

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

CASE NO. 2016-022VW

MARCIA GARDENS, LLC,  
Petitioner

vs.

FHFC APPLICATION: 2015-107B6H  
REQUEST FOR APPLICATIONS: 2015-110

FLORIDA HOUSING FINANCE  
CORPORATION,  
Respondent

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**PETITION FOR WAIVER OF RULE 67-21.013  
FOR A CHANGE TO ALLOW THE PURCHASE OF BONDS BY A FREDDIE MAC  
MULTIFAMILY TARGETED AFFORDABLE HOUSING LENDER AND  
SELLER/SERVICER PRIOR TO A SALE TO FREDDIE MAC**

Petitioner Marcia Gardens, LLC, a Florida limited liability company (“Marcia Gardens”) submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of Florida Housing’s requirement that “Any issuance of non-Credit Enhanced revenue Bonds<sup>1</sup> shall be sold only to a Qualified Institutional Buyer”, and that “an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds....to the effect that, among other things, such purchaser is a Qualified Institutional Buyer”. See Rule 67-21.013, Florida Administrative Code. Freddie Mac requires that a Freddie Mac Multifamily Targeted Affordable Housing Lender and Seller/Service (a “TAHL”), as such lenders are approved and designated under the Freddie Mac Tax-Exempt Loan Program the “TEL Program”), purchase the Bonds and, pursuant to a written

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<sup>1</sup> The obligation in this case is a note. The definition of “Bond” in Rule 67-21.002(13), Florida Administrative Code, incorporates the definition of Bond in Section 420.503, Florida Statutes, as amended, which specifically includes notes.

commitment executed by Freddie Mac and accepted by the TAHL, sell those Bonds to Freddie Mac, which qualifies as a Qualified Institutional Buyer under the Rule.

In support of its Petition, Marcia Gardens states:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for Marcia Gardens and its qualified representative for Marcia Gardens' application (the "Application") in response to RFA 2015-110 – Financing for Affordable Multifamily Housing Developments with HOME Funding to be Used in Conjunction with Florida Housing-Issued MMRB and Non-Competitive Housing Credits (the "RFA") are:

Marcia Gardens, LLC  
315 South Biscayne Boulevard  
Miami, Florida 33131  
Attention: Alberto Milo, Jr.  
Telephone: (305) 460-9911  
Facsimile: (305) 460-9911  
E-Mail: [amilo@relatedgroup.com](mailto:amilo@relatedgroup.com)

2. The name, address, telephone and facsimile numbers for Marcia Gardens' attorney are:

Brian J. McDonough, Esq.  
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Telephone: (305) 789-3350  
Facsimile: (305) 789-3395  
E-Mail: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

**B. THE DEVELOPMENT AND ITS FINANCING**

3. Marcia Gardens timely submitted its Application in response to the RFA for the development named "Marcia Gardens" (the "Development"). *See* Application No. 2016-106H. The application included a Freddie Mac financing plan under its TEL Program. In simple terms,

a “Project Loan” to provide funds to Marcia Gardens to build its multifamily affordable Development will be funded from a loan (the “Funding Loan”) incurred by Florida Housing pursuant to a Funding Loan Agreement among Banc of America Public Capital Corp., as the construction lender, Florida Housing and a fiscal agent. The Funding Loan to Florida Housing is funded by the sale of the Bonds to Banc of America Public Capital Corp., as the construction lender (the “Construction Lender”). Florida Housing, in turn, loans the proceeds of the Funding Loan to the Borrower as the Project Loan. At completion of construction, the Funding Loan (and the associated Bonds) will be sold/assigned to Pillar Multifamily, LLC (“Pillar”), an approved TAHL. Pursuant to a written commitment of Freddie Mac and accepted by Pillar at the time of the making of the loans and the issuance of the Bonds, Pillar will immediately thereafter sell/assign the Funding Loan and Bonds to Freddie Mac.

