

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

FRIENDSHIP TOWER, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORP.,

Respondent.

APPLICATION NO. 2006-330CHR

FHFC File No :

2011-002VW

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FLORIDA HOUSING  
FINANCE CORPORATION

**PETITION FOR WAIVER FROM RULE  
67ER06-34(19), F.A.C.**

FRIENDSHIP TOWER, LTD. ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67ER06-34(19) Florida Administrative Code (2006). 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:

Friendship Tower, Ltd.  
9400 S. Dadeland Boulevard  
Suite 100  
Miami, FL 33156  
(305) 854-7100  
(305) 859-9858

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 financing from the Housing Tax Credit (“HC”) Program and Rental Recovery Loan Program (“RRLP”) in the 2006 RRLP Cycle that the Corporation administered pursuant to Chapter 67ER-06, Florida Administrative Code. The Petitioner’s Application number is 2006-330CHR (the “Application”). Petitioner applied for housing credits and a loan under the RRLP program to finance a portion of the costs to develop a multi-family rental apartment complex in Miami-Dade County, Florida, to be known as Friendship Tower (the “Development”). The Development is a 92-unit apartment complex.

4. Petitioner was awarded a second mortgage loan under the RRLP program in the original aggregate principal amount of \$5,024,813, consisting of a RRLP base loan non-ELI amount of \$2,579,860, a RRLP base loan ELI amount of \$859,953, and a \$1,585,000 supplemental loan.

5. Petitioner (in 2007) closed on its HC financing and on its loan under the RRLP program. In connection therewith, Petitioner entered into a Land Use Restriction Agreement (“LURA”) dated December 13, 2007. Section 2.2(c) of the LURA provides, in relevant part, that “Additionally, Section 8 voucher holders may not be used to satisfy the ELI Set-Aside requirement of subparagraph 2.2(a) above, unless those households’ vouchers are paying rents only up to the ELI rent level.” Section 2.2(a) of the LURA requires, for the first 20 years of the 50 year affordability period, that twenty five percent (25%) of the units within the development be rented to households who have household income less than or equal to thirty-three percent (33%) of area median income (the “ELI Set-Aside”) and the remaining seventy-five percent (75%) of the units be rented to persons who have a household income less than or equal to sixty percent (60%) of area median income. After the first 20 years and for the remaining 30 years of the 50 year affordability period, one hundred percent (100%) of the units within the development must be rented to

households which have a household income less than or equal to sixty percent (60%) of area median income.

**THE RULES FROM WHICH WAIVER IS SOUGHT**

6. Petitioner requests a waiver from a portion of Rule 67ER06-34(19), Florida Administrative Code.

7. Rule 67ER06-34(19) provides “All set-aside units shall be RRLP Rent-Restricted Units. A unit set aside at a particular income and rent level must house a tenant who satisfies the income requirement. Additionally, Section 8 voucher holders may not be used to satisfy the ELI Set-Aside requirement, unless those households' vouchers are paying rents only up to the ELI rent level.” (emphasis added)

8. Petitioner requests a waiver from the last sentence of Rule 67ER06-34(19), which does not allow Section 8 voucher holders to satisfy the ELI Set-Aside requirement, unless those household vouchers are paying rents only up to the ELI rent level. Petitioner requests that Section 8 voucher holders be allowed to satisfy the ELI Set-Aside requirement, so long as the tenant/Section 8 voucher holder only pays (from its own funds) rents not to exceed the ELI rent level. In addition, Petitioner requests amendment of the LURA (in particular, Section 2.2(c) therein) to incorporate the provisions of the requested waiver.

**STATUTES IMPLEMENTED BY THE RULE**

9. Rule 67ER06-34(19) referenced above implements the provisions of Section 31 of Chapter 2006-69 (H.B. No. 1363), which act appropriated funds to assist those areas of the State that sustained housing damage due to hurricanes during 2004 and 2005. In the 2006 RRLP application cycle. Petitioner agreed to a total set-aside for ELI Households of twenty-five percent (25%) of the total units. Rule 67ER06-34(19) sets forth certain requirements pertaining to income

and rent levels applicable to ELI Households. Accordingly, Rule 67ER06-34(19) implements the provision of Chapter 2006-69, Section 31.

10. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness<sup>1</sup>, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

11. Petitioner requests a waiver of that portion of Rule 67ER06-34(19) which provides that Section 8 voucher holders may not be used to satisfy the agreed upon twenty-five percent (25%) ELI Set-Aside requirement, unless those households' vouchers are paying rents only up to the ELI rent level. The ELI rent level is an amount which does not exceed thirty percent (30%) of the imputed income limitation applicable to such ELI units (33% of area median income, adjusted for number of bedrooms). Petitioner requests that, with respect to ELI Set-Aside units occupied by Section 8 voucher holders, that Petitioner be permitted to collect the fair market rent payable under such Section 8 voucher, (as such rents are established under the Federal Section 8 voucher program) so long as the tenant/voucher holder does not itself pay an amount of rent greater than the ELI rent level. The limit on rent payable by the tenant is already in place under the Federal Section 8 program, which limits the rent payable by the tenant to 30% of the tenant's actual household income

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<sup>1</sup> "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.

