

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. \_\_\_\_\_  
Application No. 2006-362CHR (2006 RRLP)

ECLIPSE WEST ASSOCIATES, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR A 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**

Petitioner Eclipse West Associates, Ltd., a Florida limited partnership ("Eclipse"), petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of the restriction on changing the number of residential units and Total Set-Aside Percentage in Applications submitted under the 2006 Rental Recovery Loan Program ("RRLP"). See Rules 67ER06-27(14)(j) and (k)(2006) (the "Rules").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Eclipse requests a waiver of the Rules to change the number of residential units by reducing the number of market-rate units from 16 to 5 non-income restricted units, and to increase the Total Set-Aside Percentage from 77% to 95%.

**A. The Petitioner and the Development**

2. The name, address, and telephone and facsimile numbers for Eclipse and its qualified representative are:

Eclipse West Associates, Ltd.  
c/o Reliance-Eclipse West, LLC  
Attention: Robert O. Jackson, its managing member  
805 East Broward Boulevard, Suite 200  
Fort Lauderdale, Florida 33301  
Telephone: 954-927-4545  
Facsimile: 954-764-7860

3. The name, address, telephone and facsimile numbers, and e-mail addresses of Eclipse's attorneys are:

Mimi L. Sall, Esquire  
STEARNS WEAVER MILLER WEISSLER  
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4. Eclipse submitted its 2006 RRLP Application for an RRLP Loan and competitive housing credits ("HC"), and Florida Housing awarded Eclipse a preliminary commitment for a 2006 RRLP Loan in the amount of \$6,995,000,<sup>1</sup> and preliminary allocation of HCs in an amount not to exceed \$2,435,000.

5. When Eclipse submitted its 2006 RRLP Application, it was anticipated that the RRLP Loan and HCs would be used for the development of Eclipse, a new 117-unit high-rise apartment building (the "Development") comprised of 96 housing tax credit units and 21 market-

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<sup>1</sup>The allocation is comprised of the base loan amount of \$5 million and a \$1,995,000 supplemental loan.

rate units. The Development is intended to serve the Family demographic, including extremely low and low income families, in Fort Lauderdale, Broward County, Florida.

6. As described in the 2006 RRLP Application, the Development's Total Set-Aside Percentage is 77%.

7. The requested waiver for the 16-unit reduction of the market-rate units and the increased Total Set-Aside Percentage to 95% will not adversely affect the Development, would not have affected the required set-asides for favorable consideration by Florida Housing of Eclipse's 2006 RRLP Application, and would not have altered the scoring by Florida Housing that qualified Eclipse for a 2006 RRLP Loan and HC allocations. Nor would the reduced number of market-rate units or increased Total Set-Aside Percentage have provided Eclipse with an unfair competitive advantage over other applicants.

8. The requested waiver will provide desperately needed affordable housing and ensure the financial feasibility of the Development.

9. However, a denial of this Petition (a) would result in substantial economic hardship to Eclipse; (b) could deprive Broward County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

10. The waiver being sought is permanent in nature.

**B. The Rules from which Relief is Requested and the Statute Implementing the Rules**

11. Eclipse requests a waiver of Rules 67ER06-27(14)(j) and (k) that identify certain non-curable matters in an application for a 2006 RRLP loan as follows:

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;

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.

12. The Rules for which this waiver is requested are implementing the statute enacting Florida's response to housing disasters resulting from the 2004 and 2005 hurricane seasons. § 420.55, Fla. Stat. (2006).

13. Specifically, "[t]he Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005." Florida Housing adopted emergency rules pursuant to § 120.54, Fla. Stat. (2006), and the Legislature found "that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4)." In addition, the Legislature determined that:

such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005.

§ 420.55, Fla. Stat. (2006).

**C. Justification for Eclipse's Requested Waiver to Reduce Market-Rate Units by 16 Units and Increase the Total Set-Aside Percentage to 95%**

14. As a consequence of factors outside the control of Eclipse, including the impact of the devastating 2005 hurricane season on the construction industry, there has been, and continues to be, a substantial increase in construction costs that has also created shortages of essential building materials and labor. The increased construction costs have threatened the financial viability of the Development.

15. Additionally, the market for non-income restricted rental units has been adversely impacted by recent changes in the housing market, in general, and resulted in an enormous

increase in the availability of rental condominium units. With the rental market “flooded” with these condominium units, Eclipse needs to reduce its market-rate rental risk.

16. By eliminating 16 market-rate units and reducing the associated construction and carrying costs, Eclipse will have sufficient funding to develop the 96 housing tax credits units identified in its 2006 RRLP Application and have 5 market-rate units available to increase rental revenues.

17. A decrease in the market-rate units results in a corresponding increase of the Total Set-Aside Percentage in the 2006 RRLP Application from 77% to 95%.

18. The annual HCs would remain unchanged. However, because the Development’s units would be reduced from 117 to 101 units, the RRLP Loan should be proportionately reduced to \$6,031,235.<sup>2</sup>

19. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 96 affordable housing units will be available for families and individuals in Broward County, Florida.

20. However, a denial of the requested waiver would result in a substantial hardship for Eclipse. More significantly, Eclipse could be denied the ability to deliver decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

21. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in

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<sup>2</sup> The base loan would be reduced to \$4,316,235, and the Supplemental Loan would be reduced to \$1,715,000

meeting the purpose of the Florida Housing Finance Corporation Act (the "Act"),<sup>3</sup> through new construction, in an economical and efficient manner.

**D. Conclusion**

22. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2006).

23. In this instance, Eclipse submits that the requested waiver meets the purpose of the Act and should be granted.

24. Should Florida Housing require additional information, Eclipse is available to answer questions and provide all information necessary for consideration of its Petition for a 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.

WHEREFORE, Petitioner Eclipse West Associates, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all the relief requested herein;
- B. Waive Rule 67ER06-27(j)'s restriction against changing the total number of housing units, and allow the number of units identified in the 2006 RRLP Application to be

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<sup>3</sup> See §§ 420.501 through 420.516, Fla. Stat. (2006).

reduced from 117 to 101 units, through the reduction of market-rate units from 16 to 5 unit, with a *pro rata* reduction of the RRLP Loan from \$6,995,000 to \$6,031,235;

C. Waive Rule 67-21.003(14)(k)'s restriction against changing the Total Set-Aside Percentage from 77% to 95%; and

D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

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By:   
MIMI L. SALL

**CERTIFICATE OF SERVICE**

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 11th day of February, 2008

By:   
Mimi L. Sall