

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

TRINITY TOWERS EAST PRESERVATION
ASSOCIATES LLLP

Petitioner,

vs.

FHFC Case No. 2016-055VW
APPLICATION NO. 2016-168BS

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR WAIVER FROM RULES 67-21.003(8)(j) AND
67-48.004(3)(j), F.A.C.**

TRINITY TOWERS EAST PRESERVATION ASSOCIATES LLLP (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for waiver from Rules 67-21.003(8)(j) Florida Administrative Code (2015) and 67-48.004(3)(j) Florida Administrative Code (2014). 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:

Trinity Towers East Preservation Associates LLLP
c/o Preservation of Affordable Housing Inc.
40 Court Street
Suite 700
Boston, MA 02108
Telephone: (617) 449-0860
Facsimile: (617) 261-6661
E-mail: cmian@poah.org

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Boulevard
Miami, FL 33131
Suite 4100
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Email: gcohen@shutts.com

3. Petitioner successfully applied for an allocation of tax-exempt bond financing ("Bonds") and State Apartment Incentive Loan Funding ("SAIL") in the Request for Applications 2015-112 ("RFA"). Petitioner's application number in the RFA was 2016-168BS (the "Application"). Petitioner applied for a Bond allocation of \$8,500,000 (subsequently increased to \$10,500,000) and SAIL funding of \$4,908,004 to finance a portion of the cost of acquiring and rehabilitating a multi-family rental apartment complex located in Melbourne, Florida known as Trinity Towers East (the "Development"). The Development is a single building 156 unit elderly apartment complex.

4. Petitioner was awarded an allocation of Bonds of \$10,500,000 and SAIL of \$4,018,404, and it is anticipated that Petitioner will have closed on such financing by the time this Petition is considered by Respondent.

5. In connection with its RFA application, Petitioner committed to setting aside ninety (90%) percent, or 141, 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) (the "Income Limit"). The Development is currently operating and is occupied such that less than 141 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).

THE RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from a portion of Rules 67-21.003(8)(j) and 67-48.004(3)(j), Florida Administrative Code.

8. The Development is an existing elderly development which Petitioner has committed to rehabilitate utilizing Bond and SAIL funding, together with non-competitive low income housing credits and other subordinate financing.

9. Rules 67-21.003(8)(j) and 67-48.004(3)(j) provide that certain items must be included in the Application and cannot be revised, corrected or supplemented after the application is submitted. Those items include the following:

...“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 (90%) percent, or 141 units.

10. Petitioner requests a waiver from Rules 67-21.003(8)(j) and 67-48.004(3)(j), to permit existing tenants exceeding the Income Limit to occupy a total of up to thirty-one (31) units to reside in the Development, by decreasing the total set-aside percentage from ninety (90%) percent to eighty (80%) percent.

11. The waiver request is permanent in nature.

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 situated persons who are subject to the rule. Section 120.542(2), Florida Statutes.

STATUTES IMPLEMENTED BY THE RULES

12. Rules 67-21.003(8)(j) and 67-48.004(3)(j) implement, among other sections of the Florida Housing Finance Corporation Act, the statute that governs the Bond and SAIL programs. See Sections 450.5087 and 420.509, Florida Statutes.

13. Petitioner requests a waiver of Rules 67-21.003(8)(j) and 67-48.004(3)(j) (which prohibits a change in the total set-aside commitment) to permit up to thirty-one (31) 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 one hundred twenty-five (125) of the one hundred fifty-six (156) 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. No competitive advantage would be gained by Applicant by virtue of allowing up to thirty-one (31) units to exceed the Income Limit. Due to the scarcity of nearby affordable housing, required relocation of current over-income 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 over-income 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 (in excess of the 90% Low-Income units originally committed to in the Application) 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 (90%) percent of its tenants would be income eligible, as compared to eighty (80%) percent requested hereunder.

16. If the relief sought pursuant to this Petition is not granted, Petitioner will suffer substantial hardship. Petitioner's inability to satisfy the currently imposed ninety (90%) percent set-aside requirement would result in non-compliance under the debt and equity documentation, and would require Petitioner to rely on a subsequent waiver of such requirements, which Petitioner's equity investor desires to avoid. Grant of the waiver requested herein would promote principles of fundamental fairness by allowing current over-income tenants to remain as residents of the Development; relocation of such currently over-income tenants would impose severe hardship upon each of such tenants and also the Petitioner. Relocation of currently over-income tenants would negatively impact the financial viability and well-being of the Development, and grant of the waiver requested herein would not negatively impact Respondent.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

17. Petitioner believes that a waiver of these rules will serve the purposes of Sections 420.5087 and 420.509 of 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 Bond and

SAIL programs 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

18. The waiver being sought is permanent in nature.

ACTION REQUESTED – TOTAL SET ASIDE PERCENTAGE

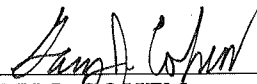
19. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for the Development to require that eighty (80%) percent of the 156 units in the Development be set-aside for qualifying low-income tenants meeting the Income Limit.

20. 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 17th day of November, 2016.




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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 ___ day of November, 2016.



Gary J. Cohen, Esq.

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