

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**CIVIC TOWERS SENIOR, LLLP**

**Petitioner,**

**vs.**

**CASE NO.: 2020-044VW**

**FLORIDA HOUSING FINANCE  
CORPORATION**

**APPLICATION NO. 2016-521C**

**Respondent.**

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**PETITION FOR WAIVER OF RULE 67-21.026(10)**

Civic Towers Senior, LLLP (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's requirement that Petitioner enter into a guaranteed maximum price construction contract for the work to be performed in connection with the rehabilitation of the Civic Towers senior elderly affordable housing development . See Rule 67-21.026(10).

In support of its petition, the Petitioner states:

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

Civic Towers Senior, LLLP  
3101 Bee Caves Road, Suite 220  
Austin, Texas 78746  
Attention: Jeffrey Green  
Telephone:(512) 717-3932  
Email: [jeff@redwoodhousing.com](mailto:jeff@redwoodhousing.com)

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail of the Petitioner's attorney are:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
200 S. Biscayne Blvd.  
Suite 4100  
Miami, FL 33131  
(305) 347-7308  
(305) 347-7808 (Fax)  
[gcohen@shutts.com](mailto:gcohen@shutts.com)

3. The Petitioner timely submitted its application for non-competitive 4% low-income housing tax credits ("Credits") (Application #2016-521C) for the development named "Civic Towers Senior". Corporation has issued a Preliminary Allocation of Credits to Petitioner.

4. Equity raised from Housing Credits was used for the acquisition and rehabilitation of Civic Towers Senior, a 151 unit senior affordable housing complex serving low-income elderly residents in the "Civic Center" area just north of downtown in Miami, Florida (the "Development").

5. 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, and (b) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2019).

6. The waiver being sought is permanent in nature.

#### THE RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-21.026(10), Florida Administrative Code.

Rule 67-21.026(10) provides, in relevant part, as follows:

"(10) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, ...".

#### STATUTES IMPLEMENTED BY THE RULES

8. 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

9. Petitioner requests a waiver from Rule 67-21.026(10), Florida Administrative Code. Petitioner is seeking a waiver from the Rule to permit and allow Petitioner to enter into a "cost plus" contract which does not provide for a guaranteed maximum price.

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

- a. Petitioner initially entered into a guaranteed maximum contract for the rehabilitation work contemplated at the Development. However, on or about September 10, 2017, while in the midst of rehabilitation, Hurricane Irma caused significant damage to the Development. As a result of the storm, the envelope of the building was materially damaged and significant water intrusion traveled through the common areas and residential units, causing

- building components (including but not limited to drywall and framing) to become saturated with moisture, which led to damage, rot and mold.
- b. Soon after, the City of Miami Building Department deemed the Development unsafe for occupancy and determined that components of the building damaged by the hurricane had to be brought up to code when rehabilitated. The hurricane related damage and unforeseen code upgrades greatly expanded the original scope of rehabilitation work, lengthened the rehabilitation/construction timeline, and increased the overall costs of the Development. In aggregate, the damage caused by Hurricane Irma added approximately \$8,000,000 in additional renovation hard costs, approximately \$1,500,000 in additional renovation soft costs and more than 12 months to the overall construction/rehabilitation timeline.
  - c. The economic detriment was not limited to the foregoing costs. The existing tenants of the Development had to be relocated on an emergency basis to temporary housing, which added approximately \$3,500,000 in additional relocation and temporary housing costs to the overall costs of the Development. Notwithstanding the shortage of housing in and around the Civic Center area in the aftermath of Hurricane Irma, Petitioner was able to locate accommodations for all of the building's tenants, and paid for these unplanned costs for the duration of the expanded renovation.
  - d. Given the significant increase and scope of work due to the damage caused by Hurricane Irma, Petitioner had to hire a new contractor (Thornton Construction Residential, LLC; "Thornton") to complete the expanded scope of work. Time being of the essence, the new contractor was able to mobilize much needed additional resources to complete the Development and enable residents to move back into their homes. However, given the backdrop of a south Florida construction market with limited options, capacity, labor and resources after Hurricane Irma, contractors with the capacity and technical capability needed to complete the additional work within the time frames required were extremely difficult to find. None of the contractors with whom Petitioner met were willing to agree to a contract that met the specific FHFC requirement of a guaranteed maximum price.
  - e. Petitioner was able to locate a new contractor (Thornton) to perform the additional work necessitated by Hurricane Irma. The construction contract did not have a guaranteed maximum price but instead had a "control estimate", which the new contractor did not exceed. Per the terms of the construction contract, only costs actually incurred have been billed by the general contractor and therefore no cost savings have been taken as additional profit or otherwise been paid to the general contractor. To the extent amounts paid to Thornton exceed Corporation limits, Petitioner agrees to remove such costs from eligible basis and from costs submitted in the cost certification, and to compute the developer fee based upon the foregoing limitation.

- f. Hurricane Irma was a catastrophe that required urgent action in an enormously strained market and caused significant hardship for the Development and its residents. Petitioner moved forward to the best of its abilities and funded a large portion of storm-related costs out of its own pocket. Petitioner developed a comprehensive recovery plan and contracted with a quality general contractor (Thornton) which committed to not only meeting the tight time frames imposed (in order to avoid permanent relocation and move residents back into their homes) but also complied with the “control estimate” figures set forth in such contract.
- g. Unfortunately, a contract that specifically met Corporation requirements (a guaranteed maximum price contract) was not a viable option in the midst of the above-described crisis. Nevertheless, a fair and equitable contract was established that allowed Petitioner to complete the additional work mandated by Hurricane Irma and return residents to their homes without permanent displacement, as quickly as possible. The amount paid to Thornton (apart from the contractor fee portion) was no greater than that which would have been charged under a guaranteed maximum price contract; that is, the “control estimate” figure contained in the contract was not exceeded, and represented the same amount which would have been contained in a guaranteed maximum price contract.

11. A waiver of the Rule’s requirement of a guaranteed maximum price contract 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 persons and households.

12. By granting the waiver and permitting Petitioner to utilize a construction contract without the required guaranteed maximum price, the Corporation would recognize the economic realities faced by Petitioner when forced to quickly secure a new general contractor immediately after Hurricane Irma, in order to perform the expanded scope of work required to quickly return residents to their homes, avoiding permanent displacement of such residents.

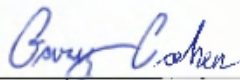
#### ACTION REQUESTED

Petitioner requests the following:

- (a) That the Corporation grant Petitioner a waiver from Rule 67-21.026(10), Florida Administrative Code, allowing it to utilize a cost plus contract without a guaranteed maximum price;
- (b) Grant the Petition and all the relief requested therein; and
- (c) Grant such further relief as may be deemed appropriate.

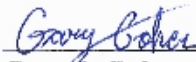
Respectfully submitted,

SHUTTS & BOWEN LLP  
Counsel for Civic Towers Senior, LLLP  
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Suite 4100  
Miami, Florida 33131  
Tel.: (305) 347-7308  
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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 1<sup>st</sup> day of ~~June~~ <sup>July</sup>, 2020.

  
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Gary J. Cohen