

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

GEORGIA APARTMENTS, LLC,

Petitioner,

vs.

FHFC Case No. 2008-111VW
APPLICATION NO. 2007-081C

FLORIDA HOUSING FINANCE
CORP.,

Respondent.

**PETITION FOR WAIVER FROM RULES
67-48.004(1)(a) and 67-0075(A)1., F.A.C.**

GEORGIA APARTMENTS, LLC ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67-48.0075(7)(a)1, Florida Administrative Code (2007). 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:

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

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

Lynn Washington and
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
(305) 374-8500
(305) 789-7799

3. Petitioner successfully applied for financing from the Housing Tax Credit ("HC") Program in the 2007 Universal Application Cycle; Multi-Family Mortgage Revenue Bonds ("MMRB") Program; State Apartment Incentive Loan ("SAIL") Program; Home Investment Partnership ("HOME") Rental Program; and Housing Credit ("HC") Program (the "Universal Cycle") that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's Application number is 2000-081(C) (the "Application"). Petitioner applied for housing credits and a "supplemental loan" in the amount of \$510,000.00 to finance a portion of the costs to develop a multi-family rental apartment complex in Miami-Dade County, Florida, to be known as Georgia Apartments (the "Development"). The Development is a 60-unit apartment complex.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from the provisions of Rule 67-48.0075(a) 1, Florida Administrative Code. Rule 67-48.0075(7)(a)1, pertaining to the terms and provisions of repayment of supplemental loans, provides in part:

... with the principal forgivable provided the units for which the supplemental loan amount is awarded or targeted to ELI Households for at least 15 years.

STATUTES IMPLEMENTED BY THE RULES

5. Rule 67-48.0075(7)(a)1, referenced above implements the provisions of Section 34 of Chapter 2006-69 (H.B. No. 1363), which act appropriated the sum of \$30,000,000 to assist in the production of housing units for extremely low-income persons as defined in Florida Statute Section 420.0004(8). In the 2007 Universal Application Cycle, provision was made for the award of "supplemental" loans to applicants agreeing to set aside a specified percentage of apartment units to extremely low-income persons ("ELI Households"). Rule 67-48.0075(7)(a) sets forth the terms and conditions of such supplemental loans, providing in part that ". . . with

the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years". Accordingly, Rule 67-48.0075(7) (a) implements the provision of Chapter 2006-69, Section 34.

6. 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.

7. Petitioner requests a waiver of that portion of Rule 67-48.0075(7)(a)l, which requires, with respect to repayment of supplemental loans, that the principal balance thereof be automatically forgiven provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years. Due to potential negative federal income tax ramifications pertaining to forgivable loans, Petitioner specifically request that: (1) that the supplement loan to the Petitioner not be a forgivable loan, (2) that the supplemental loan to Petitioner have a maturity date of thirty (30) years from the date of closing, and (3) that on the fifteen (15) anniversary date of the closing of the supplemental loan to the Petitioner, the restriction that ten percent (10%) of the units (six units) in the Development be released from the "ELI" restriction but that the repayment of the loan not be forgiven and not be required until maturity. In furtherance of such Waiver, it is requested that the loan documentation for such supplemental loan shall specifically provide that the principal of such loan shall not be forgivable by the Corporation along with the provisions requested above.

8. 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. Unless the Rules are waived to allow the changes as outlined above, the Petitioner will be subject to "phantom taxable income" which will result in a substantial financial burden to the Petitioner and substantially increase the cost to Petitioner of delivering the much needed affordable housing units.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

9. 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 to low-income persons and households by ensuring:

The maximum use of available tax credits in order to encourage development of low-income housing in the State, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the Applicant to proceed to completion of the project in the calendar year for which credit is sought. Section 420.5099(2), Fla. Stat.

10. The Florida Housing Finance Corporation Act (Section 420.501. et seq.) was passed in order to encourage private and public investment in housing for persons of low income. The creation of the Housing Credit program, and the appropriation of funds for supplemental loans to projects housing ELI Households, stimulates private sector initiatives to increase the supply of affordable housing. By granting this request, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

11. 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).

12. The requested waiver will not adversely impact the development of Florida Housing and will ensure that the 60 affordable housing units will be available for families and individuals in Miami-Dade County, Florida.

13. However, a denial of the requested waiver would result in substantial hardship for Georgia Apartments, LLC. More significantly, Georgia Apartments, LLC could be denied the ability to deliver decent, safe and affordable housing units to a market in desperate need of extreme low and low-income housing.

TYPE OF WAIVER

14. The waiver being sought is permanent in nature.

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

ACTION REQUESTED

16. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for the loan documentation evidencing the supplemental loan from the Corporation to provide that the

principal amount of such loan may shall not be forgiven, that the supplemental loan has a term of thirty (30) years, and that at the end of the fifteen (15th) year following the closing of the supplemental loan, the ELI restriction to the units related to the supplemental loan be released.

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

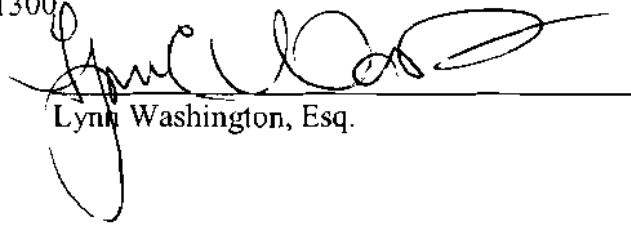
Respectfully submitted this 24th day of November, 2008.



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(305) 374-8500
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CERTIFICATE OF SERVICE

The Petition is being served this 21st day of November, 2008 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 dclivery on the Joint Administrative Procedures Committee, Room 120. 600 Calhoun Street. The Holland Building, Tallahassee. Florida 32399-1300



Lynn Washington, Esq.

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