

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: BISCAYNE APARTMENTS
ASSOCIATES, LTD.

FHFC Case No.: 2010-034VW

**ORDER GRANTING WAIVER OF RULE 9I-ER93-10(3),
FLORIDA ADMINISTRATIVE CODE,**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on October 22, 2010, pursuant to a "Petition for Waiver of Rule 9I-ER93-10(3)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on September 14, 2010, from Biscayne Apartments Associates, Ltd., ("Petitioner"). On September 24, 2010, Florida Housing published the Notice of the Petition in Volume 36, Number 38, 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

Della M. Farrell DATE: 10/22/10

2. In 1993, Florida Housing awarded a HOME loan in the amount of \$2,800,000.00 and an allocation of Low Income Housing Tax Credits in the amount of \$167,279 to Biscayne Apartment Associates, Ltd. (“Petitioner”) under the HOME Investment Partnership Program (Disaster Relief) to finance the construction of Biscayne Woods Apartments, a 114 unit multi-family rental apartment (the “Development”) located in Miami-Dade County.

3. Petitioner has contracted with Biscayne Palm Preservation, LP (“Biscayne Palm”) to purchase the Development from Petitioner. Funding for the acquisition is to be comprised of approximately \$2,400,000 in equity raised through anticipated syndication of tax credits allocated to Biscayne Palm, \$3,000,000 in first mortgage tax exempt bond financing funding through Florida Housing’s New Issue Bond Program (“NIBP”), \$2,000,000 in market rate bonds and assumption of the HOME loan.

4. Citi Community Capital (“Citi”) is the underwriter for the Freddie Mac Bond Credit Enhancement, in connection with the issuance of the bonds under the NIBP.

5. Rule 9I-ER93-10(3), Fla. Admin. Code (1993) states in pertinent part:

(3) The loans shall be non-amortizing and repayment shall be deferred until maturity. Interest payments, where applicable, on the HOME mortgage will be due to the servicer on the first day of the calendar quarter.

6. Petitioner requested a waiver of the above provision. Specifically, Petitioner requested that the interest payments be modified to be due on an annual basis and be based on Development Cash Flow in accordance with the terms of RFP 2009-06, "Financing of Multifamily Housing Properties with HOME Funds in conjunction with Multifamily Mortgage Revenue Bonds (MMRB)." ("RFP 2009-06")

7. 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.

8. Under these circumstances, strict application of the above Rule to this Petitioner would create a substantial hardship or violate the principals of fairness. Petitioner demonstrated that the waiver is necessary, as Citi notified Biscayne Palm that without modification of the terms of the existing HOME loan to allow debt service payments be made annually from Development Cash Flow, the Development will be unable to support the amount of senior debt needed to acquire and rehabilitate it in a financially feasible manner. The requested waiver will provide Petitioner with similar terms and conditions available to developers receiving new HOME loans under Florida Housing's RFP 2009-06.

9. Petitioner demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, in that it will not be able to complete the sale of the Development to Biscayne Palm, resulting in significant economic hardship to the Development. Petitioner has further demonstrated that permitting this change in Development would also serve the underlying purpose of the statute, to provide safe, sanitary and affordable housing to the citizens of Florida.


IT IS THEREFORE ORDERED:

The Petition for a Waiver of Rule 9I-ER93-10(3), Florida Administrative Code is hereby **GRANTED** to the following extent: the interest payments on its HOME loan will be made annually from Development Cash Flow, pursuant to the terms of RFP 2009-06.

DONE and ORDERED this 22nd day of October, 2010.



Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO PROCEEDINGS 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