

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
APPLICATION NO. 93HD-013

FHFC CASE NO. _____

BISCAYNE APARTMENTS ASSOCIATES, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 9I-ER93-10(3)

Petitioner Biscayne Apartments Associates, Ltd. (“Biscayne Associates”), petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the required quarterly interest payments for loan financing provided through the HOME Investment Partnerships Program (Disaster Relief) (“HOME Program”). *See* Rule 9I-ER93-10(3) (“HOME Rule”). In support of the requested Rule waiver, Biscayne Associates states the following:

1. Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, F.A.C., Biscayne Associates petitions for a waiver of the HOME Rule which requires quarterly fixed rate interest payments to Florida Housing’s servicer.

2. As an alternative, Biscayne Associates requests that its interest payments be due on an annual basis and be based on Development Cash Flow which is permitted for HOME loans awarded to successful applicants who submitted applications to Florida Housing under its Request for Proposals 2009-06 (“RFP”), p. 11, ¶ 8.

A. THE PETITIONER

3. The name, address, telephone and facsimile numbers for Biscayne Associates and its qualified representative are:

Biscayne Apartments Associates, Ltd.
c/o Related/GM Biscayne, Ltd., its General Partner
Attention: Jay L. Reinhard
60 Columbus Circle
New York, NY 10023
Telephone: 212-801-1078
Facsimile: 212-801-3731

4. For purposes of this Petition, the address, telephone and facsimile numbers of Petitioner's attorneys are:

| | |
|---|---|
| Brian J. McDonough, Esquire | Mimi L. Sall, Esquire |
| STEARNS WEAVER MILLER WEISSLER | STEARNS WEAVER MILLER WEISSLER |
| ALHADEFF & SITTERSON, P.A. | ALHADEFF & SITTERSON, P.A. |
| 150 West Flagler Street, Suite 2200 | 200 East Las Olas Boulevard, Suite 2100 |
| Miami, Florida 33130 | Fort Lauderdale, Florida 33301 |
| Telephone: 305-789-3200 | Telephone: 954-462-9575 |
| Facsimile: 305-789-3395 | Facsimile: 954-462-9567 |
| Email: bmcdonough@stearnsweaver.com | Email: msall@stearnsweaver.com |

B. THE DEVELOPMENT AND FUNDING

5. Biscayne Associates is the developer and owner of Biscayne Apartments (the "Development"). The Development, located in Miami-Dade County, Florida, is a 114-unit rental apartment development. The Development was placed in service in 1995, and serves the Family demographic for extremely low and low income families.

6. The Development was initially financed through (a) equity raised pursuant to tax credits allocated to the Development under Florida Housing's 9% tax credit program; (b) a \$2,800,000 HOME Loan (the "HOME Loan") made by Florida Housing to Biscayne Associates; and (c) a first mortgage loan from Barnett Bank in the original principal amount of \$1,000,000.

7. Under the HOME Rule and as required under the HOME Amended and Restated Promissory Note ("HOME Note"), interest on the HOME Loan accrues at 3% per annum, and quarterly interest payments must be made to Florida Housing's servicer. A copy of the December 28, 1993 HOME Note is attached as Exhibit A.

8. Based, in part, upon the age of the Development, substantial rehabilitation is required to update and upgrade the apartment units and facilities.

9. Biscayne Associates has contracted with Biscayne Palm Preservation, LP ("Biscayne Palm") to purchase the Development from Biscayne Associates. After closing on this acquisition, Biscayne Palm will substantially rehabilitate the units and Development facilities.

10. Funding for the acquisition and substantial rehabilitation by Biscayne Palm of the Development will be comprised of (a) approximately \$2,400,000 in equity raised through the anticipated syndication of tax credits allocated to Biscayne Palm and the Development by Florida Housing; (b) approximately \$3,000,000 in first mortgage tax exempt bond financing funded through the New Issue Bond Program ("NIBP");¹ (c) approximately \$2,000,000 in Market Rate Bonds; and (d) assumption of the HOME Loan.

