

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: COLONIAL LAKES
APARTMENTS, LTD., et al.

FHFC Case No.: 2011-016VW

**ORDER GRANTING PETITION OF WAIVER
OF RULES 67-48.027(2)(m) AND 67-48.0072(10), FLORIDA
ADMINISTRATIVE CODE (2009)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 14, 2011, pursuant to a “Petition for Waiver of Rules 67-48.027 and 67-48.0072(10), Florida Administrative Code” (the “Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on September 14, 2011, from Colonial Lakes Apartments Ltd., a Florida limited partnership, and TRG Member of FL I, LLC, a Florida limited liability company (collectively, the “Petitioners”). On September 23, 2011, Notice of the Petition was published in Volume 37, Number 38, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Harvey / DATE: 10/14/2011

advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioners intend to apply for 4% Non-Competitive Low Income Housing Tax Credits to finance, in part, the development and construction of Colonial Lakes Apartments (the “Development”) in Palm Beach County, Florida. The Development has already received commitments for funding in the form of local housing finance authority bonds and Neighborhood Stabilization Program 2 (NSP2) funding.

3. Rule 67-48.027(2)(m), F.A.C. (2009) provides, in pertinent part:

(2) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the IRC, seeking to obtain Housing Credits from the Treasury receiving the bonds from the Corporation prior to calendar year 2000 or receiving bonds from another source other than the Corporation, and not competing for Housing Credits under the state of Florida Allocation Authority shall:

(m) After bonds are issued to the Development make Application to the Corporation as required in Rule 67-48.004 and 67-48.0072, F.A.C. Applicant shall submit its Application completed in accordance with the Universal Application Package instructions for receipt by the Corporation no later than July 1 of the year the Development is placed in service...

4. Petitioners request a waiver of the above Rule provision which requires that Applicants seeking 4% Non-Competitive Housing Credits from Florida Housing must wait to apply until after associated bonds are issued.

5. Petitioners have received funding commitments from the Palm Beach County Housing Finance Authority and loan proceeds of federal NSP2 funds. Petitioners are required to close on the NSP2 funding no later than October 30, 2011, and 50% of the funding must be expended no later than December 15, 2011.

6. Petitioners are eligible for an allocation of 4% Housing Credits from Florida Housing, but per the Rule above cannot apply for such until the local bonds are actually issued.

7. Petitioners' application has been delayed through no fault of Petitioners by the rule challenges to the 2011 Universal Cycle Rules, and Petitioners now seek a rule waiver to permit them to apply for 4% credits prior to receiving their local bonds.

8. The Board finds that the delay caused by the application of this Rule in conjunction with the delay caused by the proposed rule challenges creates a substantial financial hardship and could result in its inability to complete the Development, and would violate the principles of fairness.

9. Florida Housing, in its proposed 2011 amendments to Rule 67-48.027, F.A.C., removes the prohibition of Rule 67-48.027(2)(m) to allow other applicants situated as is Petitioner to apply without first having closed on their bonds.

10. Petitioners also seek a waiver of Rule 67-48.0072(10), Florida Administrative Code, which states in pertinent part:

(10) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed property's financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit Syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a SAIL or HOME loan, a Housing Credit Allocation, or a combined SAIL loan and Housing Credit Allocation or Housing Credit Allocation and HOME loan. The Credit Underwriter must review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction

set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have an average occupancy rate of 90 percent or greater.

11. Petitioners seek a waiver of the provisions of this 2009 Rule which require a Credit Underwriter to review and determine whether the proposed Development would have a negative impact on any Guarantee Fund developments within five (5) miles or the Primary Market Area, whichever is greater.

12. Florida Housing is now in the process of revising the criteria for allocating 4% Housing Credits, and has included these new criteria in its draft 2011 Universal Cycle Instructions (which are incorporated into the proposed 2011 Rules). Essentially, Petitioners request that the new 2011 criteria be applied to its proposed Development rather than the obsolete 2009 provisions.

13. But for the delay caused by the unrelated Rule challenges, Petitioners would be subject to the new 2011 provisions.

14. The Board finds therefore that as a result of these circumstances beyond Petitioners' control, they will suffer substantial hardship and that the application of the obsolete Rule would violate the principles of fairness.

15. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

16. Under these circumstances, the Board finds that strict application of the aforementioned Rules may impair the Development's financial viability absent earlier confirmation that the 4% Housing Credits will be awarded. Additionally, under the obsolete 2009 Rule provisions Petitioners may not be able to complete the required credit underwriting process by the October 20, 2011, deadline imposed by the NSP2 program.

17. Moreover, the Board finds that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

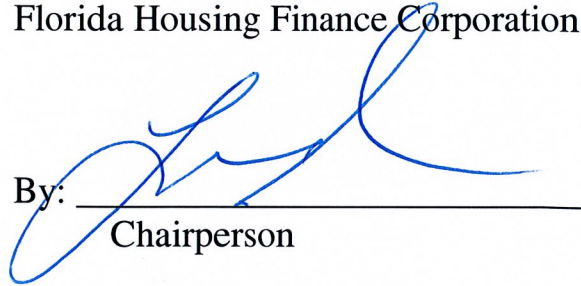
a) That Petitioners' request for a waiver of Rule 67-48.027(2)(m), F.A.C., of the restriction of submitting an application by Petitioner to Florida Housing for 4 percent credits until after tax exempt bonds have been issued to the Development is **GRANTED**; and,

b) That Petitioners' request for a waiver of Rule 67-48.0072(10), Florida Administrative Code, is also **GRANTED** in that the Development shall be subject to the new criteria set forth in Florida Housing's proposed 2011 Universal Cycle Instructions (June 2, 2011 draft) as they pertain to 4% Housing Credit County HFA Bonds Applications.

DONE and ORDERED this 14th day of October, 2011.



Florida Housing Finance Corporation

By:  _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
680 Pepper Building
111 West Madison Street
Tallahassee, Florida 32399

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.