

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

GULF BREEZE APARTMENTS PARTNERS, LTD.

Petitioner,

vs.

CASE NO.: 2006-0411W

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67ER05-10(14) AND PART II.A.2.b. AND PART II.B.1 OF THE RENTAL RECOVERY LOAN (RRLP) APPLICATION INSTRUCTIONS FOR A CHANGE IN THE IDENTITY OF PETITIONER'S DEVELOPER AND PETITIONER'S OWNERSHIP STRUCTURE

Petitioner Gulf Breeze Apartments Partners, Ltd. ("Petitioner") hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changes in the identity of an applicant's developer and an applicant's ownership structure. See Rule 67ER05-10(14) (the "Developer Rule") and Part II.A.2.b and Part II.B.1, Rental Recovery Loan Program (RRLP) Application Instructions (the "RRLP Application Instructions").

In support of its petition, Petitioner states:

1. The name, address, telephone number, facsimile number, e-mail address and federal employer identification number of Petitioner are:

Gulf Breeze Apartments Partners, Ltd.
c/o Norstar Gulf Breeze, Inc.
200 South Division Street
Buffalo, New York, 14204
(716) 847-1098
(716) 847-1668
rick@nstar.com
20-2207132

8. Subsequent to Petitioner filing its Application, the Authority and its affiliates and the Sandspur Developer Entity and its affiliates terminated their relations pursuant to a mediated settlement agreement dated January 27, 2006. As a result of the mediated settlement agreement, the Sandspur Developer Entity and the Sandspur GP Entity are no longer involved with the Development. Further, the Sandspur GP Entity assigned all of its interest in Petitioner to the Authority GP Entity.

9. On May 18, 2006, the Authority and Norstar Development USA, L.P., a Texas limited partnership (the "Norstar Developer Entity"), entered into a Master Development Agreement, which provides for the Authority and the Norstar Developer Entity to serve as co-developers of the Development, and for Norstar's affiliate, Norstar Gulf Breeze, Inc., a Florida corporation (the "Norstar GP Entity"), to serve as the managing general partner of Petitioner. Thereafter, the Authority intends to assign its role as a co-developer of the Development to a wholly-owned affiliated entity (the "Authority Developer Entity").

10. Petitioner has attached hereto copies of the executed Developer Certification Forms for the Authority Developer Entity and the Norstar Developer Entity as Exhibit 1. Further, to verify the required experience of the Norstar Developer Entity, Petitioner has attached hereto a Prior Experience Chart for the Norstar Developer Entity as Exhibit 2.

11. As a result of the withdrawal of the Sandspur GP Entity and the admission of the Norstar GP Entity, the Norstar GP Entity will own a 0.0051% general partner interest, and the Authority GP will own a 0.0049% general partner interest; in other words, the Norstar GP Entity will succeed to the 0.0051% general partner interest formerly held by the Sandspur GP Entity. Further, the Norstar GP Entity will serve as the managing general partner of Petitioner.

12. Accordingly, Petitioner seeks to (i) remove the Sandspur Developer Entity, as the sole Developer, and substitute the Authority Developer Entity and the Norstar Developer Entity for purposes of the Application and all other purposes as Petitioner's co-Developers; and (ii) remove the Sandspur GP Entity, as a co-General Partner, and substitute the Authority GP Entity and the Norstar GP Entity for purposes of the Application and all other purposes as Petitioner's co-General Partners.

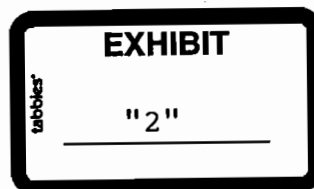
13. Consequently, a waiver of the applicable Rule and RRLP Application Instructions is necessary to change the identification of Petitioner's Developer and to change Petitioner's ownership structure.

14. The prohibition on changing the identity of an Applicant's Developer (as the term is used in the Developer Rule and the Universal Application Instructions) is found in Rule 67ER05-14(b) F.A.C., which provides that:

(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.

