

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2011 - 016VW

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In re: Request for rule waivers by  
COLONIAL LAKES APARTMENTS, LTD., a  
Florida limited partnership; COLONIAL LAKES  
APARTMENTS GP, LLC, a Florida limited  
liability company, and TRG MEMBER OF FL  
I, LLC, a Florida limited liability company,

Petitioners,

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**PETITION FOR WAIVER OF RULES 67-48.027 AND 67.48.0072(10),  
FLORIDA ADMINISTRATIVE CODE**

Petitioners, COLONIAL LAKES APARTMENTS, LTD., a Florida limited partnership;  
COLONIAL LAKES APARTMENTS GP, LLC, a Florida limited liability company, and TRG  
MEMBER OF FL I, LLC, a Florida limited liability company (collectively "Colonial Lakes"), by  
and through undersigned counsel, hereby submit this petition to Florida Housing Finance  
Corporation ("Florida Housing") requesting a waiver of the restriction on submitting an  
Application (as defined in Rule 67-48.002(9), Fla. Admin. Code) to Florida Housing, pursuant to  
Rules 67-48.004 and 67-48.0072, Fla. Admin. Code, until after tax exempt bonds have been  
issued to a development. *See*, Rule 67-48.027(m), Fla. Admin. Code. (the "Rule"). In addition,  
Colonial Lakes seeks a waiver of the requirement in Rule 67-48.0072(10), Fla. Admin. Code,  
that requires the Credit Underwriter to review and determine whether there will be a negative  
impact to Guarantee Fund Developments within the primary market area or within five miles of  
the proposed Development. In support of this Petition, Colonial Lakes states:

1. Pursuant to section 120.542, Fla. Stat., and Rule 28-104.002, Fla. Admin. Code, Colonial Lakes requests a waiver of the Rule which prohibits submitting an Application to Florida Housing, under Rules 67-48.004 and 67-48.0072, Fla. Admin. Code, for non-competitive 4% Housing Credits (as defined in Rule 67.48.002(61)) until after tax exempt local government bonds have been issued to the development.

2. Colonial Lakes requests the waiver in order to submit its Application for 4% Housing Credits prior to the time the Bonds are issued. In addition, Colonial Lakes seeks a waiver of obsolete provisions in Rule 67-48.0072(10), Fla. Admin. Code (the "Credit Underwriting Rule"), which would require an assessment by the Credit Underwriter of impact the proposed development may have on Guarantee Fund Developments in the primary market area or within five miles of the development. Florida Housing has already initiated rulemaking to modify the requirements of the Credit Underwriting Rule as it relates to 4% Housing Credits. The proposed modifications to the Credit Underwriting Rule would only require review of impact on Guarantee Fund Developments if the proposed development site is within 2.5 miles of an existing Guarantee Fund Development. There is no Guarantee Fund Development within 2.5 miles of the Colonial Lakes site. The proposed new provisions to be included in the Credit Underwriting Rule were developed for the purposes of the 2012 Universal Cycle Application, but final adoption has been delayed as a result of challenges to non-related provisions of the 2012 Universal Cycle rule. Unless the requested rule waivers are granted, Colonial Lakes may be delayed in obtaining approval for the Housing Credits needed to finance its proposed project and the local government bonds and federal financing for the Colonial Lakes development could be jeopardized.

**A. THE PETITIONER**

3. The name, address, telephone and facsimile numbers for Colonial Lakes are: c/o The Richman Group of Florida, Inc., 477 South Rosemary Avenue, Suite 301, West Palm Beach, Florida 33401, telephone number: 561-832-1114, facsimile number: 561-832-1104. For purposes of this Petition, all pleadings and correspondence should be directed to Petitioner's attorney whose address, telephone and facsimile numbers are:

J. Stephen Menton, Esquire  
Rutledge, Ecenia & Purnell, P.A.  
119 South Monroe Street, Suite 202  
Tallahassee, FL 32301  
Telephone: 850-681-6788  
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**B. THE DEVELOPMENT AND FUNDING**

4. Colonial Lakes has received commitments from various funding sources to be used for the development and construction of Colonial Lakes Apartments (the "Development"), a proposed multi-family apartment development intended to serve low income families in West Palm Beach, Palm Beach County, Florida.