4. On January 14, 2016, Marcia Gardens was invited to Credit Underwriting for the Development. The Florida Housing Board approved the April 20, 2106 underwriting report for Marcia Gardens which included a positive recommendation to the TEL Program financing plan. As the various parties to the financing began loan commitment and document production, it became apparent that Freddie Mac is not permitted by its federal regulatory provisions to purchase the Bonds directly, but rather will have to purchase the Bonds, only after Pillar, as the Multifamily Seller/Servicer, has acquired the Bonds. Pillar, as the TAHL in this instance, is not a Qualified Institutional Buyer, as defined under Rule 67-21.002(88)<sup>2</sup>, although it has satisfied the requisite criteria and has been approved as a TAHL under the TEL Program. Freddie Mac, the ultimate owner of the Bonds is a Qualified Institutional Buyer under the Rule. Pursuant to

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<sup>2</sup> The definition of “Qualified Institutional Buyer” is set forth in Exhibit “A” attached to this Petition.

Freddie Mac's charter, Freddie Mac may not purchase the Bonds directly<sup>3</sup>. This financing structure therefore requires that a Rule Waiver be approved to allow the "interim" purchase by Pillar (which is not a Qualified Institutional Buyer) prior to the committed sale of the Bonds to Freddie Mac. Accordingly, Marcia Gardens hereby petitions Florida Housing for a waiver of its requirement that privately placed (i.e. non-credit enhanced) Bonds must be purchased by Qualified Institutional Buyers, when such buyer is a TAHL under the TEL Program and has accepted a signed commitment from Freddie Mac to purchase the Bonds for resale to Freddie Mac.

5. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Marcia Gardens, (b) could deprive Miami-Dade County of desperately needed affordable housing units, and (c) would violate principles of fairness<sup>4</sup>. Section 120.542(2), Fla. Stat. (2015).

6. The waiver being sought is permanent in nature.

**C. RULES FROM WHICH WAIVER IS SOUGHT**

7. Marcia Gardens requests a waiver from the Rule. Specifically, Marcia Gardens is requesting a waiver of its requirement that privately placed (i.e. non-credit enhanced) Bonds must be purchased by Qualified Institutional Buyers, when such an "interim" buyer is a TAHL under the TEL Program and has accepted a signed commitment from Freddie Mac to purchase the Bonds for resale to Freddie Mac.

8. The Rule provides, in relevant part, as follows:

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<sup>3</sup> Section 305(a)(5) of the Federal Home Loan Mortgage Act, Public Law No. 91-351, 84 Stat. 450, approved July 24, 1970 and codified at 12 U.S.C. s. 1451 *et seq.*

<sup>4</sup> "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.

Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. Such non-Credit Enhanced revenue Bonds may only be utilized for financings where the Applicant has demonstrated that the issuance produces a substantial benefit to the Development not otherwise available from Credit Enhancement structures. The analysis of the substantial benefit must be provided in a format acceptable to the Corporation and shall include the initial issuer cost of issuance, underwriter's discount or structuring agent fee, annual debt service, total debt service and any other factors necessary and appropriate to demonstrate that the issuance produces a substantial benefit to the Development. This analysis must be provided both prior to the review of the method of Bond sale conducted by the Corporation's IRMA, and again prior to the pricing of the Bonds, showing any changes affecting the original estimated substantial benefit. The Corporation shall engage the Investment Banker or structuring agent with respect to such Bonds. The Corporation, in its discretion, will allow only an underwriting discount or a structuring agent fee, but not both. Unless such Bonds are rated in one of the four highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be Depository Trust Company (DTC)-Eligible) and shall comply with at least one of the following criteria:

...

(2) The Bonds shall be issued in minimum denominations of \$250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds (including any purchaser purchasing such Bonds in an immediate resale from an underwriter), but shall not be required of subsequent purchasers of the Bonds, to the effect that, among other things, such purchaser is a Qualified Institutional Buyer, is purchasing such Bonds for its own account and not for immediate resale to a purchaser other than a Qualified Institutional Buyer, and has made an independent investment decision as a sophisticated or institutional investor; ...

