

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

HTG VERANDA SENIOR, LTD.,

Petitioner,

Vs.

Application No. 2009-227C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**FHFC File No: 2010-030YW**

PETITION FOR WAIVER FROM RULE 67-48.004(14) FLORIDA  
ADMINISTRATIVE CODE (2009)

HTG VERANDA SENIOR, LTD., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rule 67-48.004(14), Florida Administrative Code ("FAC"). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104.002, Florida Administrative Code.

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:  
  
HTG Veranda Senior, Ltd.  
c/o Housing Trust Group  
3225 Aviation Ave., Suite 602  
Coconut Grove, FL 33133  
Attn: Randy E. Rieger  
305-856-8700 (phone)  
508-856-1475 (facsimile)
2. Petitioner successfully applied for financing from the Housing Tax Credit ("I-IC") program in the 2009 Universal Application Cycle that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's Application Number is 2009-227C (the "Application"). Petitioner applied for I-IC Funds to finance a portion of the costs to develop multi-family garden rental apartments in Miami-Dade County, Florida, to be known as Veranda Senior Apartments (the "Development").

## THE RULES FROM WHICH A WAIVER IS SOUGHT

3. Petitioner requests a waiver from 67-48.004(14), FAC 2009. Rule 6748.004(14) states, as follows:

(14) Notwithstanding any other provisions of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

- (i) Total number of units;

### STATUTES IMPLEMENTED BY THE RULE

4. Among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the Rule implements Section 420.5093, Florida Statutes, the Statute that created the HC Program.
5. The Corporation has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, FAC 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 application of the rule would (1) 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. Section 120.542(2), Florida Statutes.

### FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

8. The provisions of the foregoing Rule prohibit a change in the total number of units and a change in the funding request amount. For the reasons set forth below, compliance with the foregoing provisions of the aforementioned Rule

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes.

would give rise to substantial hardship to petitioner and would violate principles of fairness.

9. The Petitioner filed and submitted its Application with a qualified Exchange Funds allocation of Fourteen Million One Hundred Forty Four Thousand and Two Hundred Ten Dollars (\$14,144,210) and one hundred sixty eight (168) units in conjunction with its acquisition of the real property ("Property") on which the Development will be constructed.
10. On July 30, 2010, Petitioner received an Invitation to Credit Underwriting with an Exchange Funds allocation of Eight Million Three Hundred Twenty Five Thousand Seven Hundred Thirty Five Dollars (\$8,325,735.97) for a minimum of ninety nine (99) units.
11. The application of the Rule in these circumstances will create a substantial hardship for the Petitioner and would violate the principles of fairness if Petitioner is required to construct one hundred and sixty eight (168) units, since such requirement will not only cause Petitioner to incur significant economic and technological hardships from attempting to construct one hundred sixty eight (168) units with an Exchange Funds allocation which requires only ninety nine units, but would violate the principles of fairness if the amount of units constructed was not correspondingly reduced in proportion to the reduction in Exchange Funds being allocated to Petitioner.
12. Accordingly, if the Petitioner is not granted or if the Petitioner is unable to commence and complete the construction of the Development within the considerable time constraints that it faces, the Petitioner may be unable to construct the Development resulting in a loss of affordable housing units that would otherwise be available to lower income tenants.

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

13. In contrast, granting the requested waiver to the Rule will serve the purposes of the statute that the Rule implements. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was enacted to encourage private and public investment in housing for persons of low income. The Housing Tax Credit Program was created to stimulate creative private sector initiatives to increase the supply of affordable housing. By

granting this waiver and permitting Petitioner to make the requested Application change, the Corporation will permit the Development to be timely constructed and placed into service with ninety nine (99) units. Consequently, a grant of the requested waiver will further the Corporation's efforts to fulfill its goal of increasing the supply of affordable housing through private investment.

14. In light of the considerable time that it takes to develop and construct multifamily rental housing, FHFC's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.
15. As explained above, the project changes requested by Petitioner would have no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.

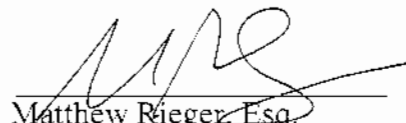
#### TYPE OF WAIVER

16. Petitioner's requested waiver is permanent in nature.

#### ACTION REQUESTED

17. Petitioner requests that the Corporation grant the requested waiver from Rule 67-48.004(14), PAC, permitting Petitioner to revise its Application to state that the Total Number of Units in the Development is ninety nine (99).
18. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 6th day of August, 2010

  
Matthew Rieger, Esq.  
Florida Bar No. 0520251

Matthew Rieger, Esq.  
Matthew Rieger, P.A.  
Counsel for Petitioner  
HTG Veranda Senior, Ltd.  
3225 Aviation Ave., Suite 602  
Coconut Grove, FL 33133  
Tel: (305) 856-4684  
Fax: (305) 856-1475