5. The Development has been allocated local government bonds from the Palm Beach County Housing Finance Authority (the "Housing Authority") in the amount of \$6,800,000. In addition, the Development has received federal NSP 2 funding in the amount of \$5,846,934. Colonial Lakes is required to close the NSP 2 funding by no later than October 30, 2011 and 50% of the funding must be expended by no later than December 15, 2011. As a result of the federal and local government financing commitments, Colonial Lakes is eligible for an allocation of 4% Housing Credits from Florida Housing in the amount of \$4,790,217.

6. Under Florida Housing's existing rules which were adopted for purposes of the 2009 Universal Cycle Application process, applicants seeking an award of 4% Housing Credits cannot file an application with Florida Housing for 4% Housing Credits until after the tax exempt bonds have been issued to the Development. In addition, an applicant for 4% Housing Credits is required to undergo a Credit Underwriting review pursuant to Rule 67-48.0072, Fla. Admin. Code. Subsection (10) of that rule requires a review and determination of whether there will be a negative impact to Guarantee Fund Developments within the primary market area or within five miles of the proposed development, whichever is greater.

7. Florida Housing is in the process of rulemaking to adopt new requirements and standards for allocating 4% Housing Credits to developments that have secured local government bond financing. Under the proposed new rules, an expedited "mini-application" process will be established for 4% Housing Credits. In addition, the credit underwriting report for developments seeking an allocation of 4% tax credits would only be required to review and determine impact on Guarantee Fund Developments that are within 2.5 miles of the site of the proposed new development. Final adoption of the new provisions has been delayed as a result of challenges to unrelated provisions in the 2012 Universal Cycle form and instructions in DOAH Case Nos. 11-003971RP and 11-003962RP. The delay in final adoption of the proposed new rules potentially jeopardizes Colonial Lakes' ability to close on the local bonds from the Housing Authority and the NSP 2 funding. Without an allocation of 4% Housing Credits, the Colonial Lakes Development will not be financially feasible and the local government bonds and federal funding committed to the project could be lost.

8. The Rule waivers requested through this Petition will enable Colonial Lakes to provide desperately needed affordable housing for low income families in West Palm Beach.

Without the requested waivers, (a) Colonial Lakes will suffer substantial hardship; (b) Palm Beach County will be deprived of additional and essential affordable housing units in a timely manner; and (c) Colonial Lakes could be unfairly required to meet the requirements of existing rule provisions that are already in the process of being modified and/or repealed. These factors satisfy the requirements of section 120.542(2), Fla. Stat. (2010). Should the waivers be denied, Colonial Lakes may be unable to deliver additional low-income housing units to a market in desperate need of quality affordable housing.

9. The requested Rule waivers are permanent in nature.

C. **THE RULES FROM WHICH RELIEF IS REQUESTED AND THE STATUTE IMPLEMENTING THE RULES**

10. Rule 67-48.027(m) provides, in pertinent part, that a party seeking an allocation of Housing Credits in connection with bonds issued to it by a local housing finance authority such as the Housing Authority must proceed as follows:

After bonds are issued to the Development, [the Developer shall] make Application to the Corporation, as required in Rules 67-48.004 and 67-48.0072, F.A.C.

Rule 67-48.027(m), F.A.C.

11. The Florida Housing Finance Corporation Act<sup>1</sup> 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"). See, sections 420.5099(1) and (2), Fla. Stat. (2010). The Allocation Procedures are established by rule in Chapter 67, Fla. Admin. Code.

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in sections 420.501 through 420.516 of the Florida Statutes (the "Act"). See also, Rule 67.40.020(1), Fla. Admin. Code. ("Act" means the Florida Housing Finance Corporation Act, sections 420.501 through 420.516 of the Florida Statutes").

Accordingly, the rules subject to Colonial Lakes' waiver requests are implementing, among other sections of the Act, Florida Housing's statutory authorization to establish Allocation Procedures for the tax credit program. Sections 420.5099(1) and (2), Fla. Stat. (2010).

