

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: ECLIPSE WEST ASSOCIATES, LTD.

FHFC Case No.: 2008-046VW
Application No.: 2006-
362CHR (2006 RRLP)

**ORDER GRANTING PETITION FOR WAIVER
OF RULES 67ER06-27(14)(b) and 67ER06-34(4)
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 8, 2008, pursuant to a "Petition for Waiver of Rules Fla. Admin. Code 67ER06-27(14)(b) (2006) and 67ER06-34(4) (2006)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 2, 2008 from **ECLIPSE WEST ASSOCIATES, LTD.** ("Petitioner"). On July 18, 2008, the Notice of the Petition was published in Volume 34, Number 29, 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

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Sherry Lee /DATE. 8-11-08

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

2. During the 2006 Rental Recovery Loan Program (“RRLP”), Florida Housing awarded an allocation of low income housing credits (“HC”) to Petitioner (under application #2006-362CHR (2006 RRLP)). Petitioner applied for an RRLP Loan and low income competitive HC to finance, in part, a Development known as Eclipse, a 101-unit high-rise apartment building located in Fort Lauderdale, Broward County, Florida (the “Development”).

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

(2) 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.

4. R. 67ER06-27(14)(b), Fla. Admin. Code states:

(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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

... (b) Identity of each Developer, including all co-Developers;

5. R. 67ER06-34(4), Fla. Admin. Code states:

(4) The supplemental loan shall be non-amortizing and shall be based on each ELI unit at 0% simple interest per annum with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 20 years.

6. Petitioner requests a waiver to change the identity of a co-developer, Ellis Diversified, Inc. (“EDI”), an accrual basis taxpayer, to EDI Eclipse, LLC (“EDI Eclipse”), a cash basis taxpayer.

7. In addition, Petitioner requests a waiver from the above rule requiring Florida Housing to forgive a supplemental loan’s principal balance when the awarded amount funds ELI Household units for at least 20 years.

8. Without the first waiver, EDI will have to include its deferred developer’s fees as current earned income. The tax consequences on this deferred income place an undue economic hardship on EDI. Instead of paying the taxes when received, EDI would have to fund its tax bill with funds not yet received. By contrast, EDI Eclipse, a cash basis taxpayer, will pay those taxes when the developer fee is later received.

9. If Florida Housing does not grant the waivers, negative federal income tax ramifications pertaining to forgivable loans will likely arise. Designating this loan as forgivable, whether ultimately forgiven or not, will likely cause the IRS to consider this loan as income that the IRS would tax, but for which Petitioner has not yet received a benefit.

10. Since approval will not affect Application scoring, Petitioner derives no unfair advantage over other applicants.

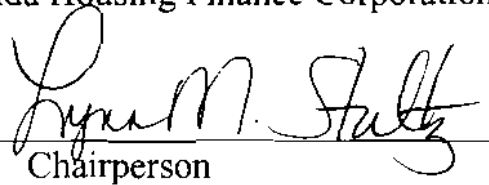
11. The Board finds that strict application of the above Rules under these circumstances will give rise to substantial hardship or otherwise violate the principles of fairness. Under the circumstances described in the Petition, granting these requests furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. The waiver of R. 67ER06-27(14)(b), Fla. Admin. Code and R. 67ER06-34(4), Fla. Admin. Code further this purpose.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of R. 67ER06-27(14)(b), Fla. Admin. Code is hereby **GRANTED** to permit Petitioner to change the identity of its developer from EDI, an accrual basis taxpayer to EDI Eclipse, a cash basis taxpayer. Also, Petitioner's request for a waiver of R. 67ER06-34(4), Fla. Admin. Code 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 20 years. Any other relief requested in the Petition is denied.

DONE and ORDERED this 8th day of August, 2008.

Florida Housing Finance Corporation

By: 
Chairperson

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.