

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**LIBERTY GATEWAY, LTD.,**

**Petitioner,**

**vs.**

**CASE NO.:** \_\_\_\_\_

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**APPLICATION NO. 2007-036 CS**

**Respondent.**

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**PETITION FOR WAIVER OF RULE 67-48.004(14); PETITION FOR WAIVER OF RULE  
67-48.002(88) AND SECTION 11 OF THE 2007 QUALIFIED ALLOCATION PLAN**

Liberty Gateway, Ltd. (the "Petitioner") hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changes in the total number of units in a development.

The Petitioner also petitions the Corporation for a waiver of the Corporation's requirement that (a) an applicant (such as the Petitioner) wait until the last calendar quarter of the year in which such applicant is otherwise required to place its project in service in order to return a housing credit allocation, and (b) a Housing Credit allocation can be reserved only for the year after the year in which the development is requirement to be placed in service ("Placed in Service Date"). The return of these Housing Credits is required before the Corporation may reserve an allocation of 2008 Housing Credits that Petitioner requests be immediately allocated. See Rule 67-48.002(88), F.A.C. and Section 11 of the Corporation's 2007 Qualified Allocation Plan ("QAP").

In support of its petition, the Petitioner states:

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

Liberty Gateway, Ltd.  
c/o Carrfour Supportive Housing, Inc.  
2828 Coral Way, Suite 500  
Miami, Florida 33145  
(305) 371-8300  
(305) 405-8489 (fax)  
sberman@carrfour.org

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

Ms. Stephanic Berman  
c/o Carrfour Supportive Housing, Inc.  
2828 Coral Way, Suite 500  
Miami, Florida 33145  
(305) 371-8300  
(305) 405-8489 (fax)  
President – Liberty Gateway, Inc. (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 timely submitted its Application in the 2007 cycle (Application #2007-036CS) for the development named "Dr. Barbara Carey-Shuler Manor" (the "Development"), requesting Housing Credits of \$2,561,000, a SAIL loan in the amount of \$2,974,923.50, and a supplemental loan in the amount of \$765,000. Florida Housing has issued its Preliminary Allocation of Housing Credits in the amount of \$2,561,000, and entered into a Carryover Allocation Agreement with Petitioner ("Carryover Agreement"). Under the Carryover Agreement, the Development's required placed in service date was December 31, 2009. In the Carryover Agreement, Petitioner has committed to construct 90 residential units.

5. Equity raised from Housing Credits, together with the proceeds of the SAIL and supplemental loan, will be used for the development of Dr. Barbara Carcy-Shuler, a new apartment development (the "Development"), located in the Liberty City area of Miami, Florida and intended to serve homeless low-income individuals and families in Miami-Dade County, Florida.

6. The requested rule waivers 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. (2007).

7. The waivers being sought are permanent in nature.

CHANGE IN NUMBER OF UNITS

8. At the time of the Petitioner’s submittal of its Application, it was anticipated that the Development would be a 90 unit apartment community, consisting of 37 single room occupancy units, 30 one bedrooms/one bathroom units, 16 two bedroom/two bathroom units and 7 three bedroom/two bathroom units.

9. Petitioner desires to increase the size of the Development from 90 units to 100 units, consisting of 28 single room occupancy units, 39 one bedroom/one bathroom units, 23 two bedroom/two bathroom units and 10 three bedroom/two bathroom units.

10. In its original application, Petitioner envisioned the inclusion of ground floor retail/commercial development. However, due to the negative commercial environment in Miami-Dade County, Petitioner has determined to not develop the retail/commercial component and increase the number of residential apartments from 90 units to 100 units. Those changes to the Development would have had no impact on the scoring of the application, thus providing Petitioner with no advantage over its competitors.

11. In light of the considerable time that it takes to develop and construct multi-family rental housing, FHFC’s statues and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that result in an improvement to the Development and a higher than anticipated number of affordable housing units being made available to serve those with limited means. FHFC routinely approves such changes when they would not otherwise have affected the scoring of the application, because the applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

12. As explained above, the project changes requested by Petitioner increase the number of units being provided and they would have had no impact on the application’s scoring, thus providing Petitioner with no advantage over its competitors.

13. A waiver of the applicable Rules is necessary in order to change the number of units in the Development. The prohibition on changing the number of units in a development is found in Florida Administrative Code, Rule 67-48.004(14)(j), which provides that:

“(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

...

(j) Total number of Units...”

14. The facts stated in Paragraphs 8 through 13 above demonstrate the circumstances that justify the waiver to increase the number of residential units in the Development.

15. The requested waiver to increase the number of residential units in the Development 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. Further, the requested Rule waiver to increase the number of residential units in the Development will further the Corporation's purpose of ensuring the maximum use of available credits in order to encourage development of low-income housing projects in urban areas.

#### WAIVER OF SECTION 11 OF QAP

16. Petitioner has previously submitted its application for an allocation of housing credits to the Corporation, received notice of final scores and ranking, and received its Carryover Agreement from the Corporation. However, since that time the original tax credit investor reflected in the application has determined not to proceed with its investment in the Development. The original tax credit investor had preliminarily committed to Petitioner to loan pre-development funds to Petitioner to cover pre-development expenses; when the original tax credit investor withdrew, the Project was left without sources to fund certain pre-development expenses and delays were incurred until such time as a pre-development loan from the new tax credit investor could be secured. In addition, since that time, the pricing offered by potential tax credit investors has decreased, and the amount of liquidity in the tax credit investor market has substantially diminished, due to the withdrawal of certain large investors from such market. As a result, pre-development and commencement of development is behind schedule. As such, at this point, it is clear that completion and "placement in service" of the Development by December 31, 2009 will not occur.