Exhibit 10 – Developer Experience Chart

Name of Developer or Principal of Developer: Norstar Development USA, L.P.			
Name of Development	Location (City & State)	Affordable Housing Program that Provided Financing	Total Number of Units
Lakeview HOPE VI Phase III	Buffalo, New York	LIHC (9%), HTF, RHF, Public Housing Subsidies, HOME Funds	61
The Ellicott Town Center	Buffalo, New York	HUD Section 108 Loan, Block Grants, HOME Funds, HTF, LIHC (9%)	257 – Rental Units 48 - Townhomes 24 – Senior Homes
Frederick Douglass Towers	Buffalo, New York	Modernization Funds, LIHC (4%), Tax-exempt Bonds, CDGB and HOME, Capital Budget and Operating Subsidy Funds	132 – Townhomes 112 – Senior Units Community Center
Pondview Homes	North Hempstead, New York	Modernization Funds, LIHC (4%), Operating Subsidies, HOME, FHLB Grant	52
Laurel Homes	North Hempstead, New York	Modernization Funds, LIHC (4%), Operating Subsidies, HOME, FHLB Grant	66
Pathfinder Courts	Fulton, New York	Modernization Funds, LIHC (4%), Tax-exempt Financing, FHLB	136
Eastwood Homes	Syracuse, New York	Modernization Funds, LIHC (9%)	134
Ash Lane Apartments	Eules, Texas	Tax Credits / Conventional Loans	250
Fountains of Rosemeade	Dallas, Texas	Tax Credits / Conventional Loans	382
Lakes of El Dorado	McKinney, Texas	Tax Credits / Conventional Loans	220



Any attempted changes to these items will not be accepted. Those items are as follows:

...

(b) Identity of each Developer, including all co-Developers;

15. Rule 67ER05-10(1)(a) adopts the "RRLP Application Package" and its contents (including the RRLP Application Instructions) and incorporates them by reference into the foregoing Rule. Part IIA.2.b. of the 2005 RRLP Application Instructions provides as follows:

...The Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

16. The Rule is implementing, among other things:

The procedures by which the Corporation shall administer the Application process, determine loan amounts, make and service mortgage loans for the construction or Substantial Rehabilitation of affordable rental units utilizing RRLP funds, authorized by Ch. 2005-92, L.O.F.

Rule 67ER05-8, F.A.C.

17. The facts stated in Paragraphs 4 through 13 above demonstrate the circumstances that justify the waivers to change the identification of Petitioner's Developer and Petitioner's change of ownership.

18. The requested waiver to change the identification of Petitioner's Developer will not adversely impact the Development or the Corporation or be prejudicial to the Development or to the market to be served by the Development, because the Authority Developer Entity and the Norstar Developer Entity together have (and the Norstar Developer Entity alone has) the required experience to serve as co-Developers of the Development. However, the denial of the requested waiver will create a substantial hardship for Petitioner, arising from a difference in the management philosophies of the Sandspur Developer Entity, on the one hand, and the Authority and the Authority Developer Entity, on the other hand, which Petitioner believes will result in unnecessary delay and expense and make it impossible to complete the Development on time and within budget.

19. The requested waiver to change Petitioner's ownership structure will not adversely impact the Development or the Corporation. However, the denial of the requested waiver will create a substantial hardship for Petitioner, arising from a difference in the management philosophies of the Sandspur GP Entity and the Authority GP Entity, which

Petitioner believes will result in unnecessary delay and expense and make it impossible to complete the Development on time and within budget.

20. Further, the requested Rule and RRLP Application Instructions waivers to change Petitioner's Developer and Petitioner's ownership structure will further the Authority's public purpose of providing low-income housing for the residents of the City of Punta Gorda, Florida and the Corporation's purpose of ensuring the maximum use of available loan proceeds in order to encourage development of affordable rental units in urban areas.

21. The waivers being sought are permanent in nature.

22. Should the Corporation require additional information, Petitioner is available to answer any questions and to provide any additional information necessary for consideration of this petition.

