

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

HERITAGE PARK APARTMENTS, LTD.,

Petitioner,

APPLICATION NOS. 2014-111B  
2014-288H

vs.

FHFC CASE NO.: 2014-074VW

FLORIDA HOUSING FINANCE CORP.,

Respondent

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**PETITION FOR WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-21.013**

HERITAGE PARK APARTMENTS, LTD. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-21.013, Florida Administrative Code ("FAC"). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

1. The address, telephone and facsimile number of Petitioner is:

Heritage Park Apartments, Ltd.  
c/o Atlantic Housing Partners  
200 East Canton Avenue, Suite 102  
Winter Park, FL 32789  
407-741-8500 (telephone)  
(407) 643-2551 (facsimile)

2. The address, telephone and facsimile number of Petitioner's attorney is:

Kerey Carpenter  
AHG Group, LLC  
700 W. Morse Blvd., Suite 220  
Winter Park, FL 32789  
407-691-5605 (direct line)  
407-371-6126 (facsimile)

3. Petitioner successfully applied for financing from the Multifamily Mortgage Revenue Bonds Program (“MMRB”) and the HOME Program in response to 2013 Universal Cycle that Florida Housing administered pursuant to Chapters 67-21 and 67-48, Florida Administrative Code. Petitioner’s Application Numbers are 2014-111B and 2014-288H. Petitioner applied for MMRB and HOME funds to finance a portion of the costs to construct 167 affordable units in a 238-unit multifamily rental apartment community located in Osceola County, Florida, to be known as the Heritage Park Apartments (the “Development”).

**THE RULES FROM WHICH A WAIVER IS SOUGHT**

4. Petitioner requests a waiver from Rule 67-21.013, as in effect for 2013 Universal Cycle. Rule 67-21.013 provides in relevant part as follows:

“Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer.”

**STATUTES IMPLEMENTED BY THE RULE**

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act<sup>1</sup>, the statute that created the MMRB Program. Section 420.509, Florida Statutes.

6. Florida Housing has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means. Section 120.542(2), Florida Statutes.

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

## FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

7. The foregoing Rule limits the sale of non-credit enhance revenue bonds to only a Qualified Institutional Buyer as that term is defined in Rule 67-21.002(88). This limitation is intended to “raise the bar” for bond purchasers from “Accredited Investor” to “Qualified Institutional Buyer” to ensure prudent bond transactions that are consistent with the public policy intention of the MMRB Program.

8. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

9. The sale of revenue bonds to certain “Accredited Investors” that meet the following higher standard than the accepted definition for “Accredited Investor” would satisfy the intent and purpose of the Rule requiring a Qualified Institutional Buyer:

- Has a Principal with minimum of \$20,000,000 in Liquidity (as defined below from [www.businessdictionary.com](http://www.businessdictionary.com)):

Liquidity – means a measure of the extent to which a person or organization has cash to meet immediate and short-term obligations, or assets that can be quickly converted to do this (Liquid Asset).

Liquid Asset – means an asset that can be converted into cash in a short time, with little or no loss in value. Liquid Assets include items such as accounts receivable, demand and time deposits, and gilt edged securities. In some countries, precious metals (usually

gold and silver) are also considered liquid assets. Also, call quick asset.

and

- As a Principal of various borrowers, has closed a minimum of \$300,000,000 in tax-exempt revenue bonds for affordable housing developments; and
- As a Principal of various affordable housing developments, has closed a minimum of \$200,000,000 in tax credit equity; and
- As a Principal of various entities, has closed a minimum of \$200,000,000 in interest rate hedging products (SWAPS, CAPS, COLLARS, etc.) for affordable housing developments

10. The proposed purchaser of the revenue bonds for the Petitioner meets the heightened criteria outlined above. Additionally, a Principal of the proposed purchaser is intended to provide a tax credit guarantee to the purchaser of the tax credits. Any foreclosure on the revenue bonds would trigger enforcement of the guarantee on the tax credits. This proposed revenue bond transaction has less risk than any of the revenue bond transactions that are typically closed with a Qualified Institutional Buyer through the FHFC MMRB Program.

11. The requested Rule waiver will not adversely affect the Development and will ensure that 167 affordable housing units will be available in Osceola County, Florida. However, a denial of this Petition (a) would result in substantial economic hardship to Petitioner and (b) would deprive Osceola County of essential affordable housing units; and (c) would violate principals of fairness.

12. Based on the foregoing, the Petitioner meets the standards for a Rule waiver.

**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

13. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.509. The purpose of both the Statute and the MMRB program is to facilitate and stimulate the development and/or preservation of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the MMRB allocation in question will be used to fund the construction of an affordable multifamily rental housing community for which there is a desperate need in Osceola County, Florida.

14. With the difficulty in recent years of utilizing the MMRB allocation available to FHFC and with the continued increase in the need for affordable housing developments, Florida Housing should waive the requirement of using a Qualified Institutional Buyer since the proposed purchaser meets or exceeds the intention and public policy reasons for the Rule.

15. By granting a waiver and permitting Petitioner to sell the revenue bonds to a purchaser that meets the heightened criteria of an Accredited Investor as described above, Respondent would recognize the economic realities of developing, preserving and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, in an economical and efficient manner.


**TYPE OF WAIVER**

16. The waiver being sought is permanent in nature.

**ACTION REQUESTED**

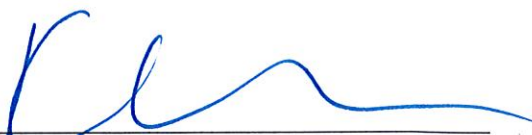
17. Petitioners request a waiver from Rule 67-21.013 to approve the sale of the revenue bonds to a purchaser meeting the heightened criteria set forth above in this Petition.

Respectfully submitted this 13<sup>th</sup> day of October, 2014.

  
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Winter Park, FL 32789  
(407) 691-5605(direct)  
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[kcarpenter@ahg-group.com](mailto:kcarpenter@ahg-group.com)  
Florida Bar No. 963781  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 680 Pepper Building, 111 West Madison Street, Tallahassee, FL 32399-1400.

  
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Kerey Carpenter