION NO. 2014-418S

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)

Petitioner Caribbean Village, Ltd., a Florida limited partnership (“Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of certain provisions of its Request for Proposal 2014-111 (the “RFP”), which RFP was conducted under the Corporation’s State Apartment Incentive Loan (“SAIL”) program, governed by Rule 67-60, Florida Administrative Code (“FAC”), and Rule 67-48.0072(4)(c), pertaining to the required closing date for a SAIL loan.

1. Pursuant to Section 120.542, Fla. Stat. (2016) and Rules 28-104.001 through 28-104.006, F.A.C., Petitioner requests a waiver of those portions of the RFP (described more fully herein) pertaining to the required closing date for a SAIL loan.

2. The name, address, telephone and facsimile numbers for Petitioner and its qualified representative are:

Caribbean Village, Ltd.
c/o Pinnacle Housing Group, LLC
9400 South Dadeland Boulevard
Suite 100
Miami, Florida 33156
(305) 854-7100
(305) 859-9858 (Fax)
E-Mail: David@pinnaclehousing.com

3. The name, address, telephone and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, Florida 33131
305-347-7308 (telephone)
305-347-7808 (telecopier)
E-Mail: gcohen@shutts.com

4. Pursuant to RFA 2014-111, Petitioner timely submitted its application for loan funding under the State Apartment Incentive Loan program ("SAIL"). See Application Number 2014-418S. Petitioner was preliminarily awarded SAIL and ELI funding, and received an invitation to enter credit underwriting on December 19, 2014. The invitation to credit underwriting represented a preliminary commitment for a SAIL loan in an amount up to \$5,000,000.00 and an ELI loan in an amount up to \$362,400.00.

5. The proceeds of the above-referenced financing will be used for new construction of at least 82 low-income units (also financed with tax exempt bond financing and 4% low-income housing credits) to be known as Caribbean Village ("Development"). The Development will serve low-income elderly residents in Miami-Dade County, Florida.

6. Petitioner's application was selected for funding by FHFC and awarded at the December 12, 2014 Corporation Board of Directors meeting.

7. Under Part I.C.4.c., of Exhibit E to the RFA and Rule 67-48.0072(4)(c), the SAIL loan must close within twelve months of the date of the invitation to enter credit underwriting. Applicants may request one extension of up to twelve months. In the event the loan does not close by the end of the twelve-month extension period, the preliminary commitment or firm commitment, as applicable, for the SAIL loan will be deemed void and the funds will be de-obligated. An identical rule applies with respect to the ELI loan. See Part II.A.5. of Exhibit E to the RFA. Petitioner was previously granted a twelve-month extension to the closing deadline, extending such deadline to December 21, 2016. A further extension of the closing deadline may not be granted without a waiver of the foregoing provisions of the RFA and Rule 67-48.0072(4)(c).

8. Petitioner is requesting an extension of the SAIL loan closing date from December 21, 2016 to December 21, 2017, due to delays in the development process caused by a lawsuit filed against Miami-Dade County and Petitioner on March 3, 2016 by the property owner adjacent to the Development site. Miami-Dade County approved a development order for the Development on February 2, 2016, which development order allowed a rezoning of the

Development site. The adjacent property owner sued for declaratory and injunctive relief, alleging that the development order was inconsistent with the Miami-Dade County Comprehensive Plan. Petitioner has vigorously denied this claim, as has Miami-Dade County. The parties to the litigation engaged in a mediation conference on July 25, 2016, and a draft Stipulation of Settlement agreement is currently being negotiated by the parties.

9. The above-referenced litigation has delayed the pre-development portion of the development process; that is, preparation and submission of construction drawings and replat of the property, and approval of the site plan have been halted pending the resolution of the litigation. Due to such halt, Petitioner will not be in a position to obtain a building permit and close the SAIL funding by the December 21, 2016 deadline.

10. Petitioner anticipates that, if and when it enters into the Stipulation of Settlement Agreement, it will commence the completion of the construction drawings and replat and submit same for review to Miami-Dade County. The proposed Stipulation for Settlement provides (in part) for rezoning of the adjacent property owner's property, and that upon successful rezoning of the adjacent property owner's property, the above-described litigation will be voluntarily dismissed. If the adjacent property owner's site is not successfully rezoned, the above-referenced litigation will not be voluntarily dismissed and any agreement to stay the litigation shall terminate.