¹ Colony Lakes Preservation, L.P. ("Colony Lakes"), an affiliate of Biscayne Palm's general partner, initially applied and was approved for financing under the Multifamily New Issue Bond Program. Colony Lakes was allocated \$10,000,000 in first mortgage tax exempt bond financing for the acquisition and rehabilitation of Riverwalk III d//b/a Colony Lakes Apartments. Subsequently, it was determined that a portion of the NIBP financing could be allocated for the acquisition and rehabilitation of Biscayne Apartments. Upon request, and following review and due diligence, Florida Housing approved the allocation of \$3,000,000 to Biscayne Palm from the NIBP financing approved for Colony Lakes.

Communications and documentation attached as exhibits to this Petition refer to Colony Lakes. However, as a result of Florida Housing's approval for the allocation of a portion of the NIBP financing to Biscayne Palm, the exhibits also encompass NIBP financing to be allocated to Biscayne Palm.

11. A copy of the Multifamily New Issue Bond Program Preliminary Indication of Interest is attached hereto as Exhibit B; and a copy of the MMRB New Issue Bond Program Reservations, December 29, 2009, is attached hereto as Exhibit C.²

12. The annual interest rate for new HOME Loans that are funded under RFP 2009-06 will be 1.0% simple interest per annum. *See* RFP, p. 11, ¶ 8. Moreover, “[p]ayment on the [new] HOME loan shall be based upon the Development Cash Flow, as determined pursuant to the Financial Reporting Form SR-1, ...”*Id.*

13. By letter dated April 26, 2010, Citi Community Capital (“CITI”), the underwriter for Freddie Mac Bond Credit Enhancement required in connection with the issuance of bonds under the NIBP, advised that, without modification of the terms of the existing HOME Loan (the “Sub-Debt”) so that debt service payments on the HOME Loan are made subject to available cash flow (“Soft Pay”), the Development will be unable to support the amount of senior debt needed to acquire and adequately rehabilitate the Development in a financially feasible manner. A copy of CITI’s April 26, 2010 correspondence is attached as Exhibit D.³

14. As a result, in order to meet CITI’s underwriting requirements, a waiver of the HOME Rule is required to allow for annual interest payments at the fixed rate of 3% per annum, the payment of which will be dependent upon available cash flow.

15. The requested waiver will, in essence, provide Biscayne Palm with similar terms and conditions for annual interest payments on the assumed HOME Loan as those terms and conditions now available to developers receiving new HOME Loans under RFP 2009-06, i.e., debt service payments based upon available Development Cash Flow. By permitting loan

² See Footnote 1.

³ See Footnote 1.

payments in this manner, it will enable Biscayne Palm to leverage federal resources created by the NIBP with the HOME Loan, a state resource funded from a federal program already committed to this Development. *See* RFP 2009-06, at p. 11, ¶ 8.

16. The requested Rule waiver will not adversely impact the Development. A denial of this Petition, however, could (a) prevent Biscayne Associates from completing the sale of the Development because Biscayne Palm would be prohibited from obtaining sufficient funding to acquire and substantially rehabilitate the Development; (b) result in significant economic hardship to the Development which is in dire need of substantial rehabilitation; (c) deprive Miami-Dade County of essential, safe and rehabilitated affordable housing units; and (d) violate principles of fairness. § 120.542(2), Fla. Stat. (2009).

17. More importantly, without the requested waiver, the Development may no longer be able to provide safe low-income housing units to a market in desperate need of quality affordable housing.

