

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2015-042VW

OSPREY APARTMENTS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE  
CORPORATION

Respondent.

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FINANCE CORPORATION

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**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S  
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS, AND FOR  
AN IMMEDIATE ALLOCATION OF 2015 HOUSING CREDITS AND FOR WAIVER  
OF RULE 67-48.004(3)(g) PERTAINING TO DEVELOPMENT TYPE**

Petitioner Osprey Apartments, LLC, a Florida limited liability company (“Osprey”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for (i) a waiver of the 2014 Qualified Allocation Plan’s (a) prohibition from returning its 2014 Housing Credit Allocation prior to the last quarter of 2016, and (b) requirement that a housing credit allocation can be reserved only for the year after the year in which the development is required to be placed in service (“Placed-in-Service Date”), and (ii) a waiver of Rule 67-48.004(3)(g) prohibiting a change in Development Type. The return of these Housing Credits is required before the Corporation may reserve an allocation of 2015 Housing Credits that Osprey requests be immediately allocated. *See* Rule 67-48.002(92), Florida Administrative Code effective October 9, 2013 (the “Rules”), and Qualified Allocation Plan Section II.K.

1. Pursuant to Section 120.542, Fla. Stat. (2015) and Rules 28-104.001 through 28-104.006, F.A.C., Osprey requests (a) a waiver of Rule 67-48.002(92), Florida Administrative Code, and of Section II.K of the Qualified Allocation Plan (“QAP”) to allow the immediate

return of its 2014 Housing Credit Allocation, and an immediate allocation of 2015 Housing Credits, and (b) a waiver of Rule 67-48.004(3)(g) prohibiting change in Development Type.

2. The name, address, telephone and facsimile numbers for Oakland and its qualified representative are:

Osprey Apartments, LLC  
1398 S.W. 1<sup>st</sup> Street, 12<sup>th</sup> Floor  
Miami, Florida 33135  
Attention: Stephanie Berman  
Telephone 305-371-8300  
E-Mail: [sberman@carrfour.org](mailto:sberman@carrfour.org)

3. The name, address, telephone and facsimile numbers of Osprey's attorneys are:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
201 S. Biscayne Blvd., Ste. 1500  
Miami, Florida 33131  
305-347-7308 (telephone)  
305-347-7808 (telecopier)

4. Pursuant to RFA 2014-107, Osprey timely submitted its application for competitive Housing Credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program") and for loan funding under the State Apartment Incentive Loan program ("SAIL"). *See* Application Number 2014-398CS. Osprey was the only applicant under this RFA.

5. Equity raised from Housing Credits will be used for new construction of 60 low-income housing tax credit units to be known as Liberty Village (the "Development"). The Development will serve low-income veteran and chronically homeless tenants in Miami, Miami-Dade County, Florida. The Development entails the new construction of one residential building.

6. Osprey's application was selected for funding by FHFC and awarded at the June 13, 2014 Corporation Board of Directors meeting.

7. Under Rule 67-48.028(1), if an applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, such applicant must enter into a “carryover allocation agreement” with the Corporation by December 31 of the year in which the preliminary allocation is issued. The carryover allocation allows the applicant until the end of the second year following the year in which the carryover allocation is issued to place the development in service. As such, an applicant receiving a preliminary allocation of 2014 housing credits must enter into a carryover allocation agreement with FHFC by December 31, 2014 and must place the development in service by December 31, 2016. On December 29, 2014, Osprey and the Corporation entered into a carryover allocation agreement for the Development. The carryover allocation agreement required that Osprey satisfy the “10% test” by June 30, 2015, commence construction and close tax credit financing by September 30, 2015, and place the Development in service by December 31, 2016.

8. Pursuant to requests submitted by Osprey on May 22 and September 30, 2015, the Corporation extended the date for meeting the “10% test”, commencement of construction and closing of the tax credit financing until December 29, 2015. Neither of these extensions affected the required placed in service deadline, which continued to be December 31, 2016. As explained more fully below, the Development will not be able to meet the above deadlines, and as such is requesting an exchange of Housing Credits (2015 for 2014). Failure to meet the 10% test results (with no exception) in loss of the Housing Credits. Carrfour Supportive Housing, Inc. (the developer of the Development) has invested over \$800,000 to date in the Development, all of which will be lost if this Petition is not granted.

