

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: WESTGATE PLAZA
APARTMENTS, LTD.

FHFC Case No.: 2011-009 VW

**ORDER GRANTING PETITION OF WAIVER
OF RULE 67-48.027(1)(m), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on July 22, 2011, pursuant to a "Petition for Waiver of Rule 67-48.027, F.A.C." (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on June 10, 2011, from Westgate Plaza Apartments, LTD. ("the Petitioner"). On June 24, 2011, the Notice of the Petition was published in Volume 37, Number 25, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

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2. Westgate Plaza Apartments, Ltd (“Petitioner”) is applying for 4% Non-Competitive Low Income Housing Tax Credits to finance, in part, the development and construction of the Westgate Plaza Apartments (the “Development”) in Palm Beach County, Florida.

3. Rule 67-48.027(1)(m), Fla. Admin. Code (2009) provides, in pertinent part:

(1) Tax-Exempt Bond-Financed Developments, as defined in Section 42(h)(4)(B) of the IRC, which applied for 4 percent Housing Credits when applying for tax exempt bonds from the Corporation in calendar year 2000 or later 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; and

4. Petitioner requests a waiver of the Rule requiring that Applicants seeking “Four Percent” Non-Competitive Housing Credits from Florida Housing wait until after bonds are issued to apply for the Credits. Petitioner has received funding commitments from the Housing Finance Authority of Palm Beach County, Florida; equity from an investor limited partner, Wells Fargo Community Lending and Investment; and loan proceeds of Neighborhood Stabilization Program, second phase (“NSP2”)

funds from Palm Beach County, Florida, as part of the County's Neighborhood Rental Redevelopment Loan Program ("NRRLP"). However, Petitioner has been informed that it will be unable to close on the equity contribution, the bonds and the NSP2 Loan without first having undergone a full credit underwriting with respect to the allocation of Housing Credits to the Development; submitted an application to Florida Housing for the four percent credits; and received a favorable recommendation, on a preliminary basis for such credits. Without a waiver, Petitioner will not be able to proceed with the loan closing.

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

Variances 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.

6. The Board finds that under these circumstances, strict application of the above Rule to this Petitioner would create a substantial hardship and violate the principals of fairness. Petitioner demonstrated that due to the time requirements imposed by the NSP2 loan and the closing deadline for the other funding sources, it would not be able to close on them without first obtaining the favorable recommendation from Florida Housing

for an allocation of four percent credits. A waiver of the rule would allow Petitioner to proceed with its loan closing in a timely fashion. Moreover, Florida Housing in its proposed amendments to Rule 67-48.027, F.A.C., will remove the prohibition of Rule 67-48.027(1)(m) to allow other applicants the apply without first having closed on their bonds. Granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

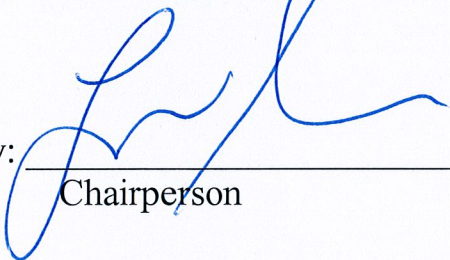
IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-48.027(1)(m), Fla. Admin. Code (2009), of the restriction of submitting an application by Petitioner to Florida Housing apply for four percent credits until after tax exempt bonds have been issued to the Development is hereby **GRANTED**.

DONE and ORDERED this 22nd day of July, 2011.



Florida Housing Finance Corporation

By: 

Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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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.