WHEREFORE, Petitioner Gulf Breeze Apartments Partners, Ltd. respectfully requests that the Corporation:

A. Consider this Petition in conjunction with Petitioner's Application;

B. Grant this Petition and all the relief requested herein;

C. Waive the prohibition on changing the identity of Petitioner's Developer and Petitioner's ownership structure by: (i) allowing the removal of the Sandspur Developer Entity, as the sole Developer, and substitution of the Authority Developer Entity and the Norstar Developer Entity for purposes of the Application and all other purposes as Petitioner's co-Developers; and (ii) allowing the removal of the Sandspur GP Entity, as a co-General Partner, as identified in the Application, and the admission of the Norstar GP Entity as a co-General Partner, and substituting the Authority GP Entity and the Norstar GP Entity for purposes of the Application and all other purposes as Petitioner's co-General Partners; and

D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

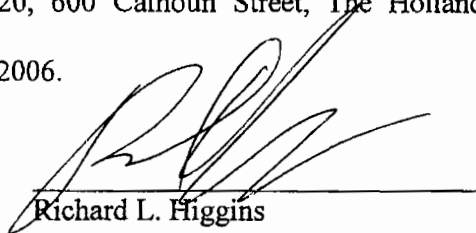
GULF BREEZE APARTMENTS PARTNERS,
LTD., a Florida limited partnership

By: Norstar Gulf Breeze, Inc., a Florida
corporation, its managing general partner

By: 
Richard L. Higgins, Vice President

CERTIFICATE OF SERVICE

The Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, on July ²¹ [REDACTED], 2006.



Richard L. Higgins

**2006 RRLP - DEVELOPER OR PRINCIPAL OF DEVELOPER
CERTIFICATION**

Name of Development: Gulf Breezs Apartments, Punta Gorda

Name of Developer: Norstar Development USA, L.P.

Name of principal of Developer, if applicable: Richard L. Higgins, President

Address of Developer: 200 South Division Street
Buffalo, New York 14204

Telephone No. of Developer: (716) 847-1098


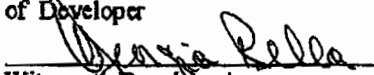
Fax No. of Developer: (716) 847-1668

E-Mail Address (if available): rick@nstar.com

The managing general partner and the developer are affiliated and commonly owned.

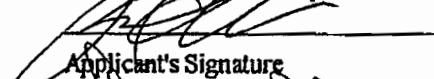
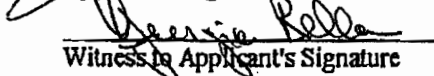
Relationship to Applicant: _____

As the Developer or principal of the Developer of the referenced Development, I certify that I have the requisite skills, experience and credit worthiness to successfully produce the units proposed by this Application. I further certify that the design, plans, and specifications for the proposed Development will comply with all federal, state and local requirements and the requirements of the Federal Fair Housing Act as implemented by 24 CFR 100, Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR 35, incorporating the most recent amendments and other legislation, regulations, rules, and other related requirements which apply or could apply to the proposed Development. I have developed and completed; i.e., the certificate of occupancy has been issued for at least one building, at least two affordable rental housing developments, at least one of which consists of a total number of units no less than 50 percent of the total number of units in the Development proposed by this Application, as evidenced by the prior experience chart provided in this Application. I understand I am the Developer or principal of the Developer of record for this Development and that, if funded by the Corporation, I will remain in this capacity until the Development has been completed. I certify that neither the Developer, Applicant, any Principal or Financial Beneficiary has any existing Developments participating in Corporation programs that remain in non-compliance with the IRC, applicable rule chapter, or applicable loan documents and for which any applicable cure period granted for correcting such non-compliance has ended. I further certify that the information provided within this Application is true and correct.

	<u>7/19/06</u>	<u>Richard L. Higgins</u>
Signature of Developer or principal of Developer	Date (mm/dd/yyyy)	Print or Type Name of Signatory
	<u>7/19/06</u>	<u>Georgia Rella</u>
Witness to Developer's or principal of Developer's Signature	Date (mm/dd/yyyy)	Print or Type Name of Signatory

APPLICANT'S CERTIFICATION

I certify that the Developer identified above will serve as the Developer of the proposed Development.

	<u>7/19/06</u>	<u>Richard L. Higgins</u>
Applicant's Signature	Date (mm/dd/yyyy)	Print or Type Name of Signatory
	<u>7/19/06</u>	<u>Georgia Rella</u>
Witness to Applicant's Signature	Date (mm/dd/yyyy)	Print or Type Name of Signatory

If this certification contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold and will be rejected. The certification may be photocopied.

