STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2022-055VW

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FLORIDA HOUSING
FINANCE CORPORATION

LITTLE HAITI GATEWAY, LLC,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

PETITION FOR WAIVER OF RULES 67-48.009(5)(D), 67-48.018(1)(C) AND 67-48.023(1)(C)

Petitioner Little Haiti Gateway, LLC, a Florida limited liability company ("Petitioner") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition against an applicant applying for SAIL program funding, HOME program funding, and/or competitive Housing Credits (collectively, "FHFC Funding") if the proposed development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing (with certain limited exceptions not applicable here). See *Rules 67-48.009(5)(d)*, *67-48.018(1)(c)*, and *67-48.023(1)(c), F.A.C. (2022)* (collectively, the "Rules").

Petitioner owns that certain affordable housing complex known as "Little Haiti Gateway", an 83-unit multi-family affordable housing complex located in the Little Haiti neighborhood of the City of Miami (the "Apartment Complex"). The Apartment Complex and the entire parcel of land upon which it is situated is subject to an existing Land Use Restriction Agreement ("LURA"), as a result of having received a SAIL loan from the Corporation in 2002. As explained more fully herein, there is excess land at the site on which the Apartment Complex is located ("Site") with

respect to which Petitioner (or its affiliate) seeks to develop with additional affordable housing; however, because the Site is subject to the LURA, Petitioner (or its affiliate) cannot apply to Corporation for funding in response to competitive solicitations which would provide the funds necessary to further develop the Site. Petitioner's proposed further development of the Site cannot be accomplished without additional FHFC Funding and, due to the existence of the above-referenced LURA, strict application of the Rules prevents Petitioner or its affiliates from applying for the necessary FHFC Funding. Petitioner is not asking to be released from the existing LURA, but rather to be allowed to compete for additional FHFC Funding which would permit the further development of the Site.

A. THE PETITIONER

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

Little Haiti Gateway, LLC
c/o Carrfour Supportive Housing, Inc.
1398 SW 1st Street, Suite 201
Miami, FL 33135-2384
(786) 363-4971 (telephone)
sberman@carrfour.org (email)

2. 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 (facsimile)
gcohen@shutts.com (e-mail)

B. BACKGROUND

3. The Apartment Complex was acquired and rehabilitated by Petitioner in 2002. Petitioner utilized a combination of first mortgage financing, a SAIL loan of $495,000 (which has

an outstanding principal balance of $427,083 as of December 31, 2021), and additional subordinate debt to finance the rehabilitation of the Apartment Complex. The Apartment Complex consists of a single 51 unit, two story apartment building together with 8 cottages containing an additional 32 units located throughout the Site.

4. To address the current extreme shortage of affordable housing in the City of Miami, Petitioner's affiliate Carrfour Supportive Housing, Inc. ("Carrfour") is proposing Notre Maison. Notre Maison (which means our house in French) will be a holistic supportive housing community for both homeless and low-income adults and families in the heart of Miami's Little Haiti neighborhood. The Little Haiti neighborhood is the cultural heart of the Haitian diaspora and has become home to the largest Haitian population in the country. Vibrant and colorful, the neighborhood is lined with small locally owned businesses, modest owner-occupied homes, affordable mid-sized multifamily rentals and many cultural sites. Despite this rich cultural backdrop, the mostly immigrant neighborhood has struggled and currently 40% of the households live below the poverty level. The neighborhood is in the center of the City of Miami that has 64% (654 adults) of the County's unsheltered homeless population living on its streets.

5. Surrounded by recently gentrified communities, the Little Haiti neighborhood is now at the center of a massive and controversial development project called Magic City which community leaders fear will push "residential and commercial rents in the neighborhood well beyond the reach of its current residents and effectively erase the community." (Miami Herald, June 28, 2019). Magic City, which will span over seven city blocks will contain 2,630 mostly high-end residential units in towers rising 25 stories, hotels, office space, retail space, and parking garages. After a lengthy and controversial approval process with heated public hearings that went late into the night, the City of Miami approved Magic City's plan in June of 2019. Since then, Magic City has begun its development efforts and other developers have also begun to buy real

estate in the neighborhood, pricing out the longtime residents already grappling with poverty and making no plans to address the need for affordable housing in the area.

