

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MARCIA GARDENS, LLC.

FHFC Case No.: 2016-022VW

**ORDER GRANTING WAIVER OF RULE 67-21.013,
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 24, 2016, pursuant to a Petition for Waiver of Rule 67-21.013 (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on June 8, 2016, from Marcia Gardens, LLC (“Petitioner”). Notice of the Petition was published in Volume 42, Number 113, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner was selected to receive \$4,500,000 in HOME funds from Florida Housing under RFA 2015-110 to assist in the construction of a 70 unit low-income housing development named “Marcia Gardens” (the “Development”), with a commitment to provide 55 HOME-Assisted units. Petitioner also obtained

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 6-24-16

\$8,500,000 in Multifamily Mortgage Revenue Bonds¹ (MMRB) for this 70-unit development. After being invited to credit underwriting, Petitioner obtained approval from Florida Housing to increase the MMRB amount to \$15,500,000 in order to increase the total number of low-income housing units in the development to 134. Petitioner now seeks a waiver to allow the purchase of non-credit enhanced revenue bonds by an entity that does not meet the definition of a Qualified Institutional Buyer.

3. Rule 67-21.013, Fla. Admin. Code, allows a non-credit enhanced revenue bond to be sold only to a Qualified Institutional Buyer (QIB), as defined in Rule 67-21.002(88), F.A.C.² The rule also requires that the purchaser of such bonds provide an investment letter.

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

¹ The particular form of indebtedness here is a note. However, the rule to be waived uses the term “bonds,” which is defined in Section 420.503(4), F.S., to include any note issued by the Corporation.

² QIBs are sometimes referred to as sophisticated investors that are capable of understanding and managing the risks associated with a non-credit enhanced bond.

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.

4. Petitioner is funding its Development using, among other things, a Freddie Mac Tax Exempt Multifamily Revenue Note (Bond) under its Tax Exempt Loan (TEL) Program. Federal law requires Freddie Mac to purchase the bonds through an intermediary, which in this case is Pillar Multifamily, LLC (“Pillar”). Pillar, however, does not meet the definition of a Qualified Institutional Buyer in Rule 67-21.002(88), Fla. Admin. Code. Petitioner seeks a waiver that will allow it to use the services of Pillar in order to facilitate the note/bond portion of the financing for these Developments. The notes/bonds will ultimately be sold to Freddie Mac (which is a QIB) in accordance with an executed commitment letter between Pillar and Freddie Mac. Unless the waiver is granted, Petitioner will be required to find alternate financing, and funding for the Development will be jeopardized.

5. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, 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. Section 120.542(2) provides in pertinent part:

Variations and waivers 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 a rule would create a substantial hardship or would violate principles of fairness

The 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.

6. The Board finds that granting the waiver would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that granting the waiver would have no detrimental impact on Florida Housing or any of its programs.

7. Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

8. The Board finds that strict application of the above rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-21.013, Fla. Admin. Code, is hereby **GRANTED**, so that Petitioner will be able to use the services of Pillar to purchase the non-credit enhanced revenue bonds as part of the TEL Program and so that Pillar will not be required to submit an investment letter.

DONE and ORDERED this 24th day of June, 2016.

Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.