9. The investor member of the project is unwilling to close the tax credit financing (which closing is anticipated to occur in the second quarter of 2016) and wait until the fourth quarter of 2016 (as is required by Section II.K. of the QAP) to find out whether or not the 2014

Housing Credits can be exchanged for 2015 Housing Credits (with extended dates for placement in service and other requirements in the new carryover allocation agreement). They will only close with the certainty of an allocation of 2015 Housing Credits (and corresponding later dates for satisfaction of requirements in the new carryover allocation agreement).

10. The reason for the delay in closing the tax credit financing and commencement of construction is as follows. Applicant was invited to credit underwriting in June 2014, immediately after the award of 2014 Housing Credits. Upon receipt of its invitation for credit underwriting, Applicant immediately commenced customary pre-construction activities (preparation of building plans, and securing of entitlements from the City of Miami and Miami-Dade County). Once building plans were prepared, Osprey immediately (in July 2015) put the plans out for bid. Four contractors attend the pre-bid meeting, and one contractor submitted a responsive bid. However, the initial price received from the general contractor made it readily apparent to Osprey that the total development cost of the Development would have been much greater than the amount set forth in its tax credit application, and that such total development cost would likely be in excess of the Total Development Cost Per Unit Limitation set forth in RFA 2014-107 (the "TDC Limit"). In late July 2015, Osprey requested that the Corporation grant a waiver to the aforementioned "TDC Limit"; however, such request was denied at the August 7, 2015 FHFC Board Meeting.

11. Since that time, Osprey has undertaken a significant re-design of the Development, decreasing the number of floors from seven to six (giving rise to the necessity of requesting a change in Development Type from High-Rise to Mid-Rise 5 to 6 stories set forth more fully below) and requesting a substantial reductions in required parking from the City of Miami. The request to decrease the number of parking spaces will remove the necessity of constructing a separate parking deck facility for the Development, instead allowing surface

parking. This re-design will allow the Development to meet and satisfy the TDC Limit. This request is scheduled to be heard at the December 2, 2015 City of Miami Planning and Zoning Board meeting (in advance of the December 11, 2015 FHFC Board Meeting at which this Petition will be considered).

12. In its application, Osprey indicated the Development's "Development Type" would be "High-Rise" (defined in the RFA's instructions as a building comprised of seven or more stories). Due to the re-design of the Development it will now only be comprised of six stories. As such, Osprey is requesting a change in the Development Type from "High-Rise" to "Mid-Rise 5 to 6 stories." As noted earlier, no competitive advantage will result to Osprey, as there were no other applicants in this RFA.

13. All of the above items were and are outside of Osprey's control. Osprey in good faith believed that the Development would meet the TDC Limit, and it was not until the initial response to its bid request was received in July, 2015 that Osprey became aware that (as contemplated) the Development could not satisfy the TDC Limit. Osprey has been working diligently since that time to re-design the Development in order to meet the TDC Limit, by reducing one floor from the Development and eliminating the necessity of construction of a separate parking deck by virtue of obtaining a substantial parking reduction from the City of Miami. However, due to the foregoing delays, Osprey will be unable to satisfy the various requirements of its Carryover Allocation Agreement (commencing construction, closing tax credit financing, issuance of final credit underwriting report, and satisfaction of the 10% test, all by December 29, 2015). In addition, Osprey will be unable to place the Development in service by December 31, 2016.

14. Osprey seeks to return its 2014 Housing Credit allocation now, rather than wait for the last calendar quarter of 2016, as required under the QAP, and obtain from the Corporation

an immediate allocation of 2015 Housing Credits, instead of an allocation in 2017, the year after the current Placed-in-Service Date. In addition, Osprey seeks permission to change the Development Type from High-Rise to Mid-Rise 5 to 6 stories. This change would not have caused any change in the scoring of Osprey's application submitted in response to RFA 2014-107.

15. The requested waivers and variance will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Osprey (as it has over \$800,000 at risk in this transaction); (b) deprive the City of Miami and Miami-Dade County of essential affordable rental units set aside for low-income and very low-income disabled veterans and the chronically homeless, who desperately need the housing which the Development will offer (as these tenant populations are not otherwise served by the Corporation's "regular geographic" RFA's); and (c) violate principles of fairness.

