

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: FLORIDA LOW INCOME  
HOUSING ASSOCIATES, INC.

FHFC Case No.: 2008-037VW

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**ORDER GRANTING WAIVER FROM RULE 91-28.006(7), F.A.C. (1990)**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on March 13, 2009, pursuant to a "Petition for Waiver/Variance from Rule 91-28.007, Florida Administrative Code,<sup>1</sup>" ("Petition"), filed by Florida Low Income Housing Associates, Inc. ("Petitioner") on May 28, 2008. On June 6, 2008, the Notice of the Petition was published in Volume 34, Number 23, 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.

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<sup>1</sup> The citation to Rule 91-28.007 is incorrect. The correct citation is Rule 91-28.006, F.A.C. (1990)

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Della M. Farrell* DATE: 3/13/09

2. During the 1989-1990 State Apartment Incentive Loan (SAIL) Cycle II, Florida Housing awarded SAIL funds (loan number 90S-002) to Petitioner, to finance the construction of Atlantic Pines (“Development”) a farm worker/family housing development located in Big Pine Key, Monroe County, Florida.

3. The SAIL loan matured on June 26, 2007 and was extended to January 31, 2009. Petitioner requests a variance from the rule in order to obtain forgiveness of the entire \$84,080.50 deferred SAIL interest, not forgiven by Rule 9I-28.006 on the matured loan and to re-amortize the outstanding principal balance on the loan over a thirty year term at a rate of 0% interest.

4. Petitioner is requesting a waiver of Rule 9I-28.006, F.A.C. (1990).  
The applicable rule is summarized as follows, in pertinent part:

(7) If, in their application, the Applicant agrees to a very low income set-aside for a term longer than that required by law, the deferred SAIL interest due pursuant to 9I-28.006(6)(g), F.A.C., shall be forgiven in an amount equal to the amount of interest due pursuant to 9I-28.006(6)(g) multiplied by .05 multiplied by the number of years, not to exceed 15, that the very low income set-aside was extended beyond that required by law.

(a) The amount of interest to be forgiven shall be computed upon the maturity of the note.

(b) Only interest which is in excess of the base interest rates specified in Rule Chapter 9I-28.006(2)(b), F.A.C. shall be eligible for forgiveness.

5. 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.

6. The Development is a farm worker/family housing development operating in Big Pine Key. Monroe County has the highest housing costs in Florida, so continuing to provide affordable housing is critical. Under the Rules applicable when the Development was approved, the interest rate for a farm worker and family development was 9%. The Development has operated successfully for fifteen years, but does not generate significant cash flow because the rental revenue barely covers the expenses of operation.

7. The SAIL statutes now include a commercial fishing workers set-aside and authorize SAIL loans for commercial fishing worker developments to be made at an interest rate of zero to three percent. *See*, Sections 420.507(22)(a)(1) and (2), 420.5087(3)(c) and 420.5087 (6)(a), Florida Statutes. The 2008 SAIL rule establishes a 0% interest rate on loans to developments that set aside at least 80% of the units for commercial fishing worker residents. Rule 67-48.010(3)(a), F.A.C. (2008).

8. While the Development has always operated as one committed to serving the commercial fishing worker, Petitioner has agreed to formalize this

commitment in exchange for the loan extension, and to commit to set aside 80% of the units in the Development for commercial fishing workers. This commitment would have qualified the Development for a 0% interest rate loan at its inception had the SAIL statute and rule in effect at that time recognized commercial fishing worker developments.

9. The granting of this waiver request would serve the purpose of the underlying statute, in that the statutory goal to develop and provide affordable rental housing in Monroe County will be facilitated by permitting Petitioner to operate the Development. It will enhance the financial viability of the Development and thus ensure the continued availability of affordable housing to the commercial fishing workers in this Development. It will also facilitate a new loan structure with Petitioner's SAIL loan interest at 0%, and with the principal balance amortized over a new thirty year term.


10. Not granting this waiver would result in a substantial hardship and a violation of the principles of fairness to Petitioner in that the Development could not continue to operate as a commercial fishing worker development without relief from the terms of the existing SAIL loan and the limitation on interest forgiveness as set forth in Rule 9I-28.006, F.A.C. (1990)

**IT IS THEREFORE ORDERED:**

The Petitioner's request for a waiver of Rule 91-28.006(7), F.A.C. (1990), is hereby **GRANTED**, to forgive all deferred SAIL interest due on the loan with the waiver conditioned upon and subject to the closing of the loan modifications and extensions in accordance with the proposal submitted by Special Assets contemporaneous herewith.

DONE and ORDERED this 13th day of March, 2009.

Florida Housing Finance Corporation

By:   
Chairperson



Copies furnished to:

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Pat Kenney  
Executive Director  
Florida Low Income Housing Associates, Inc.  
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Inverness, Florida 34453

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

**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.**