

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

CAMPUS TOWERS APARTMENTS LLLP

Petitioner,

vs.

FHFC CASE NO. 2019-095VW

APPLICATION NO. 2019-128C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

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**PETITION FOR WAIVER FROM RULE  
67-48.004(3)(j), F.A.C.**

CAMPUS TOWERS APARTMENTS LLLP (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for waiver from Rule 67-48.004(3)(j) Florida Administrative Code (2018). 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:

Campus Towers Apartments LLLP  
c/o Shag Development, LLC  
1079 Mulberry Way  
Boca Raton, FL 33486  
Phone: (561) 859-8520  
E-mail: [dsmith@smithbenzy.com](mailto:dsmith@smithbenzy.com)

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 2018-113 (“RFA”). Petitioner’s application number in the RFA was 2019-128C (the “Application”). Petitioner applied for an HC allocation of \$1,800,000 to finance a portion of the cost of acquiring and rehabilitating a multi-family rental apartment complex located in Jacksonville, Florida known as Campus Towers (the “Development”). The Development is a two building 192 unit elderly apartment complex.

4. Petitioner was awarded an allocation of \$1,800,000 of HC, and will close on its HC financing in December 2019.

5. In connection with its RFA application, Petitioner committed to setting aside one hundred (100%) percent, or 192, 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. Of those 192 units, Petitioner committed to setting aside twenty (20%) percent, or 39, of the dwelling units as “extremely low income” (“ELI”), at or below thirty three (33%) percent of area median gross income (“ELI Set-Aside”). The Development is currently operating and is occupied such that 190 units (approximately 98.96% of the total units) meet the foregoing “Low Income” definition, and the ELI Set-Aside is being met.

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

6. Petitioner requests a waiver from a portion of Rule 67-48.004(3)(j), Florida Administrative Code.

7. The Development is an existing elderly development which Petitioner has committed to rehabilitate utilizing HC funding. Residents currently occupying 190 of the units at Campus

Towers (constituting approximately 98.96% of the total units) have income levels which are permissible under Section 42 and the HC program, and the ELI Set-Aside is being met. 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 will be 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(3) provides that "... notwithstanding any other provision of these rules, the following as identified in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

...(j) For 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 (100%) percent, or 192 units.

9. Petitioner requests a waiver from Rule 67-48.004(3)(j), to permit a reduction in the total Set-Aside from 100% to 98.96%. Petitioner agrees to continue to satisfy the ELI Set-Aside by setting aside 39 units at the 33% ELI level.

10. The waiver request is permanent in nature.

**STATUTES IMPLEMENTED BY THE RULE**

11. Rule 67-48.004(3)(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(3)(j) (which prohibits a change in the total set-aside commitment) to permit the reduction of the total set-aside commitment for the Development from 100% of 98.96% (190 of 192 units).

13. Had Petitioner initially indicated (in its RFA application) that 190 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 one hundred (100%) percent or 98.96%. In computing the “leveraging” rankings under the RFA, Applicant would have still been in the “A Group” at a leveraging figure of \$81,818.00 per set-aside unit, instead of \$80,965.00 per unit. No competitive advantage would be gained by Applicant by virtue of decreasing the total set-aside commitment from 100% to 98.96%. 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 two (2) 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 two (2) 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 two (2) tenants. As noted above, Petitioner gained no competitive advantage in the RFA by representing that one hundred (100%) percent of its tenants would be income eligible, as compared to 98.96% requested hereunder. Petitioner agrees to continue to set-aside twenty (20%) percent of the 192 units (39 units) at or below the 33% ELI level.

**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 permanent in nature.

**ACTION REQUESTED – TOTAL SET ASIDE PERCENTAGE**

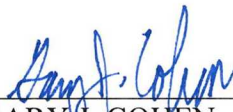
17. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for 190 (or 98.96%) of the 192 units in the Development be set-aside for qualifying low-income tenants.

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 19<sup>th</sup> day of November, 2019.



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**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 19<sup>th</sup> day of November, 2019.

  
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Gary J. Cohen, Esq.