

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: LIBERTY GATEWAY, LTD.

FHFC Case No.: 2009-033VW

**ORDER GRANTING PETITION FOR WAIVER
OF RULE 67-48.0072(4)(c) FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 4, 2009, pursuant to a "Petition for Waiver of Rule 67-48.0072(4)(c), Florida Administrative Code (2007)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on September 22, 2009, from Liberty Gateway, Ltd. ("the Petitioner"). On October 2, 2009, the Notice of the Petition was published in Volume 35, Number 39, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Willa M. Harvey / DATE: 12/7/09

2. During the 2007 Universal Cycle, Florida Housing awarded an allocation of State Apartment Incentive Loan ("SAIL"), supplemental loan funds ("ELI" funds) and Low Income Housing Tax Credits ("HC") to Petitioner to finance the construction of Dr. Barbara Carey-Shuler Manor, a 100-unit development in Miami-Dade County, Florida (the "Development"). Petitioner's Application No. was 2007-036CS.

3. On August 14, 2009, Petitioner sought funding from Request for Proposal 2009-04, Tax Credit Exchange Program Funding, due to the loss of its tax credit equity syndicator. On August 20, 2009, Petitioner was issued an invitation into credit underwriting for Exchange Program Funds.

4. Rule 67-48.0072(4)(c), (2007) Fla. Admin. Code states in pertinent part:

(4) If the credit underwriting invitation is accepted:

(c) For SAIL and HOME Applicants and Applicant/s eligible for a supplemental loan, the loan(s) must close within 14 months of the issuance of the preliminary commitment. Applicants may request one (1) extension for up to 10 months. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board approves the request to extend the commitment beyond the initial 14

month period. In the event the loan does not close within 24 months of the issuance of the preliminary commitment, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

5. Section 120.542(2), Florida Statutes provides in pertinent part:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

6. Petitioner requests a waiver of the Rule requiring it to close the SAIL and ELI loan within twenty-four months of the issuance of the preliminary commitment. Specifically, Petitioner received a preliminary commitment from Florida Housing on September 28, 2007, and an invitation to credit underwriting. On October 31, 2008, Florida Housing approved the final credit underwriting report for the Development and granted a ten month extension to close the SAIL and ELI loan. The deadline to close the loans was September 28, 2009.

7. Petitioner was unable to meet this deadline due to the loss of its original tax credit equity syndicator and inability to secure another tax credit equity investor. On August 14, 2009, Petitioner submitted its response to Request for Proposal 2009-04, seeking funds under the Tax Credit Exchange Program ("Exchange Funds"). On August 20, 2009, Petitioner received an invitation to enter credit underwriting for these funds.

8. Petitioner requests a further extension of the closing date for its SAIL and ELI loan to allow it to complete credit underwriting for the Exchange Funds, to avoid the application of the rule which provides for the de-obligation of the funds in the event the loans are not closed within twenty-four months of the issuance of the preliminary commitment.

9. The Board finds that strict application of the above Rules under these circumstances will give rise to substantial hardship or otherwise violate the principles of fairness. Petitioner demonstrated that it has expended substantial funds in the pre-development of the Development, including the acquisition of the land and through no fault of its own, was unable to locate a tax credit investor to provide the equity funds necessary to close the SAIL and ELI loans. Granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-48.0072(4)(c) Fla. Admin. Code (2007), which requires Florida Housing to de-obligate SAIL and supplemental loan funds if not closed within twenty-four months of the

preliminary commitment is hereby **GRANTED**. The new closing date for such funds is March 31, 2010.

DONE and ORDERED this 4th day of December, 2009.



Florida Housing Finance Corporation

By: *Stuart Schanzer*
Chairperson

Copies furnished to:
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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.