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March 6, 2017

VIA FEDERAL EXPRESS NO. 7858 1368 9354

Ms. Kate Flemming, Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

VIA FEDERAL EXPRESS NO. 7858 1352 6530

Joint Administrative Procedures Committee
Pepper Building, Room 680
111 West Madison Street
Tallahassee, Florida 32399-1400

RE: Petition for Waiver from Rule 67-48.004(3)(J), F.A.C.

Ladies and Gentlemen:

Enclosed please find a Petition for Waiver for the above-referenced matter. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary J. Cohen". The signature is fluid and cursive, written over the printed name below it.

Gary J. Cohen

GJC/mar
Enclosure
cc: Hugh R. Brown, Esq.

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BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

HARBOR CITY TOWERS LLLP

Petitioner,

vs.

FHFC Case No. 2017-016VW
APPLICATION NO. _____

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR WAIVER FROM RULE
67-48.004(3)(j), F.A.C.**

HARBOR CITY TOWERS LLLP (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for waiver from Rule 67-48.004(3)(j) Florida Administrative Code (2016). 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:

Harbor City Towers LLLP
c/o Preservation of Affordable Housing Inc.
40 Court Street
Suite 700
Boston, MA 02108
Phone: (617) 449-0860
Fax: (617) 261-6661

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Boulevard
Suite 4100
Miami, FL 33131
(305) 347-7308
(305) 347-7808

3. Petitioner successfully applied for an allocation of low income housing federal tax credits (“HC”) in the Request for Applications 2014-104 (“RFA”). Petitioner’s application number in the RFA was 2014-378C (the “Application”). Petitioner applied for an HC allocation of \$1,003,828 to finance a portion of the cost of acquiring and rehabilitating a multi-family rental apartment complex located in Melbourne, Florida known as Harbor City Towers and subsequently renamed Trinity Towers West (the “Development”). The Development is a single building 192 unit elderly apartment complex.

4. Petitioner was awarded an allocation of \$1,003,828 of HC, and has closed on its HC financing.

5. In connection with its RFA application, Petitioner committed to setting aside ninety five (95%) percent, or 183, of the dwelling units in the Development to be occupied and rented to “Low Income Tenants”, defined generally as individuals whose income is sixty percent (60%) or less of area median gross income (adjusted for family size) within the meaning of Section 42(g)(1) of the Internal Revenue Code (the “Income Limit”). The Development is currently operating and is occupied such that 178 units (approximately 92.7% of the total units) meet the foregoing “Low Income” definition.

6. A denial of this Petition (a) will result in a substantial economic hardship to Petitioner; and (b) will violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2015).

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 situation person who are subject to the rule. Section 120.542(2) Florida Statutes.

THE RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from a portion of Rule 67-48.004(3)(j), Florida Administrative Code.

8. The Development is an existing elderly development which Petitioner has committed to rehabilitate utilizing HC funding. Residents currently occupying 178 of the units at Trinity Towers West (constituting approximately 92.7% of the total units) have income levels which are permissible under Section 42 and the HC program.

9. Rule 67-48.004(3) provides that “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 attempt to changes to these items will not be accepted. Those items are as follows:

...(j) With regard to the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment Section of the Application...”

In its Application, Petitioner provided for a Total Set-Aside Percentage of ninety five (95%) percent, or 183 units.

10. Petitioner requests a waiver from Rule 67-48.004(3)(j), to permit existing tenants exceeding the Income Limit to occupy a total of fourteen (14) units and to remain as tenants in the Development, by decreasing the total set-aside percentage from ninety-five (95%) percent to 92.7% (178 units).

11. The waiver request is permanent in nature. This waiver would replace a temporary waiver previously granted by the Corporation to Petitioner.

STATUTES IMPLEMENTED BY THE RULE

12. Rule 67-48.004(3)(j) implements, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program. See Section 420.5099, Florida Statutes.

13. Petitioner requests a waiver of Rule 67-48.004(3)(j) (which prohibits a change in the total set-aside commitment) to permit fourteen (14) of the units in the Development to be occupied by residents whose income exceeds the Income Limit.

14. Had Petitioner initially indicated (in its RFA application) that 178 of the 192 units of the Development were to be set aside for qualifying tenants, Applicant would have still been funded under the RFA. No scoring reduction would have resulted in its RFA application, and Petitioner has sufficient basis in the Development to generate the requested amount of HC, regardless of whether the “applicable fraction” for purpose of computing the amount of HC was ninety five (95%) percent or 92.7%. No competitive advantage would be gained by Applicant by virtue of allowing up to fourteen (14) units to exceed the Income Limit. Due to the scarcity of nearby affordable housing, required relocation of such tenants would impose severe hardship upon each of them. No public policy objective is served or furthered by requiring Applicant to evict and relocate the nine (9) tenants at the Development.

15. 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. In addition, the financial viability and well-being

of the Development will be furthered by permitting Petitioner to allow the tenants who are currently over-income to remain residents of the Development. Loss of such residents will result in loss of income to the Development until such time as qualifying replacement tenants can be located. In addition, Petitioner would not have to incur relocation expense in connection with relocating such tenants. As noted above, Petitioner gained no competitive advantage in the RFA by representing that ninety-five (95%) percent of its tenants would be income eligible, as compared to 92.7% requested hereunder.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

16. 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.

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 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

17. The waiver being sought is permanent in nature.

ACTION REQUESTED – TOTAL SET ASIDE PERCENTAGE


18. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for the Development to require that 178 (or 92.7%) of the 192 units in the Development be set-aside for qualifying low-income tenants meeting the Income Limit.

19. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399-1400.

Respectfully submitted this 6th day of March, 2017.

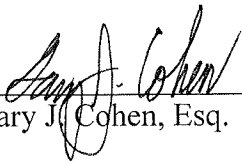


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Counsel for Petitioner

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 680, 600 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 6th day of March, 2017.



Gary J. Cohen, Esq.

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