

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In re: Eclipse West Associates, Ltd.

Case No. 2008-005VW

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**ORDER GRANTING PETITION FOR WAIVER OF RULES 67ER06-27(14)(j) and (k), FLORIDA ADMINISTRATIVE CODE (2006)**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on March 14, 2008, pursuant to a "Petition for Waiver of Rules 67ER06-27(14)(j) and 67ER06-27(14)(k) of the 2006 Rental Recovery Loan Program to Change the Number of Units and Total Set-Aside Percentage in the 2006 RRLP Application" filed by Eclipse West Associates, Ltd. ("Petitioner") on February 12, 2008. An Amended Petition filed by the same on February 14, 2008 (together referred to as the "Petition"). Notice of the Petition was published in Volume 34, Number 08, 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

*Sherry Tree* /DATE: 3-17-08

2. During the 2006 Rental Recovery Loan Program (“RRLP”) Cycle, Eclipse West Associates, Ltd., (“Petitioner”) applied for and was awarded an RRLP loan and competitive low-income housing tax credits (“Housing Credits”) to finance the construction of Eclipse (the “Development”), a 117-unit high-rise development located in Broward County, Florida.

3. Rule 67ER06-27(14)(j), Florida Administrative Code (2006), provides in pertinent part:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline... Those items are as follows:

(j) Total number of units;

4. Rule 67ER06-27(14)(k), Florida Administrative Code (2006), provides in pertinent part:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline... Those items are as follows:

(k) Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitments section of the Application.

5. 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.

6. In Petitioner's original Application, Petitioner indicated that the Development would consist of 117 units, comprised of twenty-six (26) market-rate units and ninety-one (91) set-aside units for a Total Set-Aside Percentage of 77%. However, Petitioner claims, subsequent changes in the housing market have reduced the demand for market-rate units. Simultaneously, Petitioner alleges, the economic impact of recent hurricanes in South Florida has increase construction costs.
7. To remedy both of these problems, Petitioner requests that it be allowed to reduce the total number of units from 117 to 101, reduce the number of market-rate units from 26 to 5, and increase the number of Set-Aside units from 91 to 96.
8. The Board finds that unless this Petition is granted, Petitioner will incur substantial economic hardships in attempting to construct the additional sixteen units in the face of increased construction costs. Moreover, Petitioner's offer to increase the Total Set Aside-Percentage from 77% to 95% would also serve the

underlying purpose of the statute which is to, *inter alia*, provide affordable housing.

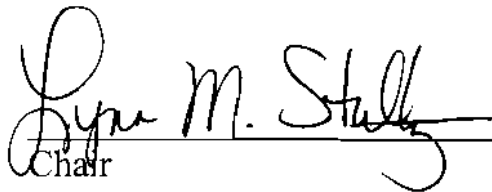
9. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. Petitioner has demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness in that unless the petition is granted, Petitioner will not be able to complete construction of the Development. Permitting this change in Development would also serve the underlying purpose of the statute.

**IT IS THEREFORE ORDERED:**

The Petition for a waiver of Rules 67ER06-27(14)(j) and (k) Florida Administrative Code (2006) is hereby **GRANTED**, to allow Petitioner to reduce the number of units in the Development from 117 to 101, reduce the number of market-rate units from 26 to 5, and increase the number of Set-Aside units from 91 to 96 for a new Total Set-Aside Percentage of 95%. Finally, Petitioner's RRLP base loan amount shall be proportionally reduced to \$4,316,235 and the supplemental loan amount shall be proportionally reduced to \$1,715,000.

DONE and ORDERED this 14th day of March, 2008.

Florida Housing Finance Corporation

By:   
Chair

**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 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.**