(which may be less than but never greater than the imputed income limitation applicable to such tenant).

12. FHFC seeks to serve lower income tenants (the ELI Households) and, in exchange for loaning funds to developers at an attractive interest rate, requires such developers to house more ELI households. FHFC has consistently (in funding cycles both before and after the 2006 RRLP cycle) required developers to house ELI Households in order to obtain such attractive financing. However, FHFC has never, except for the 2005 and 2006 RRLP cycles, implemented a rule similar to that sought to be waived hereunder; that is, FHFC has never prohibited developers from collecting Section 8 fair market rents when satisfying applicable ELI Set-Asides by housing ELI households possessing Section 8 vouchers.

13. The Federal Low-Income Housing Tax Credit Program (under Section 42 of the Internal Revenue Code) permits developers to collect fair market rents under the Section 8 program. *See* Section 42(g)(2)(B)(1)(i) of the Internal Revenue Code of 1986, as amended. No public policy objective is served or furthered by overriding the rents established by the Federal government under the Section 8 voucher program, provided that the tenant itself pays no more than the applicable ELI rent limitation (which is already the case under the Section 8 program). The appropriate policy is to not overburden the tenant with an excessive rent obligation. This policy goal is met so long as the tenant pays no more than 30% of its actual household income as rent, as required under the Section 8 program.

14. The rule with respect to which waiver is sought hereunder (Rule 67ER06-34(19)) imposes a limitation (in the 2005 and 2006 RRLP Cycles) which FHFC has not again sought to impose upon developers. In fact, application of this rule competitively disadvantages the Development in relation to neighboring FHFC-financed developments, which are not subject to the

restriction described herein and are currently collecting Section 8 fair market rents with respect to their ELI units participating in the Section 8 voucher program. Imposition of the Rule places the Development at a competitive disadvantage, notwithstanding the fact that the Development is already providing a deeper ELI set-aside (25% of total units) than the neighboring FHFC-financed developments.

15. The requested waiver is consistent with current policy of FHFC, in that FHFC currently permits (in its administration of the Federal Low-Income Housing Tax Credit Program) developers to collect fair market rents with respect to ELI units under Section 8 vouchers. It is important to note that the relief sought hereunder will not impact FHFC or the residents of the Development, nor does Petitioner seek to amend in any way the terms of repayment of the RRLP loan. Finally, it is important to note that, as compared to currently mandated ELI set-asides imposed by FHFC programs (typically FHFC requires up to 10% of total units to be set aside for ELI residents), Petitioner has committed to a deeper set-aside (25% of its total units for ELI households).

16. 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. Denial of the requested waiver will result in substantial hardship to Petitioner, in that it will be placed at a competitive disadvantage to other affordable housing developments financed by the Corporation (in other than the 2005 and 2006 RRLP cycles), which developments are permitted to collect fair market rents under Section 8 vouchers in satisfying their required ELI Set-Asides. By granting the requested waiver, the Corporation would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing, in that it would be treating all developers participating in

FHFC financing programs in the same fashion when satisfying the applicable ELI Set-Aside requirements.

**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

17. 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, and the appropriation of funds for loans to projects housing ELI Households, 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.

19. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

**ACTION REQUESTED**

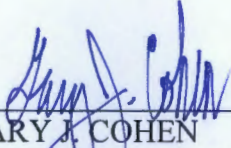
20. Petitioner requests the following:

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

(b) That the Corporation grant this waiver allowing for the loan documentation evidencing the RRLP loan from the Corporation to be amended to permit Section 8 voucher holders to satisfy the required ELI Set-Aside requirement and to allow Petitioner to receive the fair market rent otherwise payable under Section 8 voucher, provided that the tenant pay an amount no greater than the ELI rent level.

21. 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 15<sup>th</sup> day of February, 2011.



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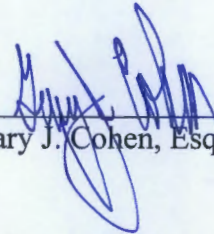
GARY J. COHEN  
Florida Bar No. 0353302  
SHUTTS & BOWEN LLP  
201 South Biscayne Boulevard  
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Miami, Florida 33131  
Telephone: (305) 347-7308  
Facsimile: (305) 347-7808  
Email: [gcohen@shutts.com](mailto:gcohen@shutts.com)

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 15<sup>th</sup> day of February, 2011.

  
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Gary J. Cohen, Esq.

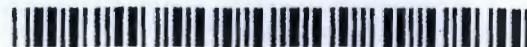
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unless the criteria outlined in this rule chapter are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

(18) All RRLP Loans shall be in conformance with applicable federal and state statutes, including the Fair Housing Act as implemented by 24 CFR Part 100, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2006 Rental Recovery Loan Program link labeled Related Information and Links, and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35, which is adopted and incorporated herein by reference and available on the Corporation's Website under the 2006 Rental Recovery Loan Program link labeled Related Information and Links. The Corporation shall allow units dedicated to occupancy by the Elderly in a Development designed for occupancy by elderly households pursuant to authorization by HUD under the Fair Housing Amendments of 1988 as implemented by 24 CFR Part 100.

