

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: GULF BREEZE APARTMENTS
PARTNERS, LTD.

FHFC Case No. : 2006-041VW
FHFC App. No.: 2005-319HR

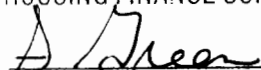
**ORDER GRANTING WAIVER OF RULE 67ER06-15(14)(b) AND PART II.A.2.b AND
PART II.B.1. OF THE RENTAL RECOVERY LOAN (RRLP) APPLICATION
INSTRUCTIONS FOR A CHANGE IN THE IDENTITY OF PETITIONER'S
DEVELOPER AND THE PETITIONER'S OWNERSHIP STRUCTURE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on October 20, 2006, pursuant to a "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 the Petitioner's Developer and the Petitioner's Ownership Structure" (the "Petition¹"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 28, 2006, from Gulf Breeze Apartments Partners, Ltd. ("Petitioner"). On August 11, 2006, the Notice of the Petition was published in Volume 32, Number 32, of the Florida Administrative Weekly. Florida Housing did not receive any 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.

¹ The Emergency Rule Chapter, 67ER05 -8 through 67ER05-19, which was in effect at the time of submittal of Petitioner's Application, expired pursuant to 2005-92, L.O.F. Emergency Rule Chapter 67ER06-13 through 67ER06-24, effective date, 7/5/06, supersedes the previous rule chapter and governs the 2005 RRLP program, pursuant to 2006-69, L.O.F. The substantive language of the Rule Chapters is identical.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 10-23-06

2. During the 2005 Rental Recovery Loan Program (“RRLP”) Petitioner was awarded an allocation of RRLP funds in the amount of \$1,000,000.00 for the construction of Gulf Breeze Apartments, a 184-unit apartment development intended to serve the Family demographic to be located in Charlotte County, Florida (the “Development”). The RRLP funds are to be used in conjunction with tax-exempt mortgage revenue bonds issued by the Punta Gorda Housing Authority (the “Authority”).

3. The Petitioner’s application identified the Developer as Sandspur Housing Group, Ltd. (“the Sandspur Developer Entity”); the Petitioner did not have any co-Developers. Petitioner’s application identified its co-General Partners as Gulf Breeze Sandspur Partners, L.L.C. (“the Sandspur GP Entity”) and Gulf Breeze Apartments Partners, L.L.C. (“the Authority GP Entity”). The Authority GP Entity is an instrumentality of the Authority. The Sandspur GP Entity is affiliated with the Sandspur Developer Entity.

4. Subsequent to Petitioner’s submittal of 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, Sandspur Developer Entity and Sandspur GP Entity are no longer involved with the Development. Sandspur GP Entity assigned all of its interest in Petitioner to the Authority GP Entity.

5. 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”).

6. 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.

7. Emergency Rule 67ER06-15(14)(b), Florida Administrative Code, states in pertinent part:

“(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 Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

.....

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

8. Emergency Rule 67ER06-15(1)(a), Florida Administrative Code, adopts and incorporates by reference the RRLP Application Instructions (the “Application Instructions”). The Application Instructions include the instructions discussed below (the “Applicable Instructions”).

Part II.B.1. of the Application Instructions provides that:

“1. Developer or principal of Developer (Threshold)

The identity of the Developer(s) listed in this Application may not change until the construction or Substantial Rehabilitation of the Development is complete.”

Part II.A.2.b. of the 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.”

9. 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.

10. 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.

11. The granting of this request for waiver will serve the purpose of the underlying statute in that the requested changes to the Developer entity and the Petitioner’s ownership structure will enhance the likelihood that the Development will be timely and successfully completed and, in turn, will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. Furthermore, the granting of this request for waiver will not adversely impact the Development as Petitioner demonstrated that the Authority Developer Entity and the Norstar Developer Entity together have the required experience to

serve as co-Developers of the Development². Strict application of Emergency Rule 67ER06-15(14) and the Applicable Instructions incorporated by Emergency Rule 67ER06-15(1)(a), 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, in that it will result in unnecessary delay and expense and make it impossible to complete the Development on time and within budget.

IT IS THEREFORE ORDERED:

A Waiver of Emergency Rule 67ER06-15(14), F.A.C., and the Applicable Instructions incorporated by Emergency Rule 67ER06-15(1)(a), F.A.C., is hereby **GRANTED** to (1) allow 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 (2) allow 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.

DONE and ORDERED this 20th day of October, 2006.



Florida Housing Finance Corporation

By:

Terry Santoni
Chairperson

² Petitioner provided copies of the executed Developer Certification Forms for the Authority Developer Entity and the Norstar Developer Entity. Further, to verify the required experience of the Norstar Developer Entity, Petitioner provided a Prior Experience Chart for the Norstar Developer Entity.

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Ms. Vicki Robinson
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Richard L. Higgins, Vice President
Norstar Gulf Breeze, Inc.
200 South Division Street
Buffalo, New York, 14204

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHTS

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.