

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**EDEN GARDENS APARTMENTS  
LIMITED PARTNERSHIP,**

**Petitioner,**

**vs.**

**CASE NO.:** \_\_\_\_\_

**FLORIDA HOUSING FINANCE**

**APPLICATION NO. 2004-145C/2008-011C**

**Respondent.**  
\_\_\_\_\_/

**PETITION FOR WAIVER OF RULE 67-48.004(14)(g)  
FOR A CHANGE IN DEVELOPMENT TYPE**

Eden Gardens Apartments Limited Partnership (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changes in the "Development Type" of a development. See Rule 67-48.004(14)(g).

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Eden Gardens Apartments Limited Partnership  
c/o Everglades Community Association, Incorporated  
19308 SW 380<sup>th</sup> Street  
P.O. Box 343529  
Florida City, Florida 33034  
(305) 242-2142  
(305) 242-2143 (fax)  
kirknet@yahoo.com

2. The contact person, along with contact information and relationship, for the Petitioner's Application – Housing Credit (HC) Program (the "Application") is:

Mr. Steven Kirk – President  
c/o Everglades Community Association, Incorporated  
19308 SW 380<sup>th</sup> Street  
P.O. Box 343529  
Florida City, Florida 33034  
(305) 242-2142  
(305) 242-2143 (fax)  
kirknet@yahoo.com

President – Everglades Community Association, Incorporated  
(One of Petitioner’s co-developers)

3. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner’s attorney are:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
1500 Miami Center  
201 S. Biscayne Blvd.  
Miami, FL 33131  
(305) 347-7308  
(305) 347-7808 (Fax)  
gcohen@shutts.com

4. The Petitioner timely submitted its Application in the 2004 cycle (Application #2004-145C) for the development named “Eden Gardens” (the “Development”). Florida Housing has issued its Preliminary Allocation of Housing Credits and entered into a Carryover Allocation agreement with Petitioner. Petitioner has previously exchanged its 2004 Housing Credits for an allocation of 2008 Housing Credits.

5. Equity raised from Housing Credits have been used for the development of Eden Gardens, a new 71-unit apartment development intended to serve very low-income individuals and families in Collier County, Florida.

6. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner, (b) could deprive Collier County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2007).

7. The waivers being sought are permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rule 67-48.004(14)(g), Florida Administrative Code (2008). Specifically, Petitioner is seeking a waiver from the “Development Type” designation identified by Petitioner in its original housing credit application.

Rule 67-48.004(14) provides, in relevant part, as follows:

(14) 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 and 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 make changes to these items will not be accepted. Those items are as follows:

(g) Development Type

## STATUTES IMPLEMENTED BY THE RULES

9. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HC Program. See Section 420.5099, Florida Statutes.

## PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

10. Petitioner requests a waiver from Rule 67-48.004(14)(g), Florida Administrative Code (2008). Petitioner is seeking a waiver from the Rules allowing it to change the Development Type listed in the Application from "Townhouses" to "Garden Apartments," in order to erase any ambiguity or confusion which may have arisen in connection with the underwriting of the Development.

11. In the original Application, Petitioner planned to construct 51 units in 12 residential buildings. The original site plan and building type were altered during permitting with Collier County, due to environmental considerations of the local government which required the reduction of building footprints and an increase in native vegetation and wetland preserves. This resulted in the reduction in the number of residential buildings from 12 to 7, and a change in the configuration of each residential building.

12. The Development now consists of two building types; Building Type A comprised of 7 units and Building Type B with 8 units. Each and every building incorporates "townhouses" within it; however, the number of townhouse units as compared to "flats" (garden apartments) either on the first or second floor varies per building type. Building Type A comprised of 7 units contains two Townhouse units on one end and one Townhouse unit on the other end (three total), with 4 "flats" (garden apartments) in the middle. Building Type B comprised of 8 units contains 2 Townhouse units on each end of the building (four total), with 4 "flats" (garden apartments) in the middle.

13. The Development is comprised of five 7-unit buildings and two 8-unit buildings. As a result, there are 28 "flat" (garden apartments) units and 23 Townhouse units. As such, arguably the Development could be characterized as a "garden apartment" development type rather than "townhouse."

14. The Application's scoring and funding would not have been affected had the Applicant selected the "garden apartment" development type when it submitted its original Application. In addition, there was no "leveraging" benefit associated with selecting "townhouse" as the Development Type rather than "garden apartments."

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 rules will lead to unreasonable, unfair and unintended results in particular instances. Construction is nearly complete with respect to this Development. The Development has in all respects satisfied the conditions and requirements of the Application's rules and instructions, has the same number of units, and serves the same demographic population. If the waiver is not granted, Petitioner is at risk of being in noncompliance with its limited partnership agreement and all loan documents with respect to this Development. As a result of this potential non-compliance, the developer may be precluded from

participating in future affordable housing programs. If the waiver is not granted, Petitioner may not be able to receive the remaining installments of its tax credit equity. Unless the Petitioner's request is granted, strict application of the Rules would violate principles of fairness. Moreover, unless the Rule is waived to allow the request to change, Petitioner may not be entitled to receive a final allocation of Housing Credits, this resulting in substantial hardship to Petitioner.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

16. Petitioner believes that a waiver of these Rules will serve the purposes of the Statute, which is implemented by the rule. 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 purpose of the creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to change its Development Type as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in person of low-income.

TYPE OF WAIVER

17. The waiver being sought as permitted in nature.

ACTION REQUESTED

18. Petitioner requests the following:

(a) That the Corporation grant Petitioner a waiver from Rule 67-48.004(14)(g), Florida Administrative Code (2008), allowing it to change the Development Type listed in the application from "Townhouse" to "Garden Apartments".

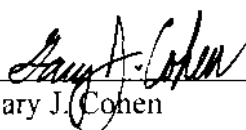
Respectfully submitted,

SHUTTS & BOWEN LLP  
Counsel for Eden Gardens Apartments  
Limited Partnership  
201 S. Biscayne Blvd,  
Suite 1500 Miami Center  
Miami, Florida 33131  
Tel.: (305) 347-7308  
Fax.: (305) 347-7808  
e-mail: gcohen@shutts.com

By: \_\_\_\_\_  
Gary J. Cohen

**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 15<sup>th</sup> day of August, 2008.

  
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Gary J. Cohen