

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATIONFHFC CASE NO. 2018-066VW
Application No. 2016-333CL

DR. ALICE MOORE APARTMENTS, LLLP

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-60.002(2) AND PROVISIONS OF RFA 2016-103
FOR A CHANGE IN APPLICANT STRUCTURE**

Petitioner, Dr. Alice Moore Apartments, LLLP, a Florida limited liability limited partnership (“Petitioner”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing” or “Corporation”) for a waiver or variance of the Respondent’s prohibition on changes in an Applicant’s ownership structure until after loan closing, which is set forth in Florida Housing’s Request for Applications No. 2016-103 (the “RFA”), as incorporated by reference into Rule 67-60.002 (the “Rule”).

Petitioner requests a waiver of the applicable provisions of the RFA in order to allow for a change of the “principal” of Petitioner from C4 AMA, LLC (as sole general partner in the application) to Carrfour Supportive Housing, Inc. (the sole member of C4 AMA, LLC).

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative for Petitioner’s application submitted in response to the RFA (the “Application”) are:

Dr. Alice Moore Apartments, LLLP
c/o Carrfour Supportive Housing, Inc.
1398 SW 1st Street, 12th Floor
Miami, FL 33135
Telephone: (305) 371-8300
Facsimile: (305) 371-1376
E-mail: sberman@carrfour.org

2. The name, address, telephone and facsimile numbers, and e-mail address of Palm's attorney, for purposes of this Petition, are:

Gary J. Cohen, Esquire
Shutts & Bowen LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Telephone: 305-347-7308
Facsimile: 305-347-7808
E-mail: gcohen@shutts.com

B. THE DEVELOPMENT

3. Petitioner timely submitted its application in RFA 2016-103 (Housing Credit and Gap Financing for Affordable Housing Developments for Persons with a Disabling Condition) (Application 2016-333CL) for the development named "Dr. Alice Moore Apartments" (the "Development"). Respondent Florida Housing has issued its Preliminary Allocation of Housing Credits entered into a Carryover Allocation agreement with Petitioner.

4. Equity raised from Housing Credits will be used for the development of Dr. Alice Moore Apartments, a new 36-unit apartment development intended to serve persons receiving disability benefits and/or disabled persons requiring independent living services in Palm Beach, Florida.

5. The requested waiver will enable Petitioner to be eligible to avail itself of the provisions of Section 196.1975, Florida Statutes, which allows for an exemption from real estate taxes in favor of affordable housing communities which are restricted to occupancy by income-

limited persons who are disabled or age 62 and older and which have a 501(c) (3) corporation as the sole general partner. Section 196.1975, F.S., provides, in relevant part, as follows:

196.1975 Exemption for property used by nonprofit homes for the aged.— Nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

(1) The applicant must be a corporation not for profit pursuant to chapter 617 or a Florida limited partnership, the sole general partner of which is a corporation not for profit pursuant to chapter 617, and the corporation not for profit must have been exempt as of January 1 of the year for which exemption from ad valorem property taxes is requested from federal income taxation by having qualified as an exempt charitable organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954 or of the corresponding section of a subsequently enacted federal revenue act.

6. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; (b) could result in a reduction of services to the residents of the Development; (c) could deprive Palm Beach County, Florida of essential affordable housing units in a timely manner and (d) would violate principles of fairness¹. § 120.542(2), Fla. Stat. (2018).

7. The waiver being sought is permanent in nature.

C. Rule from Which Relief is Requested and Statute Implemented by the Rule

8. Petitioner realleges and incorporates Paragraphs 1 through 7 as though fully set forth herein.

9. Petitioner requests a waiver of the provisions of the RFA which provide, in relevant part, as follows:

a. Section 4A.3.d. of the RFA provides as follows: **“All Applicants must provide a list, as Attachment 4 to Exhibit A, identifying the Principals for the Applicant and for each Developer....”**

¹ “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.

- b. “Principal” is defined in Rule 67-48.002(93)(b)(2014), with respect to an Applicant that is a limited partnership, as **“any general partner or limited partner of the Applicant limited partnership ...”**.
- c. Exhibit B to the RFA (the Applicant Certification and Acknowledgement form) provides, in Section 3.d.(2). thereof, that **“The Applicant entity shall be the recipient of the Housing Credits and borrowing entity for the loan and cannot be changed until after the loan closing.... Changes to the Applicant entity prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation”**.

Therefore, without the relief requested to be granted pursuant to this Petition, the “Principal” identified as the general partner of Petitioner identified on Attachment 4 to the Application cannot be changed prior to loan closing.

10. The Rule and RFA are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the State Apartment Incentive Loan Program and that governs the allocation of federal low income housing tax credits. See Sections 420.5087 and 420.5099, F.S.

D. Justification for Petitioner’s Requested Waiver

11. Petitioner realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2018).

13. In this instance, Petitioner meets the standards for a waiver.

14. Petitioner requests a waiver from the relevant restrictions in the RFA and the Rule, in order to allow for the change of the sole general partner from C4 AMA, LLC, a Florida limited liability company, to Carrfour Supportive Housing, Inc., a Florida non-profit corporation and Section 501(c)(3) entity, which is the sole member of C4 AMA, LLC.

15. Petitioner is a limited liability limited partnership currently comprised of a general partner and a limited partner.