Rule 67-21.013, F.A.C.

**D. STATUTES IMPLEMENTED BY THE RULE**

9. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that grants Florida Housing the power to issue revenue bonds. *See* Section 420.509, Florida Statutes.

**E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS**

10. Marcia Gardens requests a waiver from Rule 67-21.013, Florida Administrative Code. Marcia Gardens is seeking a waiver from the Rule in order to obtain permanent financing from Freddie Mac, which is not permitted by its charter to purchase the Bonds directly, but rather,

must purchase the Bonds from Pillar, a TAHL, which will acquire the Bonds for a brief period of time prior to sale to Freddie Mac. 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. (2011).

11. The following facts demonstrate the circumstances which justify Marcia Gardens' request for waiver:

- a. Marcia Gardens timely submitted its Application to Florida Housing in response to the RFA, for financing through Freddie Mac's TEL Program in which Freddie Mac would be the ultimate long term owner of the Bonds issued by Florida Housing.
- b. Marcia Gardens has obtained a commitment for the Project Loan from Florida Housing in the amount of \$15,500,000, using the privately placed non-credit-enhanced bond structure described herein.
- c. Freddie Mac will issue a forward commitment to Pillar for the purchase of the Bonds, in which Freddie Mac agrees to facilitate the financing of the Project's permanent phase by purchasing the Funding Loan and Bonds from Pillar following conversion of the Project Loan from its construction phase to its permanent phase. The permanent loan amount is anticipated to be \$8,725,000. In order to complete this transaction, Pillar must first acquire the Funding Loan from the Construction Lender at loan conversion.

d. Pillar is an experienced lender and loan servicer/seller with over \$500 million in Freddie Mac multifamily loans in its portfolio. Pillar is also a national Fannie Mae Delegated Underwriter and Servicing lender for affordable housing loans, and has sold and serviced loans which provide credit enhancement for bonds issued by Florida Housing in the past.

e. Despite the expertise and experience of Pillar, it does not fit into the categories listed in Rule 67-21.002(88), in which “Qualified Institutional Buyer” is defined, although it has satisfied Freddie Mac’s criteria as an approved TAHL under the TEL Program.

f. Pillar will acquire the Funding Loan and immediately assign it to Freddie Mac. Pillar’s ownership of the Funding Loan will be brief. Freddie Mac, the ultimate owner of the Funding Loan and the Bonds is a Qualified Institutional Buyer under the Rule.

g. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.

12. If the waiver requested herein is not granted, Marcia Gardens will suffer a substantial and unnecessary economic and operational hardship. A commitment for permanent financing for the Development is required in order to close on the Bonds and all other debt as well as equity sources, and without Freddie Mac’s commitment to purchase the Funding Loan from Pillar, closing on the Development will fail to occur. Pillar has already performed a complete underwriting analysis of the Development and its feasibility, at substantial cost to Marcia Gardens. The economics of the Development cannot support the engagement of a

new TAHL to perform new underwriting; further the Development's schedule for closing and construction could not accommodate the resulting delay and inevitable associated costs.

13. A waiver of the Rule's requirements pertaining to Qualified Institutional Buyers would serve the purposes of Section 420.509, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

14. Should Florida Housing require additional information, a representative of Marcia Gardens is available to answer questions and to provide all information necessary for consideration of this Petition.

**F. ACTION REQUESTED.** Marcia Gardens requests the following:

- a. That Florida Housing (i) grant Marcia Gardens a waiver from Rule 67-21.013, Florida Administrative Code, allowing Pillar Multifamily, LLC, an approved Freddie Mac Multifamily Targeted Affordable Housing Lender and Seller/Servicer, to purchase the Funding Loan and Bonds prior to resale to Freddie Mac, which is a Qualified Institutional Buyer, and (ii) waive the requirement that the investor letter provided by the initial purchaser of the Bonds state that such purchaser is a Qualified Institutional Buyer.
- b. That Florida Housing grant the Petition and all the relief requested therein; and

