

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2012-032VW  
Application No. 2009-512C

SCOTT CARVER IIC, LIMITED PARTNERSHIP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.004(14)(k)'s RESTRICTIONS ON  
CHANGING THE NUMBER OF SET ASIDE UNITS  
FOR ITS SCOTT CARVER IIC DEVELOPMENT**

Petitioner Scott Carver IIC, Limited Partnership, a Florida limited partnership ("Scott Carver"), submits to Respondent Florida Housing Finance Corporation ("Florida Housing") its Petition for waiver of Rule 67-48.004(14)(k), Florida Administrative Code (2009) (the "Rule"). The Rule precludes changes to certain sections of the 2009 Universal Application after the Application Deadline.

1. Pursuant to Section 120.542, Fla. Stat. (2011), and Rules 28-104.001 through 28-104.006, F.A.C. (2011), Scott Carver requests a waiver of the Rule to allow for a change due to a scrivener's error in its 2009 Universal Application (the "Application") that has led Florida Housing staff to determine that the Development (as hereinafter defined) is required to have one additional residential unit set aside for households earning sixty percent (60%) or less of the area median income, than originally promised to Scott Carver's lenders and investor, and as documented in the loan and equity documents at the closing of the transaction in September,

2010. Following such closing, Scott Carver developed a new garden style project known as Scott Carver IIC (the "Development"), which was constructed, in part, with the proceeds of the sale of 4% low income housing tax credits (the "Housing Credits") which are to be allocated by Florida Housing to Scott Carver.

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

Scott Carver IIC, Limited Partnership  
720 Olive Street, Suite 2500  
St. Louis, MO 63101  
Attn: Michael C. Duffy  
Telephone: (314) 621-3400  
Facsimile: (314) 436-0071

3. The name, address, telephone and facsimile number, and e-mail address of Scott Carver's attorney are:

Brian J. McDonough, Esquire  
Patricia K. Green, Esquire  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: 305-789-3200  
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E-mail: [bmcDonough@swmwas.com](mailto:bmcDonough@swmwas.com)  
[pgreen@stearnsweaver.com](mailto:pgreen@stearnsweaver.com)

4. Scott Carver timely submitted its Application for Housing Credits under the Housing Credits (non-competitive 4%) Program ("Housing Credit Program"). See Application No. 2009-512C.

5. Equity raised from the Housing Credits was used for the Development, which provides rental housing for low-income households. The Development will serve families in Miami-Dade County, Florida.

6. Florida Housing issued a “Comfort Letter” on July 9, 2010 pursuant to which a Preliminary Allocation of Housing Credits (“Preliminary Allocation”) was reserved for the Development in the amount of \$767,909.

7. Consequently, it is anticipated that there will be a Final Housing Credit Allocation granted to Scott Carver in accordance with Florida Housing’s usual final allocation procedures.

8. In the Application, Petitioner’s intent was to designate 107 units in the Development as set aside for households earning sixty percent or less of the area median income. However, 107 units does not mathematically correspond with a whole number in calculating the percentage of set-aside units in the Development; it causes the set-aside unit count to be 79.85%. Eighty percent (80%) of the units is equivalent to 107 units plus a fractional part of one additional unit. However, neither the Application nor the Instructions which accompany the Application provide any notice as to how Florida Housing will treat a set-aside resulting in fractional percentages of units and whether the count will be rounded up or down, nor does the Application itself allow for entering “79.85%”, which Scott Carver attempted to do when filling in the Application. Scott Carver intended that its set-aside for the Development be established at 107 whole units, and proceeded to obtain commitments from other lenders, including the United States Department of Housing and Urban Development, Citibank, and Miami-Dade County, as well as its equity investor, an affiliate of The Richman Group, and subsequent to receiving the commitments, closed with all these parties and completed construction of the Development, all based on the 107-unit set-aside.

9. The Application was completed and submitted to Florida Housing in October, 2010, and Scott Carver was invited into credit underwriting in January, 2011. It was not until April of 2012 that Scott Carver was notified for the first time, by e-mail from Florida Housing’s

underwriter, that Florida Housing was not accepting the set-aside unit count at 107, and that the underwriting report would need to be resubmitted to Florida Housing with a revised set-aside count of 108 units. By that time, the Development had achieved substantial completion and Scott Carver had begun leasing and occupying units to (a) families and households qualifying for 107 set-aside units and (b) market-rate families and households, for the remaining 27 units. The requested waiver will not adversely affect the Development. A denial of this Petition, however, would result in (a) substantial economic hardship to Scott Carver; (b) deprive Miami-Dade County of essential, affordable housing units in a timely and efficient manner; and (c) violate principles of fairness.

10. The Rule for which the waiver is sought provides as follows:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline ... Those items are as follows:

(k) ...the Total Set Aside percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for...

Rule 67-48.004(14)(k) (2009).

11. The applicable Rule for which the waiver is requested implement, 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. (2011). The Act designates Florida Housing as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing 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. (2011).

