

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

MARTIN LAKESIDE APARTMENTS, LTD.  
Petitioner,

APPLICATION NOS. 2011-233C  
2013-015C

vs.

FHFC CASE NO.: 2013-031VW

FLORIDA HOUSING FINANCE CORP.,

Respondent.

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**PETITION FOR WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.004**

MARTIN LAKESIDE APARTMENTS, LTD. ("Martin Lakeside") ("Petitioner"), by and through their undersigned attorney, hereby petition the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-48.004, 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:

Martin Lakeside 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)

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

Kerey Carpenter  
AHG Group, LLC  
700 West 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 Housing Credits Program in the 2011 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Martin Lakeside's Application Numbers are: 2011-233C and 2013-015C (forward allocation number assigned by Florida Housing) (the "Application"). Martin Lakeside applied for Housing Credits to finance a portion of the costs to rehabilitate 25 units and construct 11 new units in a 36-unit multifamily rental apartment community located in Martin County, Florida, to be known as the Lakeside Apartments (the "Development").

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

4. Petitioner requests a waiver from Rule 67-48.004(14), as in effect for the 2011 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:

(14) Notwithstanding any other provision 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 attempt to make changes to these items will not be accepted. Those items are as follows:

\* \* \*

(i) Total number of units

\* \* \*

### **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 Housing Credits Program. Section 420.5093, Florida Statutes. The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the Housing Credit Program.

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 by the person. Section 120.542(2), Florida Statutes.

### **FACTS DEMONSTRATING ENTITLEMENT TO WAIVER**

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

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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.

8. The provisions of the aforementioned Rule prohibit a change in the “Total number of units”. Petitioner is seeking to reduce the total number of units from 36 to 32, but would increase the number of units preserved and rehabilitated from 25 to 32, resulting in a 100% Preservation Development with no new construction. This waiver is necessary because of the cost of construction increased substantially since the date of the Housing Credit allocation in 2011. Petitioner would expect a pro rata reduction in the Housing Credit allocation from \$436,043 to \$387,594 ( $32/36 \times \$436,043$ ). This modification would serve Florida Housing’s goal of promoting Preservation Developments.

9. In light of the considerable time that it takes to preserve and rehabilitate multifamily rental housing, Florida Housing’s statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. Florida Housing 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.

10. As explained above, the project changes requested by Petitioner result from the substantial increase in the cost of construction since the date of the Housing Credit Allocation in 2011, through no fault of Petitioner. Further, the proposed changes would have had no impact on scoring of the Application, thus providing Petitioner with no advantage over its competitors.

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

11. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5093, as well as the Housing Credit Program. The purpose of both the Statute and the 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 Housing Credit allocation in question will be used to fund a the preservation of an affordable multifamily rental housing community for which there is a desperate need in the Martin County, Florida.

12. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14), would be as follows. Unless the waiver is granted, Petitioner would not be able to utilize the Housing Credits for the preservation of Lakeside Apartments, a much needed affordable housing preservation development. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious.

13. By granting a waiver and permitting Petitioner to revise the total number units, 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, through preservation, in an economical and efficient manner.

**TYPE OF WAIVER**

14. The waiver being sought is permanent in nature.

**ACTION REQUESTED**

15. Petitioners request a waiver from Rule 67-48.004(14) to permit a change in the total number of units submitted in the Applications and with carryover documentation to the percentages set forth in Paragraph 8 above.

Respectfully submitted this 1<sup>st</sup> day of October, 2013.

  
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407-371-6126 (facsimile)  
[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 120, The Holland Building, Tallahassee, Florida 32399-1300.

  
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Kerey Carpenter