18. The requested Rule waiver is permanent in nature.

C. THE RULE FROM WHICH RELIEF IS REQUESTED AND THE STATUTE IMPLEMENTING THE RULES

19. Biscayne Associates realleges and incorporates Paragraphs 1 through 18 as though fully set forth herein.

20. Biscayne Associates requests a waiver of the HOME Rule as more specifically discussed herein.

21. The HOME Rule governing Biscayne Associates' HOME Loan does not limit the obligation of the borrower to make interest payments on available Development Cash Flow. Instead, interest payments are based on a fixed annual interest rate without reference to available cash flow. HOME Rule, 9I-ER93-10, F.A.C. Specifically, the HOME Rule requires that:

“Interest payments, where applicable, on the HOME mortgage **will be due to the servicer** on the first day of the calendar quarter.” Rule 9I-ER93-10(3) (emphasis added).

22. The HOME Rule is incorporated into the HOME Note’s requirement that “[a]ll accrued and unpaid interest hereunder shall be **due and payable quarterly**, commencing on March 31, 1994 and on the last day of each and every third month thereafter until the Due Date.” HOME Note, ¶ (a) (emphasis added).

23. In contrast to the HOME Rule, the provisions of RFP 2009-06 specifically provide that “[p]ayment on the HOME loan **shall be** based upon the Development Cash Flow, as determined pursuant to the Financial Reporting Form SR-1, or shall be due annually as determined by Florida Housing’s Board of Directors.” *Id.* (emphasis added).

24. The HOME Rule for which the waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),⁴ the statute that created the HOME Program. § 420.5089, Fla. Stat. The HOME Program recognizes the need to establish a qualified public depository for loans to eligible housing providers through a process that “must incorporate and provide incentives for welfare-to-work transitioning in coordination with applicable state and federal programs.” *Id.* Accordingly, the HOME Rule is implementing Florida Housing’s statutory authorization to establish the requirements, rules, and procedures for the HOME Program.

25. Moreover, the HOME Program comports with legislative findings concerning the need to provide alternative funding sources to remedy the serious shortage of decent, safe, and sanitary housing to individuals and families with low and moderate income. § 420.502, Fla. Stat.

⁴ The Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes (2009).

D. JUSTIFICATION FOR BISCAYNE ASSOCIATES' REQUESTED WAIVER

26. Biscayne Associates realleges and incorporates Paragraphs 1 through 25 as though fully set forth herein.

27. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness,⁵ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2009).

28. In this instance, Biscayne Associates meets the standards for Rule waivers.

29. The Development was placed in service almost 15 years ago. Today, the Development requires substantial rehabilitation of not only its 114 units and their buildings, but the facilities available to and used by the Development's residents.

30. The ability to substantially rehabilitate the Development is dependent upon a significant infusion of funds.

31. Biscayne Associates recognized that the best interests of the Development and its residents could be met only through its sale to another developer with sufficient funding to substantially rehabilitate the Development and its amenities. As a result, Biscayne Associates made the decision to sell the Development to Biscayne Palm. This sale can be accomplished

⁵ "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule Section 120.542(2), Florida Statutes (2009).

only if Biscayne Palm obtains the acquisition and rehabilitation funding package, described in Paragraph 10 above.

32. However, without a waiver of the HOME Rule's required quarterly interest payments, or the ability to pay debt service obligations on the HOME Loan from Development Cash Flow, as now permitted for new HOME Loans to be funded pursuant to RFP 2009-06, it is unlikely that Biscayne Associates can proceed with the sale of the Development because Biscayne Palm will not qualify to obtain the funding needed by Biscayne Palm to acquire and rehabilitate the Development.

33. In fact, CITI, as the underwriter for the NIBP program, specifically recognized that:

If the Sub-Debt [HOME Loan] can be modified so that debt service payments are only made subject to available cash flow ("Soft Pay"), [Biscayne Palm]⁶ will ultimately be able to support more senior debt. In addition, Soft Pay Sub-Debt is preferable not only to CITI and Freddie, but also to the Low Income Housing Tax Credit ("LIHTC") investors in the market today, and as you are aware, the universe of LIHTC investors currently interested in investing in Bond financed affordable housing communities is limited.

Exhibit D (emphasis provided in original).