6. Petitioner owns a 2.5-acre site in the heart of the Little Haiti neighborhood, upon a portion of which is located the Apartment Complex. In a response to a call from the community to develop affordable housing for those longtime residents displaced/priced-out by gentrification, Carrfour is proposing to redevelop its site into a multi-phase affordable and supportive housing community that will contain a mix of supportive housing, affordable housing at varying AMI levels, space for grassroots community services organizations, and retail space reserved for local businesses that have been priced-out. Because the entire 2.5 acre site described above is encumbered by a Land Use Restriction Agreement ("LURA") executed in connection with the existing SAIL loan on the Apartment Complex described above, the remainder of the development site cannot apply for FHFC funding, due to application of the Rules. Petitioner does not intend to demolish (and will continue to operate) the single two-story building containing 51 units of the total Apartment Complex. The cottages (containing 32 units) comprising a portion of the Apartment Complex may need to be reconfigured in order to facilitate redevelopment of the remainder of the site. Because the cottages are located throughout the site it is not practical or possible for Petitioner to simply request a modification of the legal description of the LURA to exclude excess land to be subsequently developed; hence the necessity of seeking this Rule waiver.

7. Notre Maison will be the first phase of this redevelopment effort, pursuant to which a total of 326 units are planned. Notre Maison (the proposed first phase of redevelopment) will contain 80 apartments with 40 of the units reserved as supportive housing for homeless adults/small families and 40 units of affordable housing for households earning less than 80% AMI. Notre Maison will contain common areas that foster a sense of community, including indoor/outdoor meeting space, a library, computer lab, and exercise room. A robust offering of

supportive services will be provided on-site by Carrfour and long-time service partners Family Action Network Movement (a grassroots service provider in the Little Haiti community), Citrus Health Network (one of the largest mental health providers in South Florida), and Betterway of Miami (a behavioral health provider specializing in substance abuse services).

C. RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rule 67-48.009(5)(d) (pertaining to SAIL applicants), 67-48.018(1)(c) (pertaining to HOME applicants), and 67-48.023(1)(c) (pertaining to applicants for Housing Credits), F.A.C., which provide:

> Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible for apply for [SAIL Program funding, HOME Program funding, or Competitive Housing Credits] if any of the following pertain [to the proposed Development]: . . . .
>
> The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following exceptions applies:
>
> (1) a LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program, or
>
> (2) a LURA or EUA, or both, for an existing building or buildings, originally constructed at least twenty-five (25) years prior to the deadline to apply for the applicable [SAIL Funding, HOME Funding, or Competitive Housing Credits] where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Acquisition and Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Preservation, or Acquisition and Preservation.

D. STATUTES IMPLEMENTED BY THE RULES

9. The Rules implement, among other sections of the Florida Housing Finance Corporation Act, Section 420.5099 (allocation of the low-income housing tax credit), Section 420.5089 (HOME Investment Partnership Program), and Section 420.5087 (State Apartment Incentive Loan Program). As demonstrated above, the requested waiver serves the purposes of

the Act, 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.

E. JUSTIFICATION FOR REQUESTED WAIVERS

10. Under Section 120.542(1), Florida Statutes, and Chapter 28-104, Florida Administrative Code, the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers will be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would 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.

11. As explained above, the Rules preclude Petitioner from submitting an application for FHFC Funding because the Site is subject to and encumbered by the LURA. Accordingly, Petitioner is requesting a waiver from the Rules to allow it to compete for FHFC Funding necessary to further develop the Site in the manner indicated above.

12. The Corporation's Portfolio Preservation Action Plan ("Action Plan") sets forth criteria for prioritizing developments for recapitalization within each program strategy. Petitioner's redevelopment plan should be prioritized in light of the following factors and criteria identified in such Action Plan:

(a) Affordability Expiration. If Petitioner (or its affiliates) are successful (after obtaining this requested waiver) in obtaining FHFC financing for redevelopment of the site, Petitioner would be willing to extend the term of the existing LURA to be co-terminous with any land use restriction agreement or extended low income housing commitment entered into in connection with further development of the site.

(b) Market Condition Opportunity. As indicated above, the site is located within a rapidly gentrifying area, and prices for surrounding property have increased dramatically. Grant of the requested waiver would allow further development of the site as affordable housing at a below-market price, since Petitioner (or its affiliate) already controls and owns the site.

(c) ELI Units and/or High Proportion of Below 60% AMI Units. In connection with the further development of the site, Petitioner will (as set forth herein) seek to house homeless adults (whose income typically falls underneath applicable ELI limits).

