

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

FRIENDSHIP TOWER, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

APPLICATION NO. 2006-330CHR

FHFC Case No. 2008-014 VW

**PETITION FOR WAIVER FROM RULE
67ER06-34(4), F.A.C.**

FRIENDSHIP TOWER, LTD. ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67ER06-34(4) 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:

Friendship Tower, Ltd.
9400 S. Dadeland Boulevard
Suite 100
Miami, FL 33156
(305) 854-7100
(305) 859-9858

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
1500 Miami Center
201 S. Biscayne Boulevard
Miami, FL 33131
(305) 347-7308
(305) 347-7808

3. Petitioner successfully applied for financing from the Housing Tax Credit ("HTC") Program and Rental Recovery Loan Program ("RRLP") in the 2006 RRLP Cycle that the Corporation administered pursuant to Chapter 67ER-06, Florida Administrative Code. The Petitioner's Application number is 2006-330CHR (the "Application"). Petitioner applied for housing credits and a loan under the RRLP program to finance a portion of the costs to develop a multi-family rental apartment complex in Miami-Dade County, Florida, to be known as Friendship Tower (the "Development"). The Development is a 92-unit apartment complex.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from various sections of Rule 67ER06-34(4), Florida Administrative Code.

5. Rule 67ER06-34(4) provides "The supplemental loan shall be non-amortizing and shall be based on each ELI unit at 0% simple interest per annum with the principal forgivable provided the units for which supplemental loan amount is awarded are targeted to ELI Households for at least 20 years". (emphasis added)

6. Petitioner requests a waiver from the provisions of Rule 67ER06-34(4) which provide for the forgiveness of principal; that is, a waiver of the underlined portion of the Rule referenced in Paragraph 5 above.

STATUTES IMPLEMENTED BY THE RULE

7. Rule 67ER06-34(4) referenced above implements the provisions of Section 31 of Chapter 2006-69 (H.B. No. 1363), which act appropriated funds to assist those areas of the State that sustained housing damage due to hurricanes during 2004 and 2005. In the 2006 RRLP 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 67ER06-34(4) 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 20 years”. Accordingly, Rule 67ER06-34(4) implements the provision of Chapter 2006-69, Section 31.

8. 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 requirements 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 fairness¹, 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.

9. Petitioner requires a waiver of that portion of Rule 67ER06-34(4) 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 20 years. Due to potential negative federal income tax ramifications pertaining to forgivable loans, Petitioner desires this Waiver in order to waive that portion of the foregoing rule requiring that such supplemental loan be automatically forgiven. In furtherance of such Waiver, it is requested that the loan documentation for such supplemental loan shall provide that the principal of such loan may be forgivable by the Corporation, in its sole discretion, at maturity provided the units for which the supplemental loan amount were awarded were targeted to ELI Households for at least 20 years and remain in programmatic compliance.

¹ “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule. Section 120.542(2), Florida Statutes.

10. 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 Rule is waived to allow the changes as outlined above, the Petitioner will be subject to “phantom taxable income” which will result in substantial financial burden to the Petitioner.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

11. 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.

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 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.

TYPE OF WAIVER

12. The waiver being sought is permanent in nature.

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

ACTION REQUESTED

14. Petitioner requests the following:

- (a) Grant the Petition and all relief requested herein; and
- (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 be forgiven in the sole discretion of the Corporation, provided the units for which the supplemental loan is awarded are targeted to ELI households for at least 20 years and remain in programmatic compliance.

15. 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 12th day of May, 2008.



GARY J. COHEN
Florida Bar No. 0353302
SHUTTS & BOWEN LLP
201 South Biscayne Boulevard
Suite 1500
Miami, Florida 33131
Telephone: (305) 347-7308
Facsimile: (305) 347-7808
Email: gcohen@shutts.com

Counsel for Petitioner

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 12th day of May, 2008.



Gary J. Cohen, Esq.

MIADOC'S 2760386 1