34. Florida Housing has previously granted relief similar to the relief requested by Biscayne Associates.

35. On July 30, 2010, Florida Housing entered its Order Granting Waiver of Rule 67-48.020(c), Florida Administrative Code, (2007) ("Homestead III Order"). In the Homestead III Order, Florida Housing looked to Rule 9I-ER93-10, the Rule then in effect, and granted the following relief to Homestead III Associates, Ltd.:

⁶ See Footnote 1.

The relief requested in the Petition is hereby **GRANTED** to the following extent: the interest rate on the HOME loan is 1.95% per annum subject to Development Cash Flow, pursuant to the terms of RFP 2009-06.” FHFC Case No.: 2010-024VW, Homestead III Order, p. 4 (emphasis added).

A copy of the Homestead III Order is attached as Exhibit E.

36. Absent the requested waiver, it is improbable that Biscayne Associates could find any otherwise qualified developer that could obtain the necessary financing to acquire and substantially rehabilitate the Development.

37. The requested waiver, therefore, would significantly benefit the residents of the Development by allowing the sale of the Development by Biscayne Associates to proceed and enabling Biscayne Palm, as the new developer, to acquire the Development and to have sufficient funds for the necessary and substantial rehabilitation of the residents' units and facilities.

E. CONCLUSION

38. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2009).

39. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 114 affordable housing units will be substantially rehabilitated and remain available for families and individuals in Miami-Dade County, Florida.

40. However, a denial of the requested waiver would result in a substantial hardship for Biscayne Associates which does not have sufficient funds for substantial rehabilitation of the Development, and Biscayne Palm would be unable to obtain sufficient funding to acquire and rehabilitate the Development and consequently would be denied the ability provide decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

41. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the preservation of affordable rental housing. In particular, the requested waiver for this Development would allow for the application of rules to the restructuring of the HOME Loan as will be applied to virtually identical HOME loans which are to be funded under RFP 2009-06, and, most importantly, would condition the ability to service debt on available Development Cash Flow. This recognition would allow Biscayne Associates to meet the purpose of the Act in an economical and efficient manner.

42. Should Florida Housing require additional information, Biscayne Associates is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 9I-ER93-10(3).

WHEREFORE, Petitioner Biscayne Apartment Associates, Ltd., respectfully requests that Florida Housing Finance Corporation:

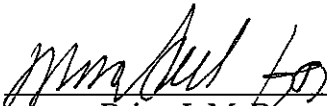
- A. Grant the Petition and all the relief requested herein;
- B. Waive the requirement for quarterly fixed interest rate payments to Florida Housing's servicer, and instead allow interest payments on the HOME Loan to be made annually from Development Cash Flow in accordance with RFP 2009-06; and

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Attorneys for Petitioner
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
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STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301
Telephone: 954-462-9575
Facsimile: 954-462-9567
Email: msall@stearnsweaver.com

By: 

Brian J. McDonough

By: 

Mimi L. Sall

CERTIFICATE OF SERVICE

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, for filing with the Corporation Clerk for Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 13 day of September, 2010.

By: 

Mimi L. Sall

**AMENDED AND RESTATED
PROMISSORY NOTE**

\$2,800,000.00

Miami, Florida
December 28, 1993

THIS NOTE AMENDS AND RESTATES IN ITS ENTIRETY THE ORIGINAL PROMISSORY NOTE EXECUTED BY THE MAKER ON DECEMBER 28, 1993. IT IS NOT INTENDED TO MODIFY OR ALTER ANY OF THE OBLIGATIONS OF THE MAKER, OTHER THAN TO CHANGE THE INTEREST RATE, EFFECTIVE AS OF MAY 1, 2002.

FOR VALUE RECEIVED, the undersigned, BISCAYNE APARTMENTS ASSOCIATES, LTD., a Florida limited partnership ("Maker"), promises to pay to the order of the FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida, together with any other holder hereof ("Holder"), at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or such other place as Holder may from time to time designate in writing, the principal sum of Two Million, Eight Hundred Thousand and No/100 Dollars (\$2,800,000.00), together with interest thereon, at the rates expressed as follows:

The outstanding principal balance of this Note shall accrue interest at the rate of Three (3.0%) percent per annum.