(d) Importance of Property to the Community. As described herein, the site is proximate to a massive redevelopment project called Magic City (containing mostly high-end residential units and non-residential uses). Surrounding properties (as a result of the Magic City development) have increased dramatically in price as a result. As one of the few remaining viable affordable housing development sites in the neighborhood, this site is extremely important to the Little Haiti community.

(e) Location. The development site is located close to nearby schools, transit and job centers. Morningside Academy (grades K-8) is located .7 miles away, Horace Mann Middle School is located 2.1 miles away, and Miami Edison Senior High School is located .8 miles away. Miami-Dade Community College-Meek Campus is located 1.1 miles away; Miami-Dade Community College is the largest and most diverse community college in the United States, offering over 300 programs of study and several degree options, including vocational, associate and baccalaureate degrees.

Residents at the site will have easy access to reliable public transportation. There is a bus stop (Bus #62) directly in front of the site which runs seven days a week every 30 minutes during peak hours, and less frequently (but never more than one hour) during off peak hours. Less than a three-minute walk from the development site are located bus routes #9, #10 and #202, which

buses run seven days per week with frequencies between 15-45 minutes. Also available is the City of Miami's free trolley service, which runs every 15-45 minutes, seven days a week, with two stops located less than a four-minute walk from the site.

The site sits on Northeast 2nd Avenue which is a main commercial street lined with retail shops, businesses and employment opportunities, including several large full-service grocery stores, pharmacies and The Shops at Midtown of Miami (containing over 40 shops and restaurants).

(f) Owner Development and Management Performance. Petitioner has resolutely and ably performed its ownership/management function at the Apartment Complex, such that several of the "property risk factors" contained in the Action Plan (aging stock, loss due to deteriorating physical condition, and loss due to financial viability) do not exist.

Petitioner is not requesting new or additional FHFC resources for the existing Apartment Complex, but rather seeks this waiver in order to better utilize the remainder of the site through the production of additional much needed affordable housing for the Little Haiti neighborhood and the City of Miami.

13. The facts set forth in Sections 4 through 7 and Section 12 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for Rule waiver.

14. Further, by granting the requested waiver, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. In addition, grant of the requested waiver will permit the construction of much needed housing for low-income and very low-income tenants.

15. The requested waiver will not adversely impact the Development or the Corporation.

16. The waiver being sought is permanent in nature.

17. Petitioner will continue to own and operate the Apartment Complex, although some reconfiguration of the cottages comprising a portion of the Apartment Complex may be required pending receipt of funds necessary for further development. Petitioner is wholly owned by Carrfour, a nationally recognized and sophisticated well-capitalized Section 501(c)(3) tax exempt organization which is committed to further developing the Site. If Petitioner (or its affiliates) is eligible to apply to FHFC Funding and is awarded same, such funds would be used to provide additional affordable housing. In the absence of further development of the Site, the City of Miami (in Miami-Dade County) will be deprived of the opportunity for additional much-needed affordable housing in an area which is in desperate need thereof.

18. The Rules prohibit Petitioner (or its affiliates) from applying for FHFC Funding because the Site is subject to the existing LURA.

19. The requested waiver is essential in order to provide new affordable housing in the Little Haiti neighborhood of the City of Miami, which residents of such neighborhood and surrounding neighborhoods desperately need. Without such funding, Petitioner cannot further develop the Site, and additional affordable units will not be constructed.

20. The requested waivers will not adversely affect the Apartment Complex or the Corporation, but would allow Petitioner (or its affiliates) to seek additional funding and ensure that affordable units in a newly constructed project(s) are available for families of lesser means in the City of Miami and Miami-Dade County.

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

WHEREFORE, Petitioner Little Haiti Gateway, LLC, respectfully requests that the Corporation:

A. Grant Petitioner (and any entity related to Petitioner through common principals that seek funding in relation to further development of the Site that is subject to the existing LURA) a waiver from Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C. (2022), allowing Petitioner (or its affiliates) to apply for FHFC Funding even though the Site is subject to the existing Land Use Restriction Agreement;

B. grant the Petition and all the relief requested therein; and

C. award such further relief as may be deemed appropriate.

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(305) 347-7308
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The Original Petition is being served by email 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 11th day of October, 2022.

GARY J. COHEN