16. Section 42(m) of the Internal Revenue Code requires each state allocating agency to adopt an allocation plan for the allocation and distribution of federal low income housing tax credits. The Corporation, as the allocating agency for the State of Florida, must distribute housing credits to applicants pursuant to its qualified allocation plan.

17. The 2014 QAP (Section II.K) provides that Housing Credits may be returned **only** in the last calendar quarter of the year in which a development is required to be placed in service, and an allocation may only be made for the year after the Placed-in-Service Date:

...where a Development has not been placed in service by the date required or it is apparent that a development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, and the Applicant **has returned its Housing Credit allocation in the last calendar quarter of the year** in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of credits returned, and may allocate such housing credits to the Applicant **for the year after**

**the year** in which the Development was otherwise required to be placed in service...”

2014 QAP at Section II.K (emphasis added).

18. Rule 67-48.004(3)(g) provides, in relevant part, that “... the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(g) “Development Type;”

Rule 67-48.004(3)(g), effective October 9, 2013. Osprey requests waiver of the foregoing rule in order to allow a change in Development Type from High-Rise to Mid-Rise 5 to 6 story, in order to facilitate the re-design of the Development in order to be in compliance with the TDC Limit contained in RFA 2014-107.

19. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),<sup>1</sup> the statute that created the Housing Credits Program. *See* § 420.5099, Fla. Stat. (2014). The Act designates FHFC as the State of Florida’s housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2014). Accordingly, the Rules subject to Osprey’s waiver requests are implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2014).

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes, (the “Act”).

20. The requested waivers will ensure the availability of Housing Credits which will otherwise be lost as a consequence of development delays described herein.

21. The facts set forth in Sections 10 through 13 of this Petition demonstrate the hardship and other circumstances which justify Osprey's request for Rule waiver; that is, the delay in commencement of construction of the Development attributable to the necessity of re-designing the Development in order to be compliance with the Corporation's TDC Limit, the loss of a substantial sum of money should the transaction not go forward, and the loss of affordable housing for an underserved tenant population (disabled veterans and the chronically homeless).

22. As demonstrated above, the requested waivers serve the purposes of Section 420.5099 and the Act, as a whole, because one of their primary 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 the credit is sought.

§ 420.5099(2), Fla. Stat. (2014).

23. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced non-profit developers, such as Carrfour Supportive Housing, Inc., in providing housing to extremely underserved tenant populations (disabled



veterans and the chronically homeless), and (b) prevent significant financial hardship to Carrfour Supportive Housing, Inc. should the transaction not move forward.

24. The requested waivers will not adversely impact the Development or the Corporation.

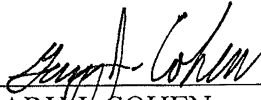
25. The waivers being sought are permanent in nature.

Should the Corporation require additional information, Osprey is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Osprey Apartments, LLC, respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive the 2014 Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2016;
- C. Allow the immediate return of the Osprey's 2014 Housing Credit Allocation;
- D. Waive the 2014 Qualified Allocation Plan's requirement that a Housing Credit Allocation cannot be reserved until the year after the Development's Placed-in-Service Date;
- E. Immediately allocate 2015 Housing Credits to Osprey, in an amount not to exceed the amount of its 2014 Housing Credit Allocation;
- F. Allow the Development to change its development type from "High-Rise to Mid-Rise 5 to 6 stories; and

F. Award such further relief as may be deemed appropriate.




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GARY J. COHEN  
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Miami, Florida 33131  
(305) 347-7308  
ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

The Original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this <sup>21<sup>st</sup></sup> day of November, 2015.

  
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GARY J. COHEN

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Partner  
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November 24, 2015

**VIA FEDERAL EXPRESS**

Ms. Kate Flemming, Corporation Clerk  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 32301-1329

Joint Administrative Procedures Committee  
Pepper Building, Room 680  
111 West Madison Street  
Tallahassee, Florida 32399-1400

Re: Osprey Apartments, LLC; Petition for Rule Waiver

Ladies and Gentlemen:

Enclosed please find a Petition for Waiver for the above-referenced matter. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary J. Cohen". The signature is written in a cursive, flowing style.

Gary J. Cohen

GJC/mar  
Enclosure

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