

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: JOHNSON LAKES ESCAMBIA LIMITED
PARTNERSHIP

FHFC Case No. : 2006-055VW
FHFC App. No.: 2005-313HR

ORDER GRANTING VARIANCE OF RULE 67ER05-17

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on October 20, 2006, pursuant to a "Petition for Waiver of Rule 67ER-17" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on September 18, 2006, from Johnson Lakes Escambia Limited Partnership. ("Petitioner"). On September 29, 2006, the Notice of the Petition was published in Volume 32, Number 39, of the Florida Administrative Weekly. Florida Housing did not receive any 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 2005 Rental Recovery Loan Program ("RRLP") Petitioner was awarded an allocation of RRLP funds in the amount of \$6,141,214 for the construction of Johnson Lake Apartments, a 160-unit apartment development intended to serve the Elderly demographic to be located in Escambia County, Florida (the "Development").

3. Applicable to 2005 RRLP funding, Emergency Rule 67ER05-17, F.A.C.
(2005), states in pertinent part:

“(3) The base loan shall be non-amortizing and shall have interest rates as follows:

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(a) 0% simple interest per annum on the pro-rata portion of the base loan attributable to ELI units over the life of the loan; and

(b) 3% simple interest per annum on the pro-rata portion of the base loan attributable to non-ELI units.”

Applicable to 2006 RRLP funding, Emergency Rule 67ER06-34, F.A.C.

(2006), provides the following:

“(3) The base loan shall be non-amortizing and shall have interest rates as follows:

(a) 0% simple interest per annum on the pro-rata portion of the base loan attributable to ELI units over the life of the loan; and

(b) 1% simple interest per annum on the pro-rata portion of the base loan attributable to non-ELI units.”

4. Escambia County was designated as one of the Florida counties impacted by the 2004 hurricane season, and the Petitioner was awarded 2005 RRLP financing to assist in hurricane recovery resulting from the 2004 hurricane season. Under Emergency Rule 67ER05-17(3)(b), F.A.C., an interest rate of 3% was set on the 2005 RRLP loan awarded the Petitioner.

5. Subsequent to Petitioner’s award of the 2005 RRLP financing, Florida Housing adopted the 2006 RRLP rules which allocated funds to assist in hurricane recovery efforts resulting from both the 2004 and 2005 hurricane seasons. The Corporation increased the subsidy limits and adopted Emergency Rule 67ER06-34, F.A.C., which reduced the interest rate for 2006 RRLP financing from 3% to 1%.

6. As a result of the decrease in interest rate from the 2005 to the 2006 RRLP rules, the Petitioner was subject to the higher 3% interest rate under Emergency Rule 67ER05-17(3)(b), F.A.C. (2005), whereas, those who applied for RRLP funds in the 2006 cycle for recovery

assistance for the same 2004 storms received the 1% interest rate under Emergency Rule 67ER06-34(3)(b), F.A.C.. Had Petitioner filed for assistance under the 2006 rule, Petitioner would have received the lower 1% interest rate.

7. Accordingly, Petitioner requests a variance of the foregoing rule to allow Petitioner to receive the 1% interest rate on the pro-rata portion of the base loan attributable to the non-ELI units, as permissible under the 2006 RRLP rule, rather than the 3% under the 2005 RRLP rule, as the RRLP funds from both 2005 and 2006 were designated to assist recovery efforts for 2004 storm damage.

8. 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.

9. The granting of this request for variance will serve the purpose of the underlying statute by ensuring the viability of this affordable housing development by allowing Petitioner the benefit of the lower interest rate and making it more likely that the project will be completed on time and in budget, and, in turn, will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. Strict application of Emergency Rule 67ER05-17(3), F.A.C., will create a substantial hardship for Petitioner because it is subject to the same increased construction and insurance costs as those in the 2006 RRLP cycle. The variance will mitigate some of the financial stress resulting from these increased costs that will result in unnecessary delay and expense and make it impossible to complete the Development on time and within budget.

IT IS THEREFORE ORDERED:

A Variance of Emergency Rule 67ER05-17, F.A.C. (2005), is hereby **GRANTED** to reduce the interest rate on 2005 RRLP funds awarded Petitioner from 3% to 1%.

DONE and ORDERED this 20th day of October, 2006.

Florida Housing Finance Corporation

By: *Terry Santoni*
Chairperson



Copies furnished to:

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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.