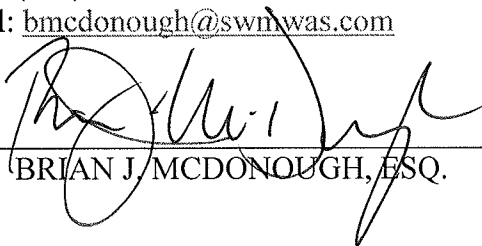


c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for Marcia Gardens, LLC  
150 West Flagler Street, Suite 150  
Miami, Florida 33131  
Tel: (305) 789-3350  
Fax: (305) 789-3395  
E-mail: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

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



BRIAN J. MCDONOUGH, ESQ.

**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 overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 8 day of June, 2016.

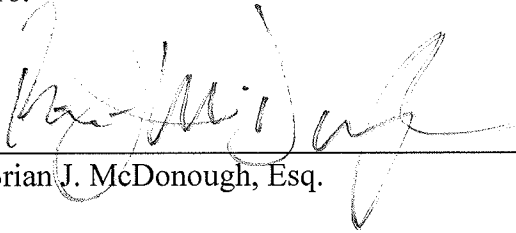
  
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Brian J. McDonough, Esq.

EXHIBIT "A"  
DEFINITION OF QUALIFIED INSTITUTIONAL BUYER

(88) "Qualified Institutional Buyer" is sometimes called a "sophisticated investor" and specifically includes the following:

(a) Any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers that, in the aggregate, own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:

1. Any insurance company as defined in section 2(13) of the Securities Act of 1933;
2. Any investment company registered under the Investment Company Act of 1940 or any business development company as defined in section 80a-2(a)(48) of that Act;
3. Any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;
4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees;
5. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;
6. Trust funds of various types, except for trust funds that include participants' individual retirement accounts or H.R. 10 plans;
7. Any business development company as defined in section 80b-2(a)(22) of the Investment Advisors Act of 1940;
8. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (except a bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Act of 1933, or a foreign bank or savings and loan or similar institution), partnership, Massachusetts or similar business trust, or any investment adviser registered under the Investment Advisors Act.

(b) Any dealer registered under section 15 of the Securities Exchange Act of 1934, acting on its own behalf or on the behalf of other Qualified Institutional Buyers who in the aggregate own and invest at least \$10 million of securities of issuers not affiliated with the dealer (not including securities held pending public offering).

(c) Any dealer registered under section 15 of the Securities Exchange Act of 1934 acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

(d) Any investment company registered under the Investment Company Act that is part of a family of investment companies that together own at least \$100 million in securities of issuers, other than companies with which the investment company or family of investment companies is affiliated.

(e) Any entity, all of whose equity owners are Qualified Institutional Buyers.

(f) Any bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Act of 1933 or foreign bank or savings and loan or similar institution that, in aggregate with the other

Qualified Institutional Buyers, owns and invests in at least \$100 million in securities of affiliates that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated during the 16 to 18 months prior to the sale.

STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.

Patricia K. Green  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Direct: (305) 789-3345  
Fax: (305) 789-2621  
Email: pgreen@stearnsweaver.com

June 8, 2016

**Via FedEx**

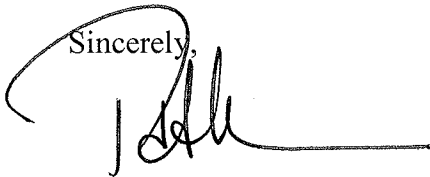
Ms. Kate A. Flemming  
Legal Analyst/Corporation Clerk  
Florida Housing Finance Corporation  
227 N. Bronough Street  
Suite 5000  
Tallahassee, Florida 32301

**RE: Petition for Rule Waiver**

Dear Ms. Flemming:

Enclosed is a Petition for Rule Waiver, submitted on behalf of Marcia Gardens, LLC, for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Patricia K. Green

PKG/zs  
Enclosure

cc: Joint Administrative Procedures Committee (with Enclosure)