Principal and interest hereunder shall be payable in lawful money of the United States of America at the office of the Holder, or at such other place as the Holder hereof may designate in writing, as follows:

(a) All accrued and unpaid interest hereunder shall be due and payable quarterly, commencing on March 31, 1994 and on the last day of each and every third month thereafter until the Due Date.

(b) Notwithstanding anything in this Note to the contrary, the entire principal balance outstanding hereunder, together with all accrued and unpaid interest, shall be due and payable on December 28, 2008 ("Due Date"), unless extended or accelerated as provided below.

After maturity or acceleration, this Note shall bear interest at the Default Interest Rate described below until paid in full.

This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance.

NOTES AND MORTGAGES OWNED BY THE FLORIDA HOUSING FINANCE CORPORATION
ARE EXEMPT FROM DOCUMENTARY STAMP TAX AND INTANGIBLE TAX.

EXHIBIT

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All terms hereunder shall be construed and defined as in 24 CFR Part 92 and Chapter 9I-40, Florida Administrative Code.

This Note is secured by a Mortgage and Security Agreement, and by a Collateral Assignment of Leases, Rents and Contract Rights, both of even date herewith, from Maker in favor of Holder, and is subject to the provisions thereof. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents."

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Maker shall have no obligation to pay interest or payments in the nature of interest in excess of the maximum rate of interest allowed to be contracted for by law, as changed from time to time, applicable to this Note (the "Maximum Rate"). Any interest in excess of the Maximum Rate paid by Maker ("excess sum") shall be credited as a payment of principal, or, if Maker so requests in writing, returned to Maker, or, if the indebtedness and other obligations evidenced by this Note have been paid in full, returned to Maker together with interest at the same rate as was paid by Maker during such period. Any excess sum credited to principal shall be credited as of the date paid to Holder. The Maximum Rate varies from time to time and from time to time there may be no specific Maximum Rate. Holder may, without such action constituting a breach of any obligations to Maker, seek judicial determination of the Maximum Rate of interest, and its obligation to pay or credit any proposed excess sum to Maker.

The "Default Interest Rate" and, in the event no specific maximum rate is applicable, the Maximum Rate shall be eighteen percent (18%) per annum.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due, taking into account applicable grace periods, any payment of principal or interest or other amount due hereunder; or upon the occurrence of an event of default pursuant to any other Loan Documents now or hereafter evidencing, securing or guaranteeing payment of the indebtedness evidenced by this Note. Exercise of this right shall be without notice to Maker or to any other person liable for payment hereof, notice of such exercise being hereby expressly waived.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise), taking into account applicable grace periods, shall bear interest at the Default Interest Rate from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay Holder a late charge of five percent (5%) of any required payment which is not received by Holder within 15 days of the due date of said payment. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Maker agrees to pay all costs of collection, including reasonable attorneys' fees and paralegals' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors' proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due hereunder, and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall arise. No action or omission of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document-executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Neither Maker nor any of its partners shall have any personal liability under this Note. In the event of a default by the Maker under this Note, Holder's sole remedy hereunder shall be limited to exercising its rights under the Loan Documents, but shall not include a right to obtain a deficiency judgment against the Maker. Notwithstanding anything herein to the contrary, this paragraph shall not affect or limit any of the Holder's rights or any obligations or liabilities of any guarantors under any guarantees of this Note, or the validity or enforceability of any judgment rendered against any guarantors of this Note under any such guarantees.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, all other forms of notice whatsoever, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against

any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

BY EXECUTING THIS NOTE, MAKER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHTS OR THE RIGHTS OF ITS HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HEREWITH OR WITH THE INDEBTEDNESS OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER'S EXTENDING CREDIT TO A BORROWER AND NO WAIVER OF LIMITATION OF HOLDER'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

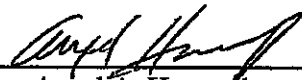
Maker acknowledges that the above paragraph has been expressly bargained for by Holder as part of the transaction with Maker and that, but for Maker's agreement thereto, Holder would not have extended the Indebtedness for the terms and at the interest rates provided.

