

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CASE NO. 2015-005VW

MARCIA GARDENS, LLC,
Petitioner

vs.

FHFC APPLICATION: 2016-106H
REQUEST FOR APPLICATIONS: 2015-110

FLORIDA HOUSING FINANCE
CORPORATION,
Respondent

**PETITION FOR WAIVER OF RULE 67-48.004(3)(i)
FOR A CHANGE IN NUMBER OF UNITS**

Petitioner Marcia Gardens, LLC, a Florida limited liability company (“Marcia Gardens”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver or variance of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant in its response to RFA 2014-110–Financing for Affordable Multifamily Housing Developments with HOME Funding to be Used in Conjunction with Florida Housing-Issued MMRB and Non-Competitive Housing Credits. See Rule 67-48.004(3)(i), Florida Administrative Code.

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 2014-110 – 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:

#4773738 v2
30364-0876

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

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

B. THE DEVELOPMENT

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. On January 14, 2016, Marcia Gardens was invited to Credit Underwriting for the Development. On January 14, 2016, Marcia Gardens also requested an increase in the total number of units in the Development from 70 to 134, via e-mail addressed to Brantley Henderson and Jade Grubbs, and followed up with a formal written request on January 20, 2016. The Corporation responded via e-mail from Jade Grubbs, Multifamily Programs Coordinator, on February 1, 2016, to advise Marcia Gardens that its request "to increase the total number of units to 134 and the MMRB request amount to \$15,500,000 in your Non-Competitive Application for Marcia Gardens has been approved. However, a Rule Waiver will need to be submitted to increase the total number of units in your HOME Application from 70 to 134 due to Rule Chapter 67-48.004(3)(i)". (*See* copy attached hereto as Exhibit "A", referred to herein as the "FHFC E-Mail"). Accordingly,

Marcia Gardens hereby Petitions the Corporation for a waiver of its prohibition on changes in “Total Number of Units” designated by an applicant in its response to the RFA.

4. 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 fairness¹. Section 120.542(2), Fla. Stat. (2013).

5. The waiver being sought is permanent in nature.

C. RULES FROM WHICH WAIVER IS SOUGHT

6. Marcia Gardens requests a waiver from Rule 67-48.004(3)(i) Florida Administrative Code (the “Rule”). Specifically, Marcia Gardens is requesting an increase in the total number of units from 70 to 134. Marcia Gardens will maintain the fifty five (55) “HOME units” committed to in its Application.

The Rule provides, in relevant part, as follows:

“(3) For the SAIL, HOME and Housing Credit Program, notwithstanding any other provision of these rules, the following items identified by the Applicant in the Application must be maintained and cannot be changed by Applicant after Application submission, unless provided otherwise below:

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;

Rule 67-48.004(3)(i), F.A.C.

¹“ 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.

D. STATUTES IMPLEMENTED BY THE RULE

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

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

8. Marcia Gardens requests a waiver from Rule 67-48.004(3)(i), Florida Administrative Code. Marcia Gardens is seeking a waiver from the Rule allowing it to increase the total number of units from 70 to 134. It is not uncommon for development changes to occur after submission of an application to the Corporation. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation 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).

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

- a. Marcia Gardens timely submitted its Application to the Corporation in response to the RFA, for 70 low-income tax credit housing units, with a commitment to provide fifty five (55) HOME-Assisted units.
- b. Marcia Gardens originally contemplated the 70 units as a first phase of a two-phased project, with the second phase on adjacent land to include 64 low-income

housing units, at a later date. Marcia Gardens has obtained an allocation of Multifamily Mortgage Revenue Bonds from the Corporation in the amount of \$8,500,000 for the first 70-unit phase. Following the receipt of such allocation, Marcia Gardens also obtained approval for a Section 8 Housing Assistants Payment Contract (the "Section 8 Contract") from HUD for the initial 70-unit Development. The Section 8 Contract will, together with an enhanced bond issue also being sought in credit underwriting for the Development, provide enough sources for Marcia Gardens to consolidate the Development with the contemplated second phase, and construct the entire project as a single 134-unit community. As to the enhanced bond issue, Marcia Gardens has obtained approval to seek an increase in the amount of the Development's original bond allocation from \$8,500,000 to \$15,000,000, subject to credit underwriting approval. (*See the FHFC E-Mail*).

c. The construction cost savings and reduced management expenses associated with a single 134-unit community are substantial, compared to building two separate communities of 70 and 64 units, respectively. The due diligence costs, legal fees, travel expenses and other closing costs that would be duplicated for two separate closings would only be incurred a single time, and thereby yield substantial cost savings. Construction costs are climbing steadily and the opportunity to build the additional 64 units on an expedited basis will allow Marcia Gardens to negotiate a more favorable construction contract. Certain economies of scale can be realized by consolidating the two communities into a single project by providing amenities that serve all of the residents in a single building rather than duplicating those facilities. Management of a 134-unit community is more efficient than managing two smaller communities.

d. Marcia Gardens' scoring and allocation of HOME funds would not have been affected if Marcia Gardens had originally included 134 units in the Application, with 55 of them designated as HOME units. Although the increase in unit count to 134, and the corresponding change in Anticipated Total Development Cost to \$26,223,201, means that the percentage of the total cost provided by the HOME loan drops from 32% to 18%, the 55 HOME units remain committed. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.

e. The waiver requested herein will not result in any decrease in the number of "low-income units," or HOME units, but rather will only increase the total number of units available for rental to the residents of Miami-Dade County.

10. A waiver of the Rule's restriction against increasing the total number of units from the number set forth in Marcia Gardens' Application would serve the purposes of Section 420.5099, 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.

11. If the waiver requested herein is not granted, Marcia Gardens will suffer a substantial and unnecessary economic and operational hardship by (a) incurring duplicate diligence and closing costs, (b) incurring increased construction costs, and (c) suffering ongoing inefficiency of project management with the attendant increased costs associated therewith.

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

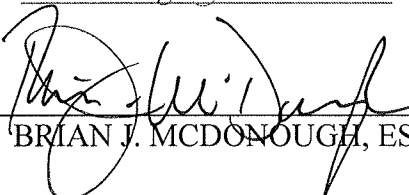
F. **ACTION REQUESTED.** Marcia Gardens requests the following:

- a. That the Corporation grant Marcia Gardens a waiver from Rule 67-48.004(3)(i), Florida Administrative Code, allowing it to increase the total number of units in the Development from 70 to 134;
- b. That the Corporation grant the Petition and all the relief requested therein; and
- c. That the Corporation 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
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E-mail: bmcdonough@swmwas.com

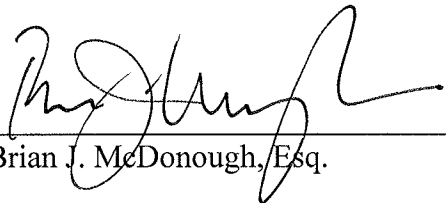
By: _____



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 11th day of January, 2016.



Brian J. McDonough, Esq.

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

February 11, 2016

Via FedEx

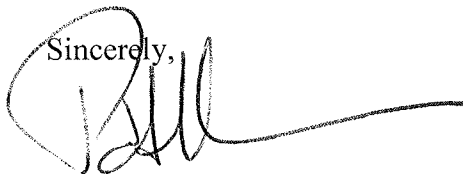
Ms. Kate A. Flemming
Legal Analyst/Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough Street
Suite 5000
Tallahassee, Florida 32301

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)