

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

HARBOR CITY TOWERS LLLP

Petitioner,

vs.

APPLICATION NO. 2014-378C

FLORIDA HOUSING FINANCE CORP.,

FHFC File No. 2015-007VW

Respondent.

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**PETITION FOR WAIVER FROM RULE  
67-48.004(14)(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(14)(j) Florida Administrative Code (2011). 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  
1500 Miami Center  
201 S. Biscayne Boulevard  
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 will close on its HC financing in 2015.

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 Development is currently operating and is occupied such that 174 units (approximately 90% of the total units) meet the foregoing “Low Income” definition.

#### **THE RULES FROM WHICH WAIVER IS SOUGHT**

6. Petitioner requests a waiver from a portion of Rule 67-48.004(14)(j), Florida Administrative Code.

7. The Development is an existing elderly development which Petitioner has committed to rehabilitate utilizing HC funding. Residents currently occupying 174 of the units at Trinity Towers West (constituting approximately 90% of the total units) have income levels which are permissible under Section 42 and the HC program. Both Section 42 and the HC program permit

tenants to continue to reside at a property when their income level initially (upon move in) meets the income requirement, but subsequently increases to an amount in excess of such limit. However, those provisions are inapplicable here, since ownership of the Development has been transferred to the Petitioner and the tenants must recertify their income levels and cannot take advantage of the exception described in the preceding sentence.

8. Rule 67-48.004(14) 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. Similarly, in Section 3(m) of the 2014 Carryover Allocation Agreement there is provided a set-aside percentage of 95%.

9. Petitioner requests a waiver from Rule 67-48.004(14)(j), and a corresponding revision to Section 3(m) of the 2014 Carryover Allocation Agreement, to permit the tenants occupying a total of eighteen (18) units (the nine (9) units allowed as non-low income under the 95% set-aside, and the nine (9) additional units which are currently over-income), which tenants are over income under the HC Program, to remain as tenants in the Development until such time as



their tenancy is terminated. Petitioner agrees that the rent charged to such tenants will not exceed the maximum rent permitted under the HC Program.

10. The waiver request is temporary in nature. At such time as the tenants in up to nine (9) of the over-income units no longer reside at the Development, such unit will then be occupied by a tenant who meets the income requirements of Section 42 of the Code, and Section 3(m) of the 2014 Carryover Allocation Agreement.

**STATUTES IMPLEMENTED BY THE RULE**

11. Rule 67-48.004(14)(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.

12. Petitioner requests a waiver of Rule 67-48.004(14)(j) (which prohibits a change in the total set-aside commitment) to permit eighteen (18) of the units in the Development to continue to be occupied by their current residents until such time as they no longer reside at the Development. For so long as such residents remain at the Development, the total set-aside commitment for the Development would be a minimum of 90% (174 of 192 units) instead of 95%. The referenced eighteen (18) tenants would continue to pay rent which does not exceed the applicable maximum HC rent. At such time as the tenants in up to nine (9) of the over-income units no longer reside in the property, such apartment unit would then be rented to an income qualifying tenant.

13. Had Petitioner initially indicated (in its RFA application) that 174 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 ninety (90%) percent. In computing the “leveraging” rankings under the RFA, Applicant would have still been in the “A Group” at a leveraging figure of \$51,922.14 per set-aside unit, instead of \$49,368.59 per unit. No competitive advantage would be gained by Applicant by virtue of allowing the nine (9) tenants who are currently over-income (in addition to the nine (9) units, which are non-low income by virtue of the 95% set-aside) to remain at the Development. 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.

14. 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 nine (9) 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 nine (9) tenants. Petitioner gains no economic advantage (as compared to replacement qualifying income tenants), since the same rent will be collected from the current tenants or from replacement income eligible 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 ninety (90%) percent requested hereunder.



**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

15. 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 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**

16. The waiver being sought is temporary in nature. The waiver is only requested for such period of time as the current eighteen (18) over-income tenants continue to reside at the Development. At such time as the tenants in up to nine (9) of the over-income units vacate the Development, such apartment unit will then be rented to an income eligible tenant, with respect to which this waiver will no longer be necessary.

**ACTION REQUESTED – TOTAL SET ASIDE PERCENTAGE**

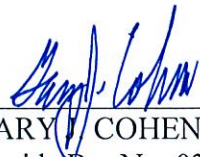
17. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for the 2014 Carryover Allocation Agreement to be amended to require that 174 (or ninety (90%) percent) of the 192 units in the Development be set-aside for qualifying low-income tenants for such period of time as the eighteen (18) over-income tenants reside at the Development, so long as that at such time as the tenants in up to nine (9) of the over-income units vacate the Development, such apartment unit will then be rented to a qualifying income eligible tenant.

18. 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 3<sup>rd</sup> day of March, 2015.



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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](mailto: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 680, 600 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3<sup>rd</sup> day of March, 2015.



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Gary J. Cohen, Esq.

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SHUTTS  
&  
BOWEN  
LLP

*100 Years  
of Service*

GARY J. COHEN  
Member Florida Bar  
(305) 347-7308 Direct Telephone  
(305) 347-7808 Direct Facsimile

E-MAIL ADDRESS:  
gcohen@shutts.com

March 3, 2015

**VIA FEDERAL EXPRESS**

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

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

Re: Harbor City Towers LLLP; Petition for Rule Waiver

Ladies and Gentlemen:

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

Sincerely,



Gary J. Cohen

GJC/mar  
Enclosure

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1500 Miami Center • 201 South Biscayne Boulevard, Miami, Florida 33131 • ph 305.358.6300 • fx 305.381.9982 • [www.shutts.com](http://www.shutts.com)