

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: WINCHESTER GARDENS PRESERVATION, LP.

FHFC Case No.: 2011-008VW

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**ORDER GRANTING WAIVER OF RULE 9I-40.100(2)(a) and (3),  
FLORIDA ADMINISTRATIVE CODE,**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on June 10, 2011, pursuant to a "Petition for Waiver of Rules 9I-40.100(2)(a) and (3), F.A.C." (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on May 18, 2011, from Winchester Gardens Preservation, LP, ("Petitioner"). On May 27, 2011, Florida Housing published the Notice of the Petition in Volume 37, Number 21, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petitions. After careful review of the record and being otherwise fully 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. In 1995, Florida Housing awarded a HOME loan in the amount of \$1,450,000.00 and an allocation of Low Income Housing Tax Credits in the

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Della Ann Harrill* / DATE: 6/13/11

amount of \$2,638,767 to Winchester Garden, Ltd. (“Winchester”), under the HOME Investment Partnership Program (Disaster Relief) to finance the acquisition and rehabilitation of Winchester Gardens Apartments, a 117 unit multi-family rental apartment (the “Development”) located in Miami-Dade County.

3. Petitioner has contracted with Winchester to purchase the Development from Winchester. Funding for the acquisition is to be comprised of equity raised through anticipated syndication of tax credits allocated to Petitioner, \$6,500,000 in first mortgage tax exempt bond financing funding through Florida Housing’s New Issue Bond Program (“NIBP”), and assumption of the HOME loan.

4. Oak Grove Capital (“Oak Grove”) is the underwriter for the Freddie Mac Bond Credit Enhancement, in connection with the issuance of the bonds under the NIBP.

5. Petitioner requested a waiver of Rule F.A.C. 9I-40.100(2)(a) and(3), Fla.Admin.Code. Rule 9I-40.100(2)(a), Fla. Admin. Code (1994) states in pertinent part:

(2) The annual interest rate will be determined by the type of applicant as follows:

(a) For all Rental Projects:

1. All for-profit applicants will receive a three percent interest rate loan for their project.

2. All non-profit applicants will receive a zero percent interest rate loan for their project.

3. All applicants consisting of a non-profit and for-profit partnership will receive a zero percent loan on the portion of the loan amount equal to the non-profit's interest in the entity and a three percent loan on the portion of the loan amount equal to the for-profit's interest in the entity.

Rule 9I-40.100(3), Fla. Admin. Code (1994) states in pertinent part:

(3) The loans shall be non-amortizing and repayment of principal shall be deferred until maturity. Interest payments, where applicable, on the mortgage will be due to the servicer on the thirtieth day of each June, of each year.

6. Petitioner requested a waiver of the above provisions. Specifically, Petitioner requested that the interest rate of 2.7% per annum that it is currently being charged be modified to allow the annual 3.0% interest only payments on the HOME loan be made from Development Cash Flow as allowed under the terms of RFP 2009-06, "Financing of Multifamily Housing Properties with HOME Funds in conjunction with Multifamily Mortgage Revenue Bonds (MMRB)."

7. 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.

8. Under these circumstances, strict application of the above Rule to this Petitioner would create a substantial hardship or violate the principals of fairness. Petitioner demonstrated that the waiver is necessary, as Oak Grove notified Petitioner that without modification of the terms of the existing HOME loan to

allow debt service payments be made subject to Development Cash Flow, the Development will be unable to support the amount of senior debt needed to acquire and rehabilitate it in a financially feasible manner. The requested waiver will provide Petitioner with similar terms and conditions available to developers receiving new HOME loans under Florida Housing's RFP 2009-06.

9. Petitioner demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, in that it will not be able to complete the sale of the Development to Petitioner, resulting in significant economic hardship to the Development. Petitioner has further demonstrated that permitting this change in Development would also serve the underlying purpose of the statute, to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

The relief requested in the Petition is hereby **GRANTED** to the following extent: the interest rate is 3.00% per annum interest only payments on the HOME loan subject to Development Cash Flow, in accordance to the terms of RFP 2009-06.

DONE and ORDERED this 10<sup>th</sup> day of June, 2011.



Florida Housing Finance Corporation

By:

Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
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**NOTICE OF RIGHTS**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO PROCEEDINGS 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**