BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

PABLO HAMLET, LLLP

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

_____/

FHFC CASE NO. 2023-022VW

APPLICATION NO. 2020-155C

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FLORIDA HOUSING FINANCE CORPORATION

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

PABLO HAMLET, 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 (2019). 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:

Pablo Hamlet, LLLP
1100 N.W. 4th Avenue
Delray Beach, FL 33444
Phone: (561) 859-8520
E-mail: dsmith@smithbenzy.com

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Boulevard
Suite 4100
Miami, FL 33131
Phone: (305) 347-7308
Fax: (305) 347-7808
Email: GCohen@shutts.com

3. Petitioner successfully applied for an allocation of low income housing federal tax credits ("HC") in the Request for Applications 2019-115 ("RFA"). Petitioner's application number in the RFA was 2020-155C (the "Application"). Petitioner applied for an HC allocation of $1,436,000 to finance a portion of the cost of acquiring and rehabilitating a multi-family rental apartment complex located in Jacksonville Beach, Florida known as Pablo Hamlet together with the new construction of 50 additional units (the "Development"). The Development is a 154 unit elderly apartment complex.

4. Petitioner was awarded an allocation of $1,436,000 of HC, and closed on its HC financing in late February 2021.

5. In connection with its RFA application, Petitioner selected the Average Income Test and committed to setting aside one hundred (100%) percent, or 154, of the dwelling units in the Development to be occupied and rented as follows: 39 units at 30% AMI; 57 units at 60% AMI; and 58 units at 80% AMI, all as evidenced in the Total Set-Aside Breakdown Chart contained in the Application. Due to circumstances described below, Petitioner now seeks to change the Total Set-Aside Breakdown Chart from 100% to 99% (153 out of 154 units). In particular, Petitioner seeks to remove one unit from the 80% AMI income band and reallocate such unit as a market rate unit. Such reallocation will cause the total set-aside percentage to decrease from 100% to 99%, and will still enable the Petitioner to maintain an overall income average below 60% AMI and therefor satisfy the Average Income Test.

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 (2019).

7. The Development is an existing elderly development which Petitioner has committed rehabilitated and added 50 new construction units utilizing HC funding. Completion of the Development occurred in September 2022.

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 154 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 99%. Petitioner agrees to continue to satisfy the ELI Set-Aside by setting aside 39 units at the 30% ELI level.

10. Upon completion of the rehabilitation and new construction of the Development in September 2022 and during rent up of the Development, a tenant was income-qualified and executed a lease. However, after such income qualification (but before the tenant moved in to its unit), a new Social Security Cost of Living Adjustment was published resulting in an increase of such tenant's income, such that 80% AMI limit was exceeded by approximately $912 per year. The Development's tax credit investor noted this mistake at the end of 2022 and brought it to Applicant's attention. Applicant would prefer to allow such tenant to remain a tenant of the Development. As such, Petitioner requests a waiver from or variance to the Rule, to enable Petitioner to revise the Total Set-Aside Breakdown Chart in order to redesignate one 80% AMI unit as a market rate unit in order to

resolve the situation regarding tenant. Such redesignation will result in Petitioner maintaining an overall income average at or below 60% AMI and to continue to particularly satisfy the Average Income Test.

11. The waiver request is permanent in nature.

STATUTES IMPLEMENTED BY THE RULE

12. 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.

13. 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 99% (153 to 154 units).

14. Had Petitioner initially indicated (in its RFA application) that 153 of the 154 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 99%. In computing the "leveraging" rankings under the RFA, Applicant would have still been in the "A Group". No competitive advantage would be gained by Applicant by virtue of decreasing the total set-aside commitment from 100% to 99%. Due to the scarcity of nearby affordable housing, required relocation of such tenant would impose severe hardship upon such tenant. No public policy objective is served or furthered by requiring Applicant to evict and relocate the tenant 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 tenant who is currently over-income to remain as a resident of the Development. Loss of such resident will result in loss of income to the Development until such time as a qualifying replacement tenant can be located. In addition, Petitioner would not have to incur relocation expense in connection with relocating such tenant. 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 99% requested hereunder. Petitioner agrees to continue to set-aside twenty-five (25%) percent of the 154 units (39 units) at or below the 30% ELI level.

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 permanent in nature.

ACTION REQUESTED – TOTAL SET ASIDE PERCENTAGE

18. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for 153 (or 99%) of the 154 units in the Development be set-aside for qualifying low-income tenants.

19. 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 21st day of February, 2023.

GARY J. COHEN
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Counsel for Petitioner
SHUTTS & BOWEN LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
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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 21st day of February, 2023.

Gary J. Cohen, Esq.