The current entity structure of Petitioner is described in Attachment 4 to the Application, a copy of which is attached hereto as Exhibit "A" (the "Existing Petitioner Structure"),

16. Petitioner seeks to cause the sole member (Carrfour Supportive Housing, Inc.) of the sole General Partner (C4 AMA, LLC) to become the sole general partner of Petitioner, in order to satisfy the requirements for eligibility for the ad valorem real property tax exemption under Section 196.1975, Florida Statutes:

The proposed entity structure of Petitioner following the change in general partner is described in Exhibit "B" attached hereto (the "Proposed Petitioner Structure").

17. In order to be eligible to obtain the ad valorem real estate tax exemption provided by Florida Statutes, Section 196.1975 for affordable housing for elderly or disabled persons, the sole general partner of a limited partnership must be a Section 501(c)(3) organization. Petitioner has been advised by the Palm Beach County Property Appraiser that the Existing Petitioner Structure will not be eligible to qualify for the foregoing ad valorem tax exemption; more specifically, in order to qualify for such exemption the sole general partner must be a Section 501(c)(3) organization (and not a wholly-owned limited liability company subsidiary of a Section 501(c)(3) organization, as provided in the Existing Petitioner Structure).

18. Unless the waiver is granted, Petitioner will not be eligible to claim the real estate tax exemption which is available to limited partnerships under Section 196.1975, Florida

Statutes, for affordable housing for elderly or disabled persons. The tax credit investor has contemplated that the Development will be fully exempt from annual ad valorem real estate tax, due to its affordable/disabled housing designation. However, as explained above, such ad valorem tax exemption is only available for affordable housing for disabled persons owned and operated by a limited partnership whose sole general partner is a Section 501(c)(3) organization; hence the request contained in this petition. If this request is denied, the result will be undue hardship to Petitioner and a hindrance to the financial viability of the Development.

19. If Petitioner had submitted the Proposed Petitioner Structure (described in Exhibit “B” attached hereto) at the time the Application was submitted, Florida Housing’s evaluation of the Application and its decision to extend an invitation to credit underwriting to Petitioner would not have been adversely impacted.

20. If the relief sought pursuant to this Petition is not granted, Petitioner will suffer substantial hardship. The consequences resulting from Petitioner’s ineligibility to avail itself of the real property tax exemption under Section 196.1975 will put a financial burden on the Development that will result in curtailed services and amenities for its residents, and may result in loss of the tax credit investor (and its equity contribution to the transaction).

E. Conclusion

21. Controlling statutes and Florida Housing’s Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when (a) the applicant subject to the rule demonstrates that strict application would create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2018).

22. The requested waiver will not adversely impact Petitioner, the Development, any other party that sought or received an allocation of funding or Housing Credits under the RFA, or Florida Housing.

23. A denial of the requested waiver could result in a substantial hardship for Petitioner which would lose the opportunity to obtain favorable real estate tax treatment and will cause the loss of substantial services for residents of the Development, and (potentially) the loss of the tax credit investor (and its equity contribution to the transaction).

24. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developers to further Florida Housing's purposes through construction of projects for disabled residents in an economically viable manner. The specific goal of providing 36 units of affordable housing in Palm Beach County, Florida for disabled persons will be achieved through the approval of the waiver requested in this Petition, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to elderly residents.

25. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner, Dr. Alice Moore Apartments, LLLP, a Florida limited liability limited partnership, respectfully requests that Florida Housing Finance Corporation provide the following relief:

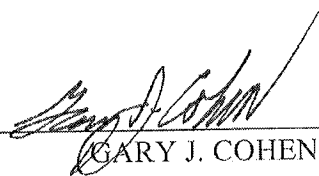
- A. Grant the Petition and all relief requested herein; and
- B. Approve the replacement of the sole general partner (C4 AMA, LLC) with its sole member (Carrfour Supportive Housing, Inc.) as general partner; and

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SHUTTS & BOWEN LLP
Counsel for Dr. Alice Moore
Apartments, LLLP
200 South Biscayne Boulevard, Suite 4100
Miami, Florida 33131
Tel: (305) 347-7308
Fax: (305) 347-7808
E-mail: gcohen@shutts.com

By: _____



GARY J. COHEN, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street Tallahassee, Florida 32399-1400, this 20th day of August, 2018.

By: _____

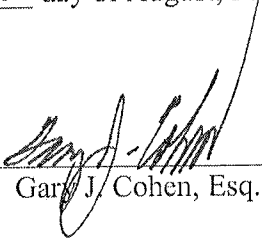

Gary J. Cohen, Esq.

Exhibit A
Principals of Applicant

EXISTING PETITIONER STRUCTURE

General & Limited Partners, Members & Managers, Officers, Directors & Shareholders

<u>Applicant:</u>	Dr. Alice Moore Apartments, LLLP
<u>General Partner:</u>	C4 AMA, LLC
<u>Limited Partner of Applicant:</u>	Stephanie Berman
<u>Managers and Member of C4 AMA, LLC:</u>	Stephanie Berman -- Manager Carrfour Supportive Housing, Inc. -- Sole Member
<u>Officers, Directors and Shareholders of Carrfour Supportive Housing, Inc:</u>	See below

Exhibit B

PROPOSED PETITIONER STRUCTURE

Applicant

Dr. Alice Moore Apartments, LLLP, a Florida limited liability limited partnership

General Partner: Carrfour Supportive Housing, Inc., a Florida non-profit corporation
(see attached list of officers and directors; it has no shareholders)

- Upon syndication the General Partner will have a .01% interest and the admitted Investor Limited Partner will have a 99.99% limited partner interest.

* Carrfour Supportive Housing, Inc. is a 501(c)(3) organization and has no shareholders.

Limited Partner: Wincopin Circle, LLC (Enterprise Housing).