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

BISCAYNE APARTMENTS ASSOCIATES, LTD.,
a Florida limited partnership

By: Related/GMN Biscayne, Ltd., a Florida limited
partnership, as General Partner

By: Related Homestead, Inc., a Florida
corporation, as managing general partner

By: 

Angel A. Hernandez,
Vice President



**FLORIDA HOUSING FINANCE CORPORATION
MULTIFAMILY NEW ISSUE BOND PROGRAM
PRELIMINARY INDICATION OF INTEREST**

1. Applicant and Contact Information:

Entity Name: Colony Lakes Preservation, LP
Developer Name: RAP FL, LLC
Contact: Jay Reinhard
Address: 60 Columbus Circle, NY, NY 10023
Phone Number: 212-801-1078
Email Address: jreinhard@related.com

2. Development Name: Colony Lakes

3. Par Amount of Tax Exempt NIBP Allocation Requested: \$10 million

4. Multifamily Bond Application previously submitted To Florida Housing (Yes/No): No

5. If Yes to "4." above, date Application was submitted:

6. LIHTC participation (Yes/No): Yes

7. Development is expected to be Submitted for FHFC HOME/Tax Exempt Bond RFP (Yes/No): Yes, Tax Exempt Bonds

8. Construction Type (New Construction or Acquisition/Rehab): Acquisition/Rehab

9. Expected Low Income Set Aside: 40% at 60%

10. Form of Credit Enhancement (Fannie Mae, Freddie Mac or GNMA): TBD



11. If applicable, anticipated Construction Letter of Credit Provider (Fannie Mae & Freddie Mac): TBD

12. Anticipated Funding Date (3/31/10, 6/30/10 or 9/30/10): 6/30/10

By submitting this indication of interest, applicant understands that Florida Housing shall request New Issue Bond Program ("NIBP") allocation and shall apply non-refundable deposit to payment of NIBP legal fees. Additionally, applicant represents that an application for the above referenced Development will be submitted on or before December 1 and shall be accompanied by a commitment fee in the amount of \$25,000.

Signed

Applicant Name: Matthew J. Allen

By: Matthew J. Allen

It's VP of its General Partner, 11/19/09

7MP

**MMRB NEW ISSUE BOND PROGRAM
RESERVATIONS
December 29, 2009**

| Developer | Development | Request amount |
|---|------------------------------|----------------------|
| Reservations for which a previous application for MMRB was submitted. | | |
| American Opportunity For Housing, Inc. | Dovetail Villas Apartments | \$14,400,000 |
| Housing Partners of Florida | Taylor Apartments | \$4,500,000 |
| The Richman Group of Florida, Inc. | Landings at Timberleaf | \$11,500,000 |
| The Richman Group of Florida, Inc. | Colonial Lakes Apartments | \$11,000,000 |
| The Richman Group of Florida, Inc. | East Lake Apartments | \$9,000,000 |
| Sage Partners, LLC | Methodist Place | \$10,000,000 |
| Towers of Jacksonville, LP | Towers of Jacksonville | \$15,000,000 |
| Preservation of Affordable Housing, LLC | New Horizons Apartments | \$4,300,000 |
| Preservation of Affordable Housing, LLC | Campbell Arms Apartments | \$4,200,000 |
| | | \$83,900,000 |
| Additional Reservations: | | |
| One (1) per developer up to \$30,000,000 | | |
| The Richman Group of Florida, Inc. | Belleair Place Apartments II | \$10,500,000 |
| Allied Pacific Development, LLC | Civic Tower | \$17,150,000 |
| Auburn Development, LLC | Groves of Delray | \$14,000,000 |
| ZF Development, LLC (ZOM) | Sorrento at Miramar | \$30,000,000 |
| Chesapeake Community Advisors, Inc. | Broward Garden Apartments | \$7,350,000 |
| Griffin Apartments, GP, LLC | Griffin Heights Apartments | \$6,030,000 |
| Eastwind Development, LLC | Stoneridge | \$10,000,000 |
| Stratford Capital Development Co., LLC | Treelap Apartments | \$8,054,000 |
| RAP FL, LLC | Colony Lakes | \$10,000,000 |
| Southport Financial Services, Inc. | Macedonia Apartments | \$7,000,000 |
| CSG Development, LLC | Capitva Cove | \$30,000,000 |
| RS Development Corp. | La Joya | \$12,500,000 |
| | | \$162,584,000 |
| | | |
| Grand Total: Receiving Reservations | | \$246,484,000 |



