

**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

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Hamel / DATE: 7/30/2010

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: Stuart Schrage
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