(19) All set-aside units shall be RRLP Rent-Restricted Units. A unit set aside at a particular income and rent level must house a tenant who satisfies the income requirement. Additionally, Section 8 voucher holders may not be used to satisfy the ELI Set-Aside requirement, unless those households' vouchers are paying rents only up to the ELI rent level.

(20) The documents creating, evidencing or securing each RRLP Loan must provide that any violation of the terms and conditions described in this rule chapter constitutes a default under



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DR Bk 26112 Pgs 0435 - 457; (23pgs)  
RECORDED 12/18/2007 09:09:33  
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MIAMI-DADE COUNTY, FLORIDA

THIS INSTRUMENT PREPARED  
BY AND RETURN TO:  
Jan Albanese Carpenter, Esq.  
Shuffield, Lowman & Wilson, P.A.  
P.O. Box 1010  
Orlando, Florida 32802-1010

Record & Return to:  
Shutts & Bowen, LLP  
1500 Miami Center  
201 S. Biscayne Blvd.  
Miami, FL 33131

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

**LAND USE RESTRICTION AGREEMENT**

**(Friendship Tower Apartments / RRLP / 2006-330CHR)**

**THIS LAND USE RESTRICTION AGREEMENT** (this "Agreement") is made and entered into as of December 13, 2007 by and between FRIENDSHIP TOWER, LTD., a Florida limited partnership (hereinafter called the "Borrower"), and the FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (hereinafter called "Florida Housing") (which term as used in every instance shall include Florida Housing's successors and assigns).

**RECITALS**

**WHEREAS**, Florida Housing was created and organized pursuant to and in accordance with the provisions of the Florida Housing Finance Corporation Act, Chapter 420, Part V, Fla. Stat., as amended (the "Act"), for the purpose among others, of financing residential rental housing projects that will provide decent, safe and sanitary housing for individuals or families of extremely low, very low, low, moderate or middle income in the State of Florida (the "State"); and

**WHEREAS**, Florida Housing has agreed under certain conditions to make a loan to Borrower under the Rental Recovery Loan Program for the purpose of providing construction and permanent financing for a 92-unit multifamily development to be known as Friendship Tower (the "Development") located in Miami-Dade County, Florida (the "County") on the real property more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Land") to be occupied by "eligible persons," as determined by Florida Housing in accordance with the Act, all for the public purpose of assisting persons of extremely low-income and very low-income within the State to afford the costs of decent, safe and sanitary housing; and

**WHEREAS**, the Borrower has agreed to provide and set aside for a continuous period of fifty (50) years from the date that the first unit within the Development is occupied or, if occupied, from the date hereof (i) for the first 20 years of the 50-year period, not less than twenty-five percent (25%) of the units (23 units) within the Development shall be rented to

- (ii) for the first 20 years of the 50-year period, not less than seventy-five percent (75%) of the units (remaining units) within the Development shall be rented to households who shall have a household income less than or equal to sixty percent (60%) of the Area Median Income ("Very Low-Income Set Asides"),

for a total set-aside of one hundred percent (100%) of the units in the Development, excluding any exempt management units.

- (iii) For the remaining 30 years of the 50-year period, one hundred percent (100%) of the units within the Development shall be rented to households who shall have a household income less than or equal to sixty percent (60%) of the Area Median Income, excluding any exempt management units.

(b) The units within the Development shall be rented in accordance with the requirements of an Elderly Development.

(c) All set aside units within the Development shall be RRLP Rent-Restricted Units. A unit set aside at a particular income and rent level must house a tenant who satisfies the income requirement. Additionally, Section 8 voucher holders may not be used to satisfy the ELI Set-Aside requirement of subparagraph 2.2(a) above, unless those households' vouchers are paying rents only up to the ELI rent level.

2.3. That the Development shall be constructed or rehabilitated/substantially rehabilitated, operated and maintained, as set forth in Exhibit "B" attached hereto and made a part hereof;

2.4. That during the Term of this Agreement the Borrower will not convert the Development to condominium or co-operative ownership;

2.5. That the Borrower shall not discriminate on the basis of race, religion, color, sex, familial status, national origin or disability in the lease, use or occupancy of the Development. Age discrimination and discrimination against minor dependents, except when units are specifically being held for the Elderly, are also not permitted;

2.6. That the Borrower will immediately withdraw from circulation any advertisement determined by Florida Housing to violate or be inconsistent with its policies, with respect to promoting rental housing for persons and families of extremely low-income and very low-income, and consents to the remedy of specific performance;

2.7. That during the Term of this Agreement, rent controls shall not be allowed on any unit in the Development except as required in conjunction with the RRLP Program and the issuance of tax-exempt bonds or federal low-income housing tax credits, or as otherwise set forth in Section 15.1; and