**MMRB NEW ISSUE BOND PROGRAM
RESERVATIONS
December 29, 2009**

| Developer | Development | Request amount |
|--|------------------------|----------------|
| Waiting List | | |
| Allied Pacific Development, LLC | TM Alexander | \$16,000,000 |
| Auburn Development, LLC | Auburn Trace | \$14,000,000 |
| ZF Development, LLC (ZOM) | Monterra Apartments | \$30,000,000 |
| The Richman Group of Florida, Inc. | Rivercrest Apartments | \$12,000,000 |
| Stratford Capital Development Co., LLC | Sand Dunes Apartments | \$5,330,000 |
| Stratford Capital Development Co., LLC | Pine Meadow Apartments | \$5,522,000 |
| Southport Financial Services, Inc. | Crossroads Apartments | \$6,500,000 |
| Southport Financial Services, Inc. | Foxwoods Apartments | \$6,500,000 |
| CSG Development, LLC | Villa Capri | \$17,000,000 |
| CSG Development, LLC | Solabella | \$9,000,000 |
| CSG Development, LLC | Preserve | \$8,000,000 |
| WFRH Properties, Inc. | Spring Lake/Edgewater | \$28,000,000 |
| | | \$154,852,000 |



April 26, 2010

Mr. Jay Reinhard
Related Affordable
60 Columbus Circle
New York, NY 10023

Re: Colony Lakes Apartments – Homestead, FL

Dear Jay:

As you know, we are currently underwriting Colony Lakes Apartments in response to your request for Freddie Mac Bond Credit Enhancement (“Credit Enhancement”) in connection with the allocation of bonds (“Bonds”) that you have secured as part of Florida Housing Finance Corp.’s (“FHFC”) participation in the New Issue Bond Program (“NIBP”).

Freddie Mac’s underwriting standards require a minimum combined debt service coverage ratio (“DSCR”) of 1.10:1 and a maximum combined Loan to Value (“LTV”) ratio of 90% for any Credit Enhancement that has subordinate debt (“Sub-Debt”) that requires mandatory payments of debt service (“Hard Pay”). In addition, any Hard Pay Sub-Debt must be fully amortizing or must balloon after the maturity of the senior debt.

The 1.10:1 minimum DSCR will ultimately limit the amount of the Credit Enhancement that Freddie will be able to provide.

If the Sub-Debt can be modified so that debt service payments are only made subject to available cash flow (“Soft Pay”), Colony Lakes will ultimately be able to support more senior debt. In addition, Soft Pay Sub-Debt is preferable not only to CITI and Freddie, but also to the Low Income Housing Tax Credit (“LIHTC”) investors in the market today, and as you are aware, the universe of LIHTC investors currently interested in investing in Bond financed affordable housing communities is limited.

With Soft Pay Sub-Debt, there are no minimum DSCR or maximum LTV constraints, however, any payments of debt service on Soft Pay Sub-Debt may not, in aggregate, exceed 75% of surplus cash flow after the payment of operating expenses, Replacement Reserves contributions, contributions to escrows (ie. taxes, insurance, etc.) and debt service on senior debt.

Please let me know if you have any questions.

