

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SP CC Apartments LLC  
(Columbus Court)  
SP HK Apartments LLC  
(Hickory Knoll)  
SP HV Apartments LLC  
(Hampton Villa)  
SP SG Apartments LLC  
(Seminole Gardens)

FHFC Case No. 2016-021 VW

Request for Applications 2015-112

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

Petitioners SP CC Apartments LLC, SP HK Apartments LLC, SP HV Apartments LLC and SP SG Apartments LLC, pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, petitions the Florida Housing Finance Corporation (“the Corporation”) for a waiver of Rule 67-21.013, Florida Administrative Code, to allow the purchase of Bonds<sup>1</sup> by a Freddie Mac<sup>2</sup> licensed and approved targeted affordable housing lender and seller-servicer prior to the sale of the Bonds to Freddie Mac, notwithstanding that such entity is not a Qualified Institutional Buyer, under the circumstances described in this petition. In support of this Petition, Petitioners state:

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<sup>1</sup> The particular form of indebtedness here is a note. But the rule to be waived uses the term “Bonds,” which in turn is defined to include any note issued by the Corporation. Section 420.503(4), Florida Statutes, and Rule 67-21.002(13), Florida Administrative Code.

<sup>2</sup> Federal Home Loan Mortgage Corporation.

Identification of the Petitioners

1. The address, telephone number and e-mail address of the Petitioners are:

c/o Southport Development, Inc.  
5403 West Gray Street  
Tampa, FL 33609  
Attn: Scott Seckinger  
Telephone: (727) 669-3660  
Email: [sseckinger@sphome.com](mailto:sseckinger@sphome.com)

2. The address, telephone number, facsimile number and e-mail address of Petitioners' counsel are:

Lawrence E. Sellers, Jr.  
Holland & Knight LLP  
315 S. Calhoun Street, Suite 600  
Tallahassee, FL 32301  
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The Four Developments

3. Each of the four Petitioners timely submitted its application for a development under RFA 2015-112-- SAIL Financing of Affordable Multifamily Housing Developments to be used in connection with Tax-Exempt Bond Financing and Non-Competitive Housing Credits. The four developments are Columbus Court (Application No. 2016-187BS, 160 units), Hampton Villa (Application No. 2016-1876BS, 60 units), Hickory Knoll (Application No. 2016-185BS, 96 units) and Seminole Gardens (Application No. 2016-179BS, 108 units). On December 11, 2015, the Corporation approved an allocation to each Development of Multifamily Mortgage Revenue Bonds (MMRB) (the "Bonds"), State Apartment Incentive Loan (SAIL) funding, a SAIL-ELI Loan and housing tax credits.

4. The Bonds are a critical part of the financing for the construction of each of the Developments, which are intended to serve low-income families living in four counties:

Duval County (Hampton Villa), Hillsborough County (Columbus Court), Marion County (Hickory Knoll) and Seminole County (Seminole Gardens). There is an immediate need for this affordable housing, and Petitioner plans to commence construction next month on the Columbus Court Development and by October 1, 2016, on the other three developments.

5. The financing proposal submitted during credit underwriting for each Development included a Freddie Mac financing plan under its Tax Exempt Loan (TEL) Program with respect to the Bonds. In simple terms, under the TEL Program, a “Project Loan” to provide funds to acquire and rehabilitate the Development will be funded from a loan (the “Funding Loan”) made by the Corporation from the proceeds received from a separate loan, made to the Corporation by Jones Lang LaSalle Multifamily, LLC (“JLL”) (which is a Freddie Mac licensed and approved Targeted Affordable Housing Lender and Seller-Servicer), pursuant to a Funding Loan Agreement among JLL, the Corporation and a Fiscal Agent, which Funding Loan is evidenced by the Bonds. The Corporation uses the proceeds of the Funding Loan to make the Project Loan of matching economic terms to the Borrower to finance the Development pursuant to a separate Project Loan Agreement among the Corporation, the Borrower and the Fiscal Agent. JLL will thereafter sell/assign the Funding Loan and the Bonds pursuant to a written commitment between JLL and Freddie Mac.

6. On May 6, 2016, the Corporation's Board approved the underwriting report for the Columbus Court Development and provided a positive recommendation for the Tax-Exempt Loan (TEL) Program financing plan. However, as the various parties to the financing began loan commitment and document production, it became known that JLL did not meet the definition of a Qualified Institutional Buyer, as defined in Rule 67-21.002(88), although it has satisfied the applicable Freddie Mac criteria and regularly acts as an approved Freddie Mac Multifamily

Targeted Affordable Housing Lender and Seller-Servicer under the TEL Program. Freddie Mac, the ultimate owner of the Bonds, is a Qualified Institutional Buyer. This financing therefore requires that a Rule waiver be granted to allow the “interim” purchase by JLL of the Bonds prior to the committed sale of the Bonds to Freddie Mac, a Qualified Institutional Buyer.