11. Notwithstanding the foregoing, Petitioner intends (if and when it executes the Stipulation of Settlement) to immediately commence completion of the construction drawings and replat and to submit same to Miami-Dade County for review and approval. A building permit cannot be issued until such time as the Development site is successfully rezoned, which cannot occur until the litigation is terminated (i.e., when the adjacent property owner's property is successfully rezoned). However, Petitioner is willing to take the risk of incurring such pre-development costs and Miami-Dade County has indicated its willingness to undertake review of the submitted construction drawings and replat (which Petitioner believes will take at least nine months) subject to the necessity of finalizing the re-zoning of the Development site.

12. The above-described delays were and are outside of Petitioner's control. Petitioner in good faith believed that the Development would be ready for commencement of the construction and closing of the SAIL funding on or before December 21, 2016, and it was not until commencement of the above-referenced litigation (and the delay occasioned thereby) that Petitioner became aware that the Development could not close its financing by December 21, 2016.

13. The requested waiver will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner (as it has over \$1,200,000 at risk in this transaction); (b) deprive Miami-Dade County of essential affordable

rental units set aside for low-income and very low-income elderly, who desperately need the housing which the Development will offer; and (c) violate principles of fairness.

14. Part I.C.4.c of Exhibit E of the RFP and Rule 67-48.0072(4)(c) sets forth the required timeline for closing upon SAIL financing. The loan must close within twelve months from the date of the invitation to enter credit underwriting, with Applicant able to request one extension up to twelve months. In the event the loan does not close by the end of the 12-month extension period, the preliminary commitment for SAIL funds will be deemed void and the funds will be deemed de-obligated. As discussed herein, Petitioner is requesting an additional extension of the SAIL loan closing date from December 21, 2016 to December 21, 2017, which request requires waiver of the foregoing rule. Petitioner respectfully requests that no further extension fee be imposed, given that the reason for the delay described herein was wholly outside of Petitioner's control.

15. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ the statute that created the SAIL loan program. *See* § 420.5087, Fla. Stat. (2014).

16. The requested waivers will ensure the availability of SAIL financing which will otherwise be lost as a consequence of development delays described herein.

17. The facts set forth in Sections 8 through 12 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for Rule waiver; that is, the delay in commencement of construction of the Development attributable to the litigation described herein, the loss of a substantial sum of money should the transaction not go forward, and the loss of affordable housing for the elderly.

18. As demonstrated above, the requested waivers serve the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing.

19. The requested waivers will not adversely impact the Development or the Corporation.

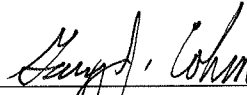
20. The waivers being sought are permanent in nature.

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes, (the "Act").

Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Caribbean Village, Ltd., respectfully requests that the Corporation:

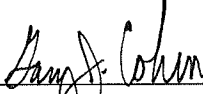
- A. Grant the Petition and all the relief requested therein;
- B. Waive the requirement that the SAIL loan close by December 21, 2016 and grant an extension of such closing date through December 21, 2017 with no further extension fee imposed; and
- C. Award such further relief as may be deemed appropriate.



GARY J. COHEN
Shutts & Bowen LLP
200 S. Biscayne Blvd., Suite 4100
Miami, Florida 33131
(305) 347-7308
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The Original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this 29th day of August, 2016.



GARY J. COHEN



GARY J. COHEN
PARTNER
Shutts & Bowen LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
DIRECT (305) 347-7308
FAX (305) 347-7808
EMAIL gcohen@shutts.com

August 29, 2016

VIA FEDERAL EXPRESS NO. 7839 4893 8687

Ms. Kate Flemming, Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

VIA FEDERAL EXPRESS NO. 7839 4898 3234

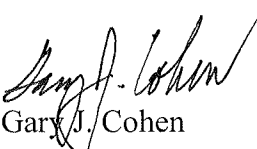
Joint Administrative Procedures Committee
Pepper Building, Room 680
111 West Madison Street
Tallahassee, Florida 32399-1400

Re: Petition for Waiver of Rule 67-48.0072(4)(c)

Ladies and Gentlemen:

Enclosed please find a Petition for Waiver for the above-referenced matter. Thank you for your attention to this matter.

Sincerely,


Gary J. Cohen

GJC/mar
Enclosure

MIADOCS 12772274 | 42848.0004