

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

LIVE OAK-MEADOWS, L.P.

Petitioner,

vs.

APPLICATION NO. 2009-141/2010-019X

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**FHFC File No :**

2010-039VV

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FLORIDA HOUSING FINANCE CORPORATION

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**PETITION FOR WAIVER FROM RULE  
67-48.004(14)(k), F.A.C.**

LIVE OAK-MEADOWS, L.P. ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67-48.004(14)(k) Florida Administrative Code (2009). 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:

Live Oak-Meadows, L.P.  
c/o Hallmark Companies  
3111 Paces Mill Road, Suite A-250  
Atlanta, GA 30339  
Attn: Martin Petersen, President  
Phone: (770) 984-2100  
Fax: (770) 980-1380

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 2009 Universal Cycle that the Corporation administered pursuant to Chapter 67-48, Florida Administrative Code (2009). Petitioner’s application number in the 2009 Universal Cycle was 2009-141C (the “Application”). Petitioner applied for a tax credit exchange program loan (“TCEP Loan”) pursuant to RFP 2010-04, and was awarded a \$4,350,000 TCEP Loan. The HC and TCEP loan were awarded to finance a portion of the cost of acquiring and rehabilitating a multi-family rental apartment complex located in Suwannee County, Florida known as Live Oak Homes (the “Development”). The Development is an 87 unit apartment complex, financed with a United States Department of Agriculture Rural Development Section 515 first mortgage loan and project based rental assistance for 80 of the 87 total units.

4. Petitioner was awarded an allocation of \$300,000 of HC and a \$4,350,000 TCEP Loan. Petitioner closed on its HC financing and TCEP Loan in 2010.

5. In connection with the TCEP Loan closing, Petitioner entered into an Extended Low Income Housing Agreement (“ELIHA”) dated December 10, 2010. Section 3(a) of the ELIHA requires that one hundred percent (100%) of the dwelling units in the Development be occupied and rented to “Low Income Tenants”, defined in the ELIHA 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. This is consistent with Petitioner’s Application submitted in the 2009 Universal Cycle wherein Petitioner committed to one hundred percent (100%) of its tenants being “Low Income”.

**THE RULES FROM WHICH WAIVER IS SOUGHT**

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

7. The Development is an existing multi-family development which Petitioner has committed to rehabilitate utilizing HC and TCEP funding. In acquiring the property, Petitioner assumed the existing USDA RD Section 515 financing. Such financing restricts occupancy to eligible tenants who satisfy income requirements; however, the methodology utilized under the USDA RD program to determine income eligibility of tenants is different from the methodology used under Section 42 of the Internal Revenue Code and the HC program.

8. Five (5) of the residents currently residing at Live Oak Homes have income levels which are permissible under the USDA RD program, but which exceed that permitted 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. See Sections 2(q)(iii) and 3(a) of the ELIHA for the Development, permitting income increases for existing tenants. 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.

9. 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:

...(k) 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 one hundred percent (100%). Similarly, in Section 3(a) of the ELIHA there is provided a set-aside percentage of 100%.

10. Petitioner requests a waiver from Rule 67-48.004(14)(k), and a corresponding revision to Section 3(a) of the ELIHA, to permit the five (5) tenants currently occupying the Development (which tenants are over income under the HC Program but not under the USDA RD Section 515 program) to remain as tenants in the Development until such time as either (i) their income exceeds applicable USDA RD limits, or (ii) their tenancy is otherwise terminated. Petitioner agrees that the rent charged to such tenants will not exceed the maximum rent permitted under the HC Program.

11. The waiver request is temporary in nature. At such time as the tenant in any of the five (5) affected units no longer resides 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(a) of the ELIHA.

**STATUTES IMPLEMENTED BY THE RULE**

12. Rule 67-48.004(14)(k) 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(14)(k) (which prohibits a change in the total set-aside commitment) to permit five (5) 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 94.25% (82 of 87 units) instead of 100%. The referenced

five (5) tenants would continue to pay rent which does not exceed the applicable maximum HC rent. At such time as any of such tenants no longer resides in the property, such apartment unit would then be rented to an income qualifying tenant.

14. Had Petitioner initially indicated (in its Application and in its application for TCEP financing under RFP 2010-04) that 82 of the 87 units of the Development were to be set aside for qualifying tenants, Applicant would have still been funded under both the HC Program and RFP 2010-04. No scoring reduction would have resulted in its HC application, and Petitioner had sufficient basis in the Development to generate their requested \$300,000 of HC, regardless of whether the “applicable fraction” for purpose of computing the amount of HC was one hundred percent (100%) or 92.45%. Under RFP 2010-04, TCEP financing was available for a maximum amount of \$50,000 per unit (not per qualifying set-aside unit). In addition, in computing the “leveraging” rankings under the RFP 2010-04, Applicant would have still been in the funding range for its \$4,350,000 TCEP Loan at a leveraging figure of \$53,048.78 per set-aside unit, instead of \$50,000 per unit. No competitive advantage would be gained by Applicant by virtue of allowing the five (5) tenants who are currently over-income 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 five (5) tenants at the Development, particularly in light of the fact that such tenants continue to be income eligible under the USDA RD Program.

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 five (5) 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 five (5) 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 either the 2009 Universal Cycle or RFP 2010-04 by representing that one hundred percent (100%) of its tenants would be income eligible, as compared to 94.25% 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 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**

17. The waiver being sought is temporary in nature. The waiver is only requested for such period of time as the current over-income tenants continue to reside at the Development. At such time as any of such tenants 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**

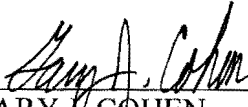
18. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for the ELIHA to be amended to require that 82 of the 87 units in the Development be set-aside for qualifying low-income tenants for such period of time as the five (5) current over-income tenants reside at the Development, so long as that at such time as any of such tenants vacate the Development, such apartment unit will then be rented to a qualifying income eligible tenant.

19. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

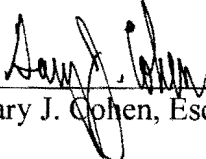
Respectfully submitted this 17<sup>th</sup> day of December, 2010.

  
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GARY 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 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 17<sup>th</sup> day of December, 2010.

  
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Gary J. Cohen, Esq.

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