

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MARTIN LAKESIDE APARTMENTS, LTD.

APPLICATION NOS. 2011-233C
 2013-015C

FHFC CASE NO.: 2014-075VW

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

MARTIN LAKESIDE APARTMENTS, LTD. ("Martin Lakeside") ("Petitioner"), by and through its undersigned attorney, hereby petitions 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)

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 Hammock at Stuart Villa Rentals f/k/a Lakeside Apartments (the "Development"). Florida Housing granted a Rule Waiver on or about November 1, 2013, changing the total number of units in the Development from 36 to 32 (FHFC Case No. 2013-031VW), with 23 of those units being rental assistance units. This Development originally applied for and was awarded Housing Credits with twenty-three of the units to be set-aside for those tenants receiving United States Department of Agriculture, Rural Development ("USDA RD" rental assistance. On or about June 14, 2014, Florida Housing granted a rule waiver to reduce the number of USDA RD rental assistance units from twenty-three to zero due to the discontinuation of the rental assistance program at the Development. (FHFC Case No. 2014-067VW). Petitioner is still required to set-aside twenty percent of the units for those individuals who are thirty-three percent or less of the area median income and set-aside eighty percent of the units for those individuals who make sixty percent or less of the area median income.

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from the portion of Rule 67-48.004 that adopts and incorporates by reference the Fee section of the Universal Application Instructions of the

Universal Application Package or UA 1016 (Rev. 2-11). The relevant portions of the Rule are as follows:

67-48.004 Application and Selection Procedures for Developments.

- (1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.
 - (a) The Universal Application Package or UA1016 (Rev. 2-11) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's Website under the 2011 Universal Application link labeled Instructions and Application or from <http://www.org/Gateway/reference.asp?No=Ref-00703>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME and HC Program(s).

Universal Application Package, Instructions, Fees Section, Compliance Monitoring Fees:

The following fees are not the fees that will be charged, but are listed for estimation purposes of completing your pro forma in the Application. The actual fees will be determined based on the current contract and any addendum for services between Florida Housing Finance Corporation and the Compliance Monitor(s).

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b. HC:

- (1) Pre-final allocation compliance monitoring fee of \$4,776 + \$9.00 per set-aside unit, to be collected as stated in the Preliminary Housing Credit Allocation, Carryover Allocation Agreement or Binding Commitment; and
- (2) Annual Compliance monitoring fee –
 - (a) All Developments other than RD - \$1,776 + \$9.00 per set-aside unit, for the full Housing Credit Extended Use Period collected at final allocation based on a quarterly payment stream discounted at a rate of 2 percent.
 - (b) RD Developments - \$450 per Development for the full Housing Credit Extended Use Period collected at final allocation based on a quarterly payment stream discounted at a rate of 2 percent.

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STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, 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 Petitioner and would violate principles of fairness.

8. At the time that Petitioner submitted its Application for this (formerly) USDA RD Development, the Annual Compliance monitoring fees listed in the Universal Application

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

Instructions was \$450 per Development for the full Housing Credit Extended Use Period. As noted above, the USDA discontinued the RD rental assistance program for this Development through no fault of Petitioner and Florida Housing granted a rule waiver recognizing the discontinuation. The Annual Compliance monitoring fees listed in the Universal Application for all other developments was \$1,776 - \$9.00 per set-aside unit. Just days after the Application was submitted, Florida Housing entered into new contracts for services with the Compliance Monitors. The new compliance monitoring contracts adversely affect small developments with less than set-aside 50 units, with the new fees increasing from an estimated \$65,000 to an actual fee of \$187,231. The new fees of \$187,231 hit this small Development with only 32 set-aside units particularly hard since this was originally a USDA RD development subject to an estimated compliance monitoring fee of just \$450 per development. For this reason, Petitioner is requesting that Florida Housing grant this Petition for Rule Waiver and to apply the Compliance Monitoring Fees as estimated in the 2011 Universal Application Instructions for RD Developments or in the alternative, as estimated in the 2011 Universal Application Instructions for all 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.

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. Unless the waiver is granted, Petitioner would be required to pay the new contract fees in the amount of \$187,231.00. Not only does this compliance monitoring fee far exceed the amount that Petitioner and Florida Housing estimated at the time of Application submission, but this fee would result in unfairness and substantial hardship to Petitioner in the preservation of this small Development. Granting the rule waiver would avoid unreasonable, unfair and unintended consequences in this particular instance.

13. By granting a waiver to apply the Compliance Monitoring Fees as estimated in the 2011 Universal Application Instructions, 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. Petitioner requests a waiver from Rule 67-48.004 and to instead apply the Compliance Monitoring Fees as estimated in the 2011 Universal Application Instructions for RD

Developments or in the alternative, as estimated in the 2011 Universal Application Instructions for all developments, rather than the actual fees in the new contracts with the Compliance Monitors.

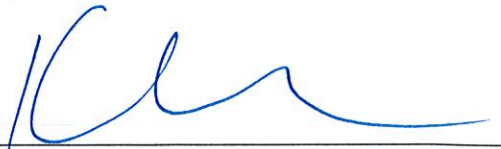
Respectfully submitted this 13th day of October, 2014.



Kerey Carpenter
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700 W. Morse Blvd., Suite 220
Winter Park, FL 32789
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407-371-6126 (facsimile)
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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.



Kerey Carpenter