Sincerely,
Citi Community Capital


Barry Krinsky
Director



**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

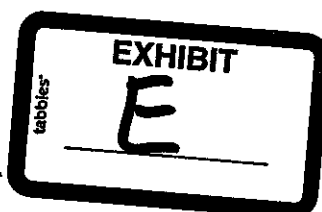
In Re: HOMESTEAD III ASSOCIATES, LTD.

FHFC Case No.: 2010-024VW

**ORDER GRANTING WAIVER OF RULE 67-48.020(2),
FLORIDA ADMINISTRATIVE CODE, (2007)**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on July 30, 2010, pursuant to a "Petition for Waiver of Rules 67-48.020(2)(a) and 67-48.020(3), F.A.C." (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on June 29, 2010, from Homestead III Associates, Ltd., ("Petitioner"). On July 9, 2010, Florida Housing published the Notice of the Petition in Volume 36, Number 27, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petitions. 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. In 1993, Florida Housing awarded a HOME loan in the amount of \$4,800,000.00 and an allocation of Low Income Housing Tax Credits in the



amount of \$579,600 to Homestead III Associates, Ltd. ("Petitioner") under the HOME Investment Partnership Program (Disaster Relief) to finance the construction of Riverwalk III d/b/a Colony Lakes Apartments, a 220 unit multi-family rental apartment (the "Development") located in Miami-Dade County.

3. Petitioner has contracted with Colony Lakes Preservation, LP ("Colony Lakes") to purchase the Development from Petitioner. Funding for the acquisition is to be comprised of equity raised through anticipated syndication of tax credits allocated to Colony Lakes, \$10,005,000 in first mortgage tax exempt bond financing funding through Florida Housing's New Issue Bond Program ("NIBP"), 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. Petitioner requested a waiver of Rule F.A.C. 67-48.020(2)(a) and(3), Fla.Admin.Code, but acknowledges that the applicable rule that governs Petitioner's HOME loan is Rule 9I-ER93-10, Fla. Admin. Code (1993). Rule 9I-ER93-10(2)(c), Fla. Admin. Code (1993) states in pertinent part:

(2) The annual interest rate will be determined by the type of applicant as follows:

(c) All applicants consisting of a non-profit and for-profit partnership will receive a zero percent loan on the portion of the loan amount equal to the non-profit's interest in the entity and a three percent loan on the portion of the loan amount equal to the for-profit's interest in the entity.

6. Petitioner requested a waiver of the above provision. Specifically, Petitioner requested that the interest rate of 1.95% per annum that it is currently being charged be modified to allow the annual 1.95% interest payments on the HOME loan be made from Development Cash Flow as allowed under the terms of RFP 2009-06, "Financing of Multifamily Housing Properties with HOME Funds in conjunction with Multifamily Mortgage Revenue Bonds (MMRB)."

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 Colony Lakes that without modification of the terms of the existing HOME loan to allow debt service payments be made subject to 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.

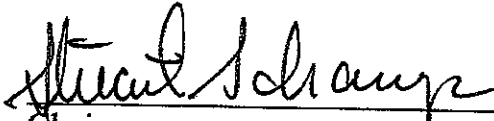
9. Petitioner demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, in that it will not be able to complete the sale of the Development to Colony Lakes, resulting in significant economic hardship to the Development. Petitioner 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 relief requested in the Petition is hereby **GRANTED** to the following extent: the interest rate on the HOME loan is 1.95% per annum subject to Development Cash Flow, pursuant to the terms of RFP 2009-06.

DONE and ORDERED this 30th day of July, 2010.

Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

Wellington H. Meffert II
General Counsel
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Tallahassee, Florida 32301-1329

Kevin Tatreau, Director,
Multifamily Housing Programs
Florida Housing Finance Corporation
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Mimi Sall, Esquire
Stearns , Weaver, Miller, et. al.
200 E Las Olas Blvd Ste 2100
Fort Lauderdale, Florida 33301-2238

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