

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**TRINITY TOWERS SOUTH PRESERVATION
ASSOCIATES LLLP,**

Petitioner,

vs.

CASE NO.: 2016-041VW

**FLORIDA HOUSING FINANCE
CORPORATION**

APPLICATION NO. 2015-228E

Respondent.

_____ /

**PETITION FOR WAIVER OF RULE 67-48.041(1)(C)
FOR A LONGER MATURITY DATE**

Trinity Towers South Preservation Associates LLLP (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition of the loan term of Petitioner's EHCL loan exceeding 15 years. See Rule 67-48.041(1)(c).

In support of its petition, the Petitioner states:

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

Trinity Towers South Preservation Associates LLLP
c/o Preservation of Affordable Housing, LLC
40 Court Street .
Suite 700
Boston, MA 02108
(617) 449-0867
(617) 261-6661 (fax)
cmian@poah.org

2. The contact person, along with contact information and relationship, for the Petitioner’s Application – EHCL Program (the “Application”) is:

Trinity Towers South Preservation Associates LLLP
c/o Preservation of Affordable Housing, LLC
40 Court Street
Suite 700
Boston, MA 02108
(617) 449-0860
(617) 261-6661 (fax)
rbrown@poah.org
Vice President – Managing Director – Preservation
of Affordable Housing, LLC
(Petitioner’s developer)

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
200 S. Biscayne Blvd.
Ste. 4100
Miami, FL 33131
(305) 347-7308
(305) 347-7808 (Fax)
gcohen@shutts.com

4. The Petitioner timely submitted its Application in RFA 2015-102 (Application #2015-228E) for the development named “Trinity Towers South” (the “Development”). The Corporation has approved an Elderly Housing Community Loan (“EHCL”) for the development in the amount of \$750,000.

5. The proceeds of the EHCL loan, together with proceeds of tax-exempt financing and equity raised from the syndication of non-competitive 4% low income housing credits and proceeds from loans from affiliates, will be utilized to rehabilitate a 162-unit mid-rise apartment development intended to serve low-income elderly residents located in Melbourne, Brevard 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 the City of Melbourne and Brevard County of essential, affordable housing units for the elderly, and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2016). The requested rule waiver would not affect the scoring of Petitioner’s Application nor allow Petitioner to gain an unfair advantage over other applicants.

7. The waiver being sought is permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rule 67-48.041(1)(c), Florida Administrative Code (2016). Specifically, Petitioner is seeking to lengthen the maturity date of the EHCL loan from 15 years to 32 years, coterminous with subordinate debt which will encumber the Development.

Rule 67-48.041(1)(c) provides, in relevant part, as follows:

“The loan term shall not exceed 15 years but may be for a shorter period of time as requested by the Applicant or recommended by the Credit Underwriter. However, if the lien of the Corporation’s encumbrance is subordinate to the lien of another mortgage, then the term may be made coterminous with the longest term of the superior lien if requested by the borrower and approved by the Credit Underwriter based upon debt service coverage ratio, loan to value ratio, and other factors established in a competitive solicitation.”

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 EHCL Program. See Section 420.5087(3)(e), Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

10. Petitioner requests a waiver from Rule 67-48.041(1)(c), Florida Administrative Code (2016). Petitioner is seeking a waiver from the Rule allowing it to lengthen the maturity date of the EHCL loan from 15 to 32 years.

11. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner’s request for waiver:

- a. Petitioner timely submitted its Application to the Corporation for the EHCL program (pursuant to RFA 2015-102) for \$750,000 of EHCL funding. Petitioner was awarded such funding and invited to credit underwriting on May 22, 2015. The Corporation approved the final credit underwriting for the EHCL loan on June 10, 2016.
- b. An affiliate of Petitioner (New Trinity South Preservation Associates, LLLP) (“New Trinity Towers”) has contracted to purchase the Development from Petitioner and has applied for and been preliminary awarded tax exempt financing from the Brevard County Housing Finance Authority, AHP financing from the San Francisco office of Federal Home Loan Bank, and non-competitive 4% low income housing tax credits from the Corporation. New Trinity Towers will also utilize the proceeds of loans from affiliates of

Petitioner (the “Petitioner Loans”) to assist in the financing of the acquisition and rehabilitation of the Development.

- c. It is intended that Petitioner will close on the EHCL financing and, on the same day, sell the Development to New Trinity Towers, and that New Trinity Towers will assume the EHCL financing.
- d. The tax credit investor in New Trinity Towers has advised that, in order for the subordinate debt on the Development (which includes the EHCL loan and the Petitioner Loans) to be included in the eligible basis of the Development for purposes of computing the amount of the 4% non-competitive low income housing tax credit generated in connection with the acquisition and rehabilitation of the Development, such debt must have a maturity of at least 32 years.
- e. A denial of the requested waiver would result in a substantial economic hardship for Petitioner, since a shorter (15 year) maturity date for the EHCL loan will not permit the inclusion of such loan in the eligible basis of the Development, thereby decreasing the amount of non-competitive 4% low income housing tax credits generated in connection with the acquisition and rehabilitation of the Development. Such decrease in the amount of non-competitive 4% low income housing tax credits (and the corresponding decrease in the amount of tax credit equity generated in connection with the syndication thereof) will cause the acquisition and rehabilitation of the Development to be economically infeasible.

12. A waiver of the Rule’s requirement of a 15 year maturity date (lengthening such maturity date to 32 years) would serve the purposes of Section 420.5087, and the Act as a whole, because one of the Act’s primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income elderly persons and households.

13. By granting the waiver, the Corporation would recognize the economic realities of developing affordable rental housing by encouraging the rehabilitation of elderly low-income housing projects. This recognition would promote participation by owners such as Petitioner in meeting the Act’s purpose of providing affordable housing in an economical and efficient manner.

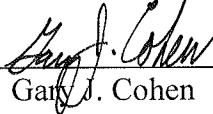
ACTION REQUESTED

Petitioner requests the following:

- (a) That the Corporation grant Petitioner a waiver from Rule 67-48.0041(1)(c), Florida Administrative Code (2016), allowing it to lengthen the maturity date of the EHCL loan from 15 years to 32 years; and
- (b) Grant the Petition and all the relief requested therein; and
- (c) Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SHUTTS & BOWEN LLP
Counsel for Trinity Towers South Preservation
Associates LLLP
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, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 17th day of October, 2016.



Gary J. Cohen



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October 12, 2016

VIA FEDERAL EXPRESS NO. 7843 2395 7910

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

VIA FEDERAL EXPRESS NO. 7843 2398 6387

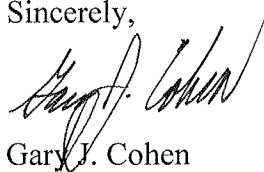
Joint Administrative Procedures Committee
Pepper Building, Room 680
111 West Madison Street
Tallahassee, Florida 32399-1400

Re: Trinity Towers South Preservation Associates LLLP v FHFC
Petition for Waiver of Rule 67-48.041(1)(C), For A Longer Maturity Date

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
cc: Hugh R. Brown, Esq.

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