

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

THE VERANDAS OF PUNTA
GORDA, LLLP

Petitioner,

FHFC CASE NO. 2014- 089 VW
RFP Application No. 2014-402C

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER

The Verandas of Punta Gorda, LLLP ("Verandas"), hereby petitions The Florida Housing Finance Corporation ("Florida Housing") for a waiver of the Total Development Cost Limitation ("TDC") found in the Credit Underwriting Procedures Section of RFA 2014-106: For PHA Revitalization of Affordable Housing Developments. ("2014 PHA RFA or RFA") In support of this Petition Verandas provides as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Veranda's and its qualified representative for purposes of this Petition is:

Paula Rhodes
Norstar Development USA, LP
3269 Madaca Lane
Tampa, FL 33618
Telephone: (813) 933-0629
Facsimile: (813) 935-3420
Email: prhodes@primericagroupone.com

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2. For purpose of this Petition, the address, telephone number and facsimile number of Counsel for Verandas is:

Michael P. Donaldson
Carlton Fields Jordan Burt, P.A.
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: (850) 513-3613
Facsimile: (850) 222-0398
Email: mdonaldson@cfjblaw.com

B. THE DEVELOPMENT

3. On May 7, 2014, Verandas timely submitted its Application in response to the 2014 PHA RFA for a 60-unit concrete construction apartment development named The Verandas of Punta Gorda in Punta Gorda, Charlotte County, Florida. (The "Development"). The Verandas Development will be constructed on property owned by the Punta Gorda Housing Authority. Verandas received an allocation of Low-Income Housing Tax Credits for the Development and is currently in the Credit Underwriting process established by the 2014 PHA RFA and applicable Credit Underwriting Rules.

4. The syndication of Low-Income Housing Tax Credits, together with other loan sources, will provide funds for the construction of The Verandas of Punta Gorda.

5. The waiver requested herein will not adversely affect the proposed Verandas Development. However, a denial of this Petition (a) will result in substantial economic hardship to Verandas; (b) could deprive Charlotte County of essential, affordable housing units, and (c) would violate principles of fairness.

6. The waiver being sought is permanent in nature.

C. RFA PROVISIONS FROM WHICH WAIVER IS SOUGHT

7. Verandas requests a waiver from the Total Development Cost Limitation referenced in the 2014 PHA RFA. Specifically, Verandas is requesting a \$5,000 increase in the Total Development Cost per unit from the listed \$165,900.

8. The 2014 PHA RFA, in relevant part at Exhibit B, Part 8 provides:

Total Development Cost Per Unit Limitation:

The Corporation shall limit the Total Development Cost (TDC) per unit for all Developments categorized by the construction type of the units as indicated by the Applicant in the RFA. The maximum amounts are provided on the TDC Per Unit Limitation chart set out below (the maximum TDC per unit exclusive of land costs, applying any applicable TDC multiplier) and will be tested during the scoring of the RFA, during the credit underwriting process, and during the final allocation process, as outlined below:

These TDC Limitation amounts are effective from the Application Deadline through Final Cost Certification.

Total Development Cost Per Unit Base Limitation

Measure	New Construction Units	Rehabilitation Units
Maximum TDC Per Unit exclusive of Land Costs	\$165,900	\$138,900

D. STATUTES IMPLEMENTED BY THE RFA

9. The 2014 PHA RFA is implementing Chapter 420, F.S. which is the statute that designates Florida Housing as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits for the State of Florida. See Section 420.5099, Florida Statutes.

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

10. Verandas requests a waiver from the 2014 PHA RFA to allow for an increase in the TDC. As has become evident in the Credit Underwriting process unforeseen issues have increased the construction costs per unit for the Verandas Development. It is not uncommon for unforeseen events to occur after submission of an Application which cause an increase in construction costs.

11. Specifically, the land on which the Verandas Development will be constructed is owned by the Punta Gorda Housing Authority and, consequently, the Davis Bacon Act requires that labor be compensated in accordance with a Prevailing Wage Determination published annually the US Department of Labor and updated from time to time throughout the year. Prevailing Wages for a PHA construction project are those in effect at the time the construction contract is executed, creating budget issues due to increases in wage rates between application and execution of the construction contract.

12. Moreover when dealing with concrete construction costs routinely fluctuate. Indeed in other RFA's (issued prior to and after the 2014 PHA RFA) Florida Housing recognized the potential for increased construction costs for concrete development verses those using wood construction. In fact in RFA 2014-103, issued prior to the 214 PHA RFA, Florida Housing recognized that the difference between wood and concrete construction was more than \$20,000 per apartment unit. The same recognition is found in subsequently issued RFAs. This difference was not referenced in the 2014 PHA RFA and the TDC appears to be based solely on wood construction. The Verandas is concrete construction garden apartment building that will replace affordable housing units destroyed during Hurricane Charley.

13. Florida Housing has the authority to grant waivers to its requirements when strict application of the requirements 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 principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person.

14. A waiver of the 2014 PHA RFA's Total Development Cost Limitation 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.

15. By granting the waiver and permitting Verandas to exceed the Total Development Cost Limitation amount, Florida Housing would recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. This recognition would promote participation by developers such as Verandas in meeting the Act's purpose of providing affordable housing where it is desperately needed.

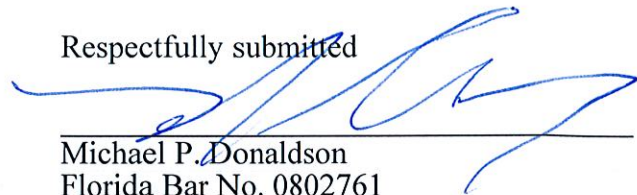
16. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

17. Petitioner requests the following:

- a) That Florida Housing grant Petitioner a waiver from the 2014 PHA RFA Total Development Cost Limitation and allow it to exceed the Total Development Cost Limitation.
- b) Grant the Petition and all of the relief requested therein;
and
- c) Grant such further relief as may be deemed appropriate.

Respectfully submitted



Michael P. Donaldson
Florida Bar No. 0802761

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Petition is being served by Hand-Delivery and electronic transmission for filing with the Corporation Clerk and Wellington Meffert, General Counsel for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300 this 21st day of November, 2014.



Michael P. Donaldson