17. Section 11 of the 2007 Qualified Allocation Plan ("QAP") provides as follows:

"Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a development will not be placed in service by the date required, such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its housing credit allocation in the last calendar quarter of the year in which otherwise required to be placed in service (emphasis added), the Corporation may reserve allocation in an amount not to exceed the amount of credits returned, and may allocate such housing credits to the Applicant for the year after the year in which otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation via Certified Mail, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs."

18. The Petitioner has commenced pre-development activities with respect to the Development; however, at this time it is apparent that (due to the aforementioned delays) it is unlikely the Development can be completed by December 31, 2009. More importantly, the new tax credit investor for the Development is not willing to undertake the initial closing of the equity financing necessary to commence construction, in view of the risk that the Development may not be completed by December 31, 2009. The tax credit syndicator (and likely any other tax credit investor in the current marketplace) will not, faced with the aforementioned "placed in service" risk, permit the equity closing and the commencement of construction to occur unless the Petitioner first obtains an extension of the "placed in service" requirement.

19. Accordingly, the Petitioner desires to obtain the relief provided for in Section 11 of the QAP and to receive an immediate allocation of 2008 Housing Credits. However, pursuant to such Section, such relief cannot be applied for until such time as an applicant has returned its housing credit allocation in the last calendar quarter of the year in which otherwise required to be placed in service. Additionally, pursuant to such Section, Housing Credits may only be allocated to an applicant for the year after the year in which the development was otherwise required to be placed in service (that is, 2010). In the instant case, this would prevent the Petitioner from petitioning for relief under Section 11 of the QAP until October 2009 and from receiving Housing Credits earlier than 2010. In order to proceed with the development of the Development, the Petitioner desires to apply for the relief afforded by Section 11 of the QAP currently; however, in order to do so, the Corporation must waive its requirement that such relief cannot be applied for until October 2009 and that Housing Credits may not be allocated until the year after the year in which the development is otherwise required to be placed in service.

20. Consequently, a waiver of the requirement that such relief may not be applied for until October 2009 is necessary in order for the Petitioner to apply for such relief and proceed with the development of the Development (presuming the relief is obtained once applied for). In addition, a waiver of the requirement that Housing Credits may not be allocated until the year after the year in which the development was otherwise required to be placed in service is also necessary, in order to receive an allocation of 2008 Housing Credits.

21. The facts stated in paragraphs 16 through 20 above demonstrate the circumstances that justify the waiver, and permit the Petitioner to apply for the relief afforded by Section 11 of the QAP, in order to currently return its 2007 housing credit allocation and obtain a 2008 housing credit allocation.

22. The requested waiver to permit the Petitioner to currently apply for the relief afforded by Section 11 of the QAP will not adversely impact the Development or the Corporation. However, the denial of the requested waiver will create a substantial hardship for the Petitioner, because the tax credit investor will not proceed forward with an equity closing and permit commencement of construction until such time as such relief is granted. This substantial hardship which would result from strict compliance with Section 11 of the QAP is obvious; the Petitioner at that point would be unable to close on its debt and equity financing, with no assurance that such relief will subsequently be available. Failure to close the debt and equity financing for the subject transaction would place the Petitioner in danger of failing to meet the foregoing "placed in service" deadline. Provision of the foregoing relief would serve the purposes of Florida Statutes Section 420.5099(2), which provides that Respondent 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.

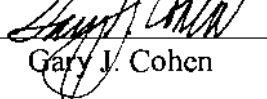
23. Should the Corporation require additional information, the Petitioner is available to answer any questions and to provide any additional information necessary for consideration of this petition.

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

- A. Consider this Petition in conjunction with the Petitioner's Application;
- B. Grant this Petition and all the relief requested herein;
- C. Waive the prohibition on changing the number of units in the Development and permit a change in the total number of units from 90 units to 100 units consisting of 28 single room occupancy units, 39 one bedroom/one bathroom units, 23 two bedroom/two bathroom units and 10 three bedroom/two bathroom units; and
- D. Waive the prohibition on returning housing credit allocations until the last calendar quarter of the year in which otherwise required to be placed in service, by allowing the Petitioner to return its housing credit allocation currently and request the Corporation to reserve a 2008 allocation in an identical amount of housing credits, all as more fully provided in Section 11 of the QAP.
- E. Allow the immediate return of the 2007 Housing Credit Allocation.
- F. Waive the 2007 Qualified Allocation Plan's requirement that a Housing Credit Allocation cannot be reserved until the year after the Development's Placed in Service Date.
- G. Immediately allocate 2008 Housing Credits to Petitioner, in an amount not to exceed the amount of its 2007 Housing Credit Allocation.
- H. Grant such further relief as may be deemed appropriate.

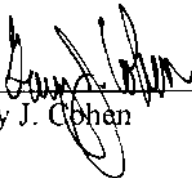
Respectfully submitted,

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By:   
Gary J. Cohen

**CERTIFICATE OF SERVICE**

The Petition is being served by 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, this 15<sup>th</sup> day of August, 2008.

  
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Gary J. Cohen