The Rule For Which The Waiver Is Sought

7. Petitioners request a waiver of Rule 67-21.013 Florida Administrative Code (the “Rule”). Specifically, Petitioners are requesting a waiver of the requirement that privately placed (i.e. non-Credit Enhanced) Bonds must be purchased by a Qualified Institutional Buyer, where such an “interim” buyer is a Freddie Mac Multifamily Targeted Affordable Housing Lender and Seller-Servicer under the Freddie Mac TEL Program and it 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:

**67-21.013 Non-Credit Enhanced Multifamily Mortgage Revenue Bonds.**

**Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. \*\*\* 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; ...**

Statutes Implemented By The Rule

9. The Rule implements Section 420.509, Florida Statutes, which grants the Corporation the power to issue revenue bonds (including notes) to achieve the purposes of the Florida Housing Corporation Act, Sections 420.501-.55, Florida Statutes. Such purposes include providing mortgage loans to sponsors to provide housing affordable to very low income persons, pursuant to the State Apartment Incentive Loan (SAIL) Program. See Section 420.5087, Florida Statutes.

The Specific Facts That Demonstrate A Substantial Hardship

10. A waiver shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate the principles of fairness. A "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. "Principles of fairness" are violated when the literal application of the 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.

11. Here, Petitioners will suffer both a legal hardship and economic hardship if the waiver is not granted. Petitioners will suffer a legal hardship in that Freddie Mac is not permitted to purchase the Bonds directly under its charter provisions,<sup>3</sup> but instead must purchase the Bonds only after its licensed and approved seller-servicer (here, JLL) has acquired the Bonds, which cannot happen without the requested waiver. Petitioners also will suffer an economic hardship if the waiver is not granted, in the form of significant additional costs as a result of the delay in

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<sup>3</sup> Section 305(a)(5) of the Federal Home Loan Mortgage Corporation Act, codified at 12 U.S.C. § 1454(a)(5).

closing, as well as significant additional expenses associated with having to obtain (and seek Board approval of) an alternative form of financing.

12. Granting the requested waiver will not provide Petitioners with an unfair advantage over other applicants, as the scoring of the Application was not affected by the financing structure.

The Requested Waiver Will Serve The Underlying Purpose of The Statute

13. A waiver of the Rule-- to allow the "interim" purchase of the Bonds immediately prior to a committed sale to Freddie Mac--will serve the purpose of the statute that is implemented by the Rule. The stated purpose of the SAIL Program is to provide affordable housing to very-low income persons. See Section 420.5087, Florida Statutes. Likewise, the Florida Housing Finance Corporation Act, Section 420.501-.55, Florida Statutes, was enacted in order to encourage private and public investment in facilities for persons of low-income. The granting of the requested waiver would serve this purpose of increasing the supply of affordable housing by facilitating the development of much needed affordable housing in Hillsborough County. In addition, as JLL is only purchasing the Bonds on a short-term basis pursuant to a written commitment from Freddie Mac, which is a Qualified Institutional Buyer, the purposes of the Rule are still served.

Petitioners Request A Permanent Waiver

14. Petitioners request a permanent waiver.

15. Petitioners are available to answer questions and provide additional information.

Action Requested

WHEREFORE, Petitioners respectfully request that the Corporation:

- A. Grant the Petition and all relief requested herein;
- B. Grant a waiver of Rule 67-21.013, Florida Administrative Code, to allow the purchase of Bonds by a Freddie Mac licensed and approved targeted affordable housing lender and seller-servicer prior to the sale of the Bonds to Freddie Mac, notwithstanding that such entity is not a Qualified Institutional Buyer, under the circumstances described in this petition. This includes a waiver of the requirement that Bonds be sold only to a Qualified Institutional Buyer as well as a waiver of the requirement to obtain an investment letter from the initial purchaser of the Bonds to the effect that the purchaser is a Qualified Institutional Buyer.
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 8th day of June, 2016.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Petition for Waiver of Rule 67-21-013 was filed by electronic mail with Kate Fleming, Agency Clerk, e-mail: [kate.flemming@floridahousing.org](mailto:kate.flemming@floridahousing.org); that a true and correct copy was provided by electronic mail to Hugh Brown, General Counsel, e-mail: [hugh.brown@floridahousing.org](mailto:hugh.brown@floridahousing.org) Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, all on this 8th day of June, 2016.



Lawrence E. Sellers, Jr.