

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Grande Oaks, LLC

FHFC Case No.: 2005-049

ORDER GRANTING VARIANCE FROM RULE 67-48.010(4), F.A.C.

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on December 9, 2005, pursuant to a Petition for Waiver from Rule 67-48.010(4), F.A.C. ("Petition"), filed by Grande Oaks, LLC ("Petitioner") on November 7, 2005. On November 18, 2005, the Notice of the Petition was published in Volume 31, Number 46, 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.

2. During the 2004 Universal Cycle, Florida Housing awarded an allocation of \$2,000,000 in loan funds to Petitioner under the State Apartment Incentive Loan ("SAIL") program regarding the Grande Oaks Apartments development, #2004-009S (the "Development").

3. 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

M. J. Son DATE: 12/12/05

4. Petitioner is requesting a variance of Rule 67-48.010(4), F.A.C. The applicable rule is summarized as follows, in pertinent part:

4) The loans described in paragraphs 67-48.010(3)(a), and (b), F.A.C., above shall be repaid from all Development Cash Flow, and of the SAIL loan is not a first mortgage loan, each year, subject to the provisions of paragraph (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and debt service;

5. The financing structure for the Development consists of a first mortgage loan from the Housing Finance Authority of Hillsborough County, Florida for tax-exempt bond proceeds and taxable bond proceeds in the aggregate amount of \$8,130,000 (the "Bond Loan"), a second mortgage loan from the City of Tampa in the amount of \$830,000 (the "City Loan"), and a third mortgage loan from Florida Housing for the SAIL proceeds in the amount of \$2,000,000 (the "SAIL Loan").

6. The Bond Loan, City Loan and SAIL Loan financing structure was detailed in the Credit Underwriting Report – Final Report as approved by the Board on April 22, 2005. The Credit Underwriting Report referenced the Fannie Mae Commitment which detailed the replacement of the taxable bonds with a fixed rate loan upon conversion to the permanent phase.

7. Fannie Mae has agreed to make a second mortgage loan to Petitioner in the amount of \$830,000 to replace the taxable bond portion of the Bond Loan in conjunction with the conversion to the Bond Loan to the permanent phase. However, Fannie Mae will not make the second mortgage loan unless Florida Housing subordinates the SAIL Loan to the proposed second mortgage loan in both lien and payment priority. The amount of debt that was approved with the SAIL Loan will not change; rather, the first mortgage Bond Loan in the amount of \$8,130,000 will be bifurcated into two separate loans (\$7,300,000 remaining as tax-exempt

variable rate bond debt secured by a first mortgage loan, and \$830,000 in the form of a taxable fixed rate loan secured by a second mortgage loan).

8. Petitioner requests that the priority of payments on the SAIL Loan be explicitly subordinated to the payment of debt service (in addition to the debt service on the first mortgage loan which is already permitted under the 2004 SAIL Rule and the SAIL Note) on the \$830,000 taxable mortgage loan and the City Loan prior to debt service on the SAIL Loan to maintain consistency with the SAIL Loan lien priority. Due to the language of the current Rule a variance is required to subordinate the loan payment structure. The contemplated financing arrangement would place the SAIL Loan lien in a fourth position. Petitioner now requests this variance to adjust the payment structure to match this position.

9. Subordination of the SAIL Loan payment is necessary in order to allow Petitioner to replace the taxable bond portion of the Bond Loan with a taxable fixed rate loan on an otherwise variable debt loan which will eliminate Petitioner's obligation to purchase an interest rate cap on the taxable debt. Additionally, in light of the volatility of variable rate taxable debt, allowing Petitioner to replace the taxable bond portion of the Bond Loan with a taxable fixed rate loan will eliminate the risk associated with variable rate taxable debt and provide Petitioner with a fixed debt service for the life of the loan. The taxable loan will occupy a second position in both lien priority and, if this variance is granted, in regards to payment priority as well.

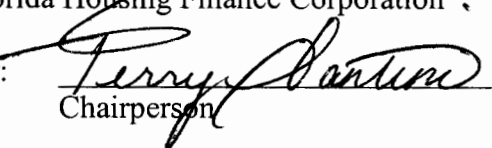
10. The granting of this waiver request would serve the purpose of the underlying statute, in that the additional financing anticipated for the Development will enhance the likelihood of its financial success and, in turn, will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. The variance from Rule 67-48.010(4), Fla. Admin. Code, will further this purpose.

11. Not granting this waiver would result in a substantial hardship to Petitioner in that it will cause Petitioner to lose the contemplated second mortgage loan from Fannie Mae to replace the \$830,000 taxable bond portion of the Bond Loan.

IT IS THEREFORE ORDERED:

The Petitioner's request for a variance from Rule 67-48.010(4), Florida Administrative Code, is hereby **GRANTED** to allow the bifurcation of the Bond Loan into first and second mortgage loans and to subordinate the lien and payment priority of the SAIL Loan to the first, second and third mortgage loans conditioned upon the total amount of debt ahead of the SAIL Loan remaining unchanged and approval of the terms and conditions of the bifurcated Bond Loan by the Credit Underwriter.

DONE and ORDERED this 9th day of December, 2005.

Florida Housing Finance Corporation ,
By: 
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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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.