

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: BANYAN SENIOR  
LIMITED PARTNERSHIP

FHFC Case No.: 2008-062VW

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**ORDER GRANTING PETITION FOR WAIVER OF RULE  
67-48.0075(7)(a)(1), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 26, 2008, pursuant to a "Petition for Waiver of Rule 67-48.0075(a)(1), Florida Administrative Code (2007)" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received a Waiver of Rule 67-48.0075(a)(1), Florida Administrative Code (2007)" (the "Petition") on August 25, 2008, from BANYAN SENIOR LIMITED PARTNERSHIP, ("Petitioner"). On September 5, 2008, the Notice of the Petition was published in Volume 34, Number 36, 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:

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Sherry Tice* /DATE: 9-26-08

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. During the 2007 Universal Cycle, Florida Housing awarded Petitioner (under application #2007-190C) Competitive Housing Credits and a Supplemental Loan for Extremely Low Income units to finance, in part, the construction of Banyan Senior Apartments (the "Development"), a 96-unit apartment complex located in Pasco County, Florida.

3. Rule 67-48.0075(7)(a)1, Florida Administrative Code states in pertinent part:

(7) Supplemental loans will be subject to the credit underwriting provisions outlined in Rule 67-48.0072 and the loan provisions outlined below:

(a) The terms and conditions of the supplemental loan shall be as follows: (1) The supplemental loan shall be (i) based on each ELI Set-Aside threshold requirement in the Universal Application Instructions; and (ii) non-amortizing at 0 percent simple interest per annum over the life of the loan, with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years.

4. Section 120.542(2), Florida Statutes provides in pertinent part:

Variances 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 waiver of the rule requiring Florida Housing to forgive a supplemental loan's principal balance when the awarded amount funds ELI Household units for at least 15 years. Petitioner demonstrated that it will suffer negative federal income tax consequences pertaining to forgivable loan without the waiver, as the IRS may consider this loan as "phantom" taxable income. Designation of this loan as forgivable, whether ultimately forgiven or not, may cause the IRS to consider this loan as "phantom" taxable income, or income that the IRS would tax, but for which Petitioner has not yet received a benefit.

6. Petitioner requests that the ELI loan be repaid at the end of the initial 15-year period, and that at the end of the initial 15-year period, Petitioner be given an automatic extension on the maturity date of the ELI loan to a date coterminous with senior financing if the units for which the ELI loan was awarded were targeted to ELI Households during the initial 15-year period.

7. Under these circumstances, strict application of the above Rule to this Petitioner would create a substantial hardship and violate the principles of fairness. Petitioner demonstrated that granting this relief does not provide Petitioner with an unfair advantage over other applicants. Granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary

and affordable housing to the citizens of Florida. The waiver of Rule 67-48.0075(a)(1), Florida Administrative Code, furthers this purpose.

**IT IS THEREFORE ORDERED:**

The Petition for a waiver of Rule 67-48.0075(a)1, Florida Administrative Code (2007) is hereby **GRANTED** to permit Petitioner to forgo the automatic forgiveness a supplemental loan's principal balance receives when the awarded amount funds ELI Household units for at least 15 years. The ELI loan shall be repaid at the end of the initial 15-year period, and that at the end of the initial 15-year period, Petitioner shall be given an automatic extension on the maturity date of the ELI loan to a date coterminous with senior financing if the units for which the ELI loan was awarded were targeted to ELI Households during the initial 15-year period.

DONE and ORDERED this 26th day of September, 2008.

Florida Housing Finance Corporation



By: Lynn M. Stultz  
Chairperson

Copies furnished to:

Wellington H. Meffert II, Esq.  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Debbie Blinderman  
Deputy Development Officer  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

David F. Leon, Esq.  
Broad and Cassel.  
390 North Orange Avenue, Suite 1400  
Orlando, FL 32801

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.**