

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: ROYALTON APARTMENTS, LTD.

FHFC Case No.: 2006-046VW
Application No.: 2005-048S

**ORDER GRANTING VARIANCE FROM RULES
67-48.010(5), and 67-48.0072(10), F.A.C (2005)**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on September 8, 2006, pursuant to a Petition for Waiver or Variance of Rules 67-48.002(30), 67-48.002(32), 67-48.010(5) and 67-48.0072(10) (2005) ("Petition"), filed by Royalton Apartments, Ltd. ("Petitioner") on August 8, 2006. On August 18, 2006, the Notice of the Petition was published in Volume 32, Number 33, 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.
2. During the 2005 Universal Cycle, Florida Housing awarded an allocation of \$1,000,000 in loan funds to Petitioner under the State Apartment Incentive Loan ("SAIL") program regarding the Royalton Apartments development, a 100-unit single room occupancy, homeless complex, located in Miami-Dade County, Florida.

3. Petitioner is requesting a variance or waiver of Rules 67-48.002(30), 67-48.002(32), 67-48.010(5) and 67-48.0072(10), Fla. Admin. Code, (2005). The applicable rules are summarized as follows, in pertinent part:

Rule 67-48.002(30) (2005), Florida Administrative Code, states in pertinent part:

(30) "Development Cash Flow" means, with respect to SAIL Developments, cash flow of a SAIL Development as calculated in the statement of cash flows prepared in accordance with generally accepted accounting principles ("GAAP") and as adjusted for items including any distribution or payments to the Principal(s) or any Affiliate of the Principal(s) or to the Developer or any Affiliate of the Developer, whether paid directly or indirectly, which was not expressly disclosed in determining debt service coverage in the Board approved final credit underwriting report.

Rule 67-48.002(32) (2005), Florida Administrative Code, states in pertinent part:

(32) "Development Expenses" means, with respect to SAIL Developments, usual and customary operating and financial costs, such as the compliance monitoring fee, the financial monitoring fee, replacement reserves, the servicing fee and the debt service reserves. As it relates to SAIL Developments and to the application of Development Cash Flow described in subsection 67-48.010(3) and (4), F.A.C., the term includes only those expenses disclosed in the operating pro forma included in the final credit underwriting report, as approved by the Board.

Rule 67-48.010(5) (2005), Florida Administrative Code, states:

(5) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of subsection (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

- (a) First mortgage fees and interest payment on SAIL loan balance equal to 1% as stated in paragraph (3)(a) above and equal to 3% as stated in paragraph (3)(b) above over the life of the SAIL loan;
- (b) Development Expenses on the SAIL loan including up to 20% of total Developer fees per year;
- (c) Interest payments on the SAIL loan deferred from previous years;
- (d) Mandatory payment on subordinate mortgages.

After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

Rule 67-48.0072(10) (2005), Florida Administrative Code, states in pertinent part:

...

For SAIL Applications, the minimum debt service coverage shall be 1.10 for the SAIL loan, including all superior mortgages.

4. 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.

5. Petitioner requests a variance from these rules to establish a Supplemental Operating Reserve in an amount up to \$2,500,000, to ensure the continuing economic viability of the Development, due to the possibility that a five-year sponsor-based Shelter Plus Care Program rental assistance contract by Miami-Dade County may be non-renewed. The Supplemental Operating Reserve would be funded with \$400,000 from the investor limited partner's second equity installment, and the balance coming from Development Cash Flow of the Development.

6. As grounds for its request, Petitioner states that the variances or waivers of the Rules will not adversely affect the Development. The granting of this waiver request would serve the purpose of the underlying statute, in that the creation of the Supplemental Operating Reserve for the project will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

7. Not granting this waiver would result in a substantial hardship to Petitioner in that it will cause Petitioner to be unable to properly and efficiently develop this Development and could deprive Miami-Dade County of essential affordable rental units for homeless persons.

IT IS THEREFORE ORDERED:

The Petitioner's request for a variance from Rules 67-48.010(5) and 67-48.0072(10), Florida Administrative Code (2005), is hereby **GRANTED** to the extent necessary to allow Petitioner to establish a Supplemental Operating Reserve in an amount up to \$2,500,000 conditioned upon

that it be funded with \$400,000 from the investor limited partner's second equity installment, and the balance coming from Development Cash Flow of the Development with the following conditions:

- a. The funding of all net cash flow from the Development, until the Supplemental Operating Reserve has reached its full funding level of up to \$2,500,000, will be treated as an item for purposes of calculating Development Cash Flow available to make interest payment on the SAIL loans, and will be treated as the first priority in terms of payments made under Rule 67-48.010(5), F.A.C., (2005); and
- b. Neither Petitioner nor any of its affiliates will receive any funds from the Supplemental Operating Reserve prior to these funds being used for operating shortfalls caused by the loss of Shelter Care rental assistance or for full payment of any accrued and/or deferred SAIL loan interest due to Florida Housing.

In no event will the deposits into the Supplemental Operating Reserve continue beyond 15 years. The minimum debt service coverage shall be zero (0.0) until such time as the Supplemental Operating Reserve is fully funded, or until the expiration of 15 years, whichever occurs first. At that point, the minimum debt service coverage shall be 1.10.

All other relief requested in the Petition, if any, is hereby **DENIED**.

DONE and ORDERED this 8th day of September, 2006.

Florida Housing Finance Corporation,

By: Terry Santore
Chairperson



Copies furnished to:

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Joint Administrative Procedures Committee
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Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.