**D. JUSTIFICATION FOR COLONIAL LAKES' REQUESTED WAIVERS**

12. Under section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing has the authority to grant waivers to its rule requirements when strict applications of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness,<sup>2</sup> and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Fla. Stat. (2010).

13. In this instance, Colonial Lakes meets the standards for Rule waivers.

14. Florida Housing has previously granted a waiver of Rule 67-48.027, Fla. Admin. Code, to Westgate Plaza Apartments, Ltd. ("Westgate"), FHFC Case No. 2011-009VW. In granting a waiver to Westgate, Florida Housing recognized the financial hardship that would be imposed if a developer was required to wait until after tax exempt bonds have been issued in order to apply for 4% Housing Credits. Colonial Lakes is in a similar position to Westgate and is entitled to the same relief.

15. The requested waivers would enable Colonial Lakes to submit an application for 4% Housing Credits prior to the closing of the local government bonds. The Housing Authority's commitment to issue the bonds is firm, as is the federal NSP 2 financing, provided

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<sup>2</sup> "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Colonial Lakes will suffer a substantial hardship if it is not able to confirm the availability of 4% Housing Credits prior to October 30, 2011. "Principles of Fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule. Section 120.542(2), Fla. Stat. (2010).

closing can occur before October 30, 2011. Here, it would be unfair to deprive Colonial Lakes of the benefit of the rule modifications that have been held up by unrelated challenges. However, in order for the project to be financially viable, Colonial Lakes needs confirmation that the 4% Housing Credits will be awarded. Because of the delay in final adoption of the “mini application” provisions and the revisions to the Credit Underwriting Rule because of challenges to unrelated portions of the proposed rules for the 2012 Universal Cycle process, Colonial Lakes has not been able to submit the “mini-application” that is slated for adoption and would have to proceed under the obsolete Credit Underwriting Rules. As a result, Colonial Lakes could potentially be unable to obtain a final credit underwriting report prior to October 30 deadline. The requested waivers are necessary in order to ensure that all components of the financing are available so that construction of the Development can proceed and thereby provide essential affordable housing to the citizens of Palm Beach County, Florida.

16. Without the Rule waivers, Colonial Lakes may be unable to obtain adequate financing to proceed with its Development and the federal NSP 2 funds and local government bonding authority may be lost.

**E. CONCLUSION**

17. Controlling statutes and Florida Housing’s Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. Section 120.542(2), Fla. Stat. (2010).

18. The requested waivers will not adversely impact the Development or Florida Housing. The waivers will preserve the financing commitments from the Housing Authority and the federal government and will enable affordable housing units to be constructed for families in Palm Beach County, Florida. Denial of the requested waivers could result in a substantial hardship for Colonial Lakes which could lose the local government and NSP 2 funding and thus be unable to provide decent, safe and affordable housing units to a market in desperate need of low income housing.

19. Granting the requested waivers would be consistent with the purposes and goals of the underlying statute and would recognize the economic realities and principles of fundamental fairness in developing affordable residential housing through the use of multiple financing sources. The waivers would encourage the development of affordable housing projects and enable Colonial Lakes to meet the needs of low-income families in dire need of affordable and safe housing and social services. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act, through new construction and in an economical and efficient manner.

20. If necessary, Colonial Lakes is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.027(m) and Rule 67-48.0072(10).

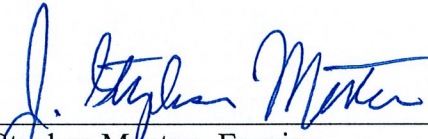
WHEREFORE, Petitioner, Colonial Lakes, respectfully requests that Florida Housing Finance Corporation:

A. Grant the Petition and all the relief requested herein;



- B. Waive the provisions in Rule 67-48.027 that requires local government bonds to be closed before Colonial Lakes can submit an Application for 4% Housing Credits;
- C. Waive the requirement in Rule 67-48.0072(10) for a review and determination of impact on Guarantee Fund Developments that are 2.5 miles from the proposed development site; and
- D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The Original Petition is being filed with the Corporation Clerk for 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, FL 32399-1300, this 13th day of September, 2011.



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Attorney