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<sup>1</sup>The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the “Act”). See also Rule 67-40.020(1), F.A.C.

Accordingly, the Rule subject to Scott Carver's waiver request implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2011).

12. The requested waiver will (a) ensure the financial feasibility of the completion of the Development; and (b) provide 107 needed affordable housing units in Miami-Dade County, Florida.

13. The following facts demonstrate the economic hardship and other circumstances which justify Scott Carver's request for Rule waiver:

a. Without knowledge of the discrepancy between Florida Housing's election to treat the fractional count as 108 units, Scott Carver proceeded on the basis of 107 units and closed on the following financing and equity transactions:

(i) \$14,000,000 construction loan from the Housing Finance Authority of Miami-Dade County (Florida) which was funded by Citibank, N.A. and administered and/or monitored in part by Wells Fargo Bank, N.A. (the "Tax Exempt Loan");

(ii) \$17,964,745 construction and permanent loan from Miami-Dade County, Florida (the "HOPE VI Loan"), which was sourced, in part, from grant funds made available to Miami-Dade County from The United States Department of Housing and Urban Development pursuant to a Mixed-Finance Amendment to Annual Contributions Contract between The United States Department of Housing and Urban Development and Miami-Dade County; and

(iii) The admission of U.S.A. Institutional Tax Credit Fund LXXI L.P., and The Richman Group Capital Corporation as limited partners in Scott Carver in

consideration for capital contributions in the anticipated amount of approximately \$5,248,570 (the "Equity Investment").

(b) Any increase in the number of set-aside units would require resubmission to, and re-approval of all underwriting and financial analyses performed by, the lenders and investor in connection with the Tax-Exempt Loan, the HOPE VI Loan and the Equity Investment. The inevitable delay may cause further funding from the various debt and equity sources to be suspended, with a resulting delay in being able to (i) complete the move-in process and (ii) generate the cash flow from the Development that will be required to cover debt service. The overall unit count at the Development is unaffected by the requested rule waiver, but the entire Development will be impacted by the delay that will result from the re-underwriting of the debt and equity terms, thereby slowing Scott Carver down from providing critically essential housing units for very-low and low-income individuals and households in Miami, Miami-Dade County, Florida within the anticipated timeframe for completion and stabilization of the Development.

(c) The requested one-unit reduction in the set-aside count will not cause any decrease in the amenities or services provided to residents at the Development.

(d) The Application was submitted for Housing Credits in a non-competitive category and the requested waiver will not impact any other applicants for Housing Credits in the 2009 Universal Cycle. The proposed changes to the Development would not have impacted the scoring of Scott Carver's Application, and would have not provided Scott Carver with an unfair competitive advantage over other applicants.

(e) A denial of the requested waivers would result in a substantial economic hardship to Scott Carver. Without the one-unit reduction in the set-aside unit count, occupancy of the Development will be significantly delayed, and Scott Carver will incur increased costs and

perhaps legal liability associated with this delay. More significantly, very-low and low income families in Miami-Dade County, Florida, would be deprived of critically needed apartment rental units in a timely and efficient manner.

14. As demonstrated above, the requested waiver serves 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. (2011).

15. Moreover, controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when they would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

16. The requested waiver will not adversely impact the Development or Florida Housing.

17. 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 developer entities and the private investment and lending community in meeting the purpose of the Act, through new

construction, in an economical and efficient manner. Because Florida Housing does not accept applications for non-competitive 4% Housing Credits until after full financial closing with all funding partners, both public and private, and commencement of construction, there is no ability for this kind of scrivener's error to have been identified and changed, or accepted as part of the transaction, and included initially in the lender's and investor's underwriting and closing documents. Therefore, deals such as these are treated differently than those deals that compete for the 9% tax credit resource, with unanticipated and adverse consequences.

18. The waiver being sought is permanent in nature.

19. Should Florida Housing require additional information, Scott Carver is available to answer questions and to provide all information necessary for consideration of its Petition for Waivers of Rule 67-48.004(14)(k)'s restrictions on changing the number of set-aside units for the Development.

WHEREFORE, Petitioner Scott Carver respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

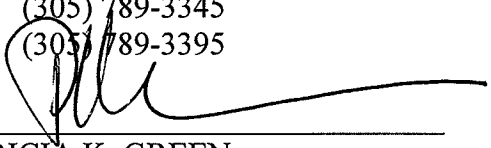
A. Waive the prohibition on changing the number of set aside units to permit a decrease from 108 to 107 for occupancy by households earning sixty percent or less of the area median income; and



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

Respectfully submitted,

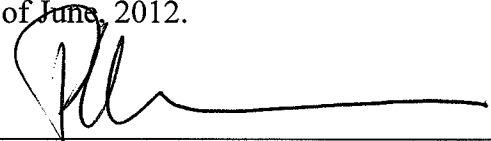
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By:   
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PATRICIA K. GREEN  
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**CERTIFICATE OF SERVICE**

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, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 15<sup>th</sup> day of June, 2012.

By: \_\_\_\_\_



Patricia K. Green