

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

JOHNSON LAKES ESCAMBIA LIMITED
PARTNERSHIP, a Florida limited partnership,

Petitioner,

vs.

FHFC CASE NO. _____

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR VARIANCE OF
RULE 67ER05-17, FLORIDA ADMINISTRATIVE CODE (2005)**

JOHNSON LAKES ESCAMBIA LIMITED PARTNERSHIP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a variance of Rule 67ER05-17, Florida Administrative Code (2005), which imposes certain conditions on mortgage loans issued by the Corporation under its Rental Recovery Loan Program ("RRLP"). In support, Petitioner states the following:

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Johnson Lakes Escambia Limited Partnership
c/o Landmark Asset Services, Inc.
406 East 4th Street
Winston Salem, NC 27101-4112

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Heather M. Conger, Esq.
Broad and Cassel
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Orlando, Florida 32801
(407) 839-4252
(407) 650-0966 Facsimile

THE RULE FROM WHICH VARIANCE IS SOUGHT

3. Petitioner requests a variance of Rule 67ER05-17(3)(b), F.A.C. (2005) (the "Rule"), which requires an interest rate of three percent (3%) simple interest per annum on the pro-rata portion of the RRLP base loan attributable to non-Extremely Low Income ("ELI") units.

**STATUTES IMPLEMENTED
BY RULE 67-21.008(1)(b), F.A.C.**

4. Rule 67ER05-17(3)(b), F.A.C. (2005), implements Sections 2 and 3 of Chapter 2005-92, Laws of Florida. Section 2 of Chapter 2005-92, Laws of Florida, allocates to the Corporation a portion of the Local Government Housing Trust Fund and the State Housing Trust Fund to provide funds to eligible entities for affordable housing recovery efforts, including the funding of the RRLP, to assist with building and rehabilitating affordable rental housing to help communities respond to hurricane recovery needs. Section 3 of Chapter 2005-92, Laws of Florida, authorizes the Corporation to, among other things, administer the funds allocated pursuant to Section 2 of Chapter 2005-92, and to adopt emergency rules to administer those funds. Pursuant to these provisions, the Corporation has adopted Rule 67ER05-17, F.A.C. (2005), entitled "Terms and Conditions of Loans." Rule 67ER05-17(3), F.A.C. (2005), provides:

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

* * *

**JUSTIFICATION FOR GRANTING
VARIANCE OF RULE 67ER05-17(3)(b), F.A.C.**

5. Petitioner applied for RRLP financing in the 2005 Rental Recovery Loan Program Application Cycle (Application Number 2005-313HR), and was awarded RRLP funds for the acquisition, construction and development of a 160-unit multifamily apartment complex located in Pensacola, Escambia County, Florida (the "Development"). The Petitioner was able to submit a 2005 RRLP application for the Development because Escambia County was one of the Florida counties impacted by the 2004 hurricane season. Petitioner entered into credit underwriting with Seltzer Management Company, Inc. ("Seltzer") and the final credit underwriting report dated May 25, 2006 (the "Final Report"), was approved by the Corporation's Board of Directors on June 9, 2006. Petitioner will be receiving an allocation of tax-exempt bond financing from the Escambia County Housing Finance Authority, and the bonds will be privately placed with an affiliate of MMA Financial Services. The bonds and the RRLP financing are scheduled to close in September of 2006. Construction and insurance costs continue to rise, and such increase was further exacerbated by another active hurricane season in the Florida region in 2005. The Corporation was again provided authority by the Florida Legislature to allocate funds to assist in hurricane recovery efforts resulting from the 2005 hurricanes, and to implement rules to administer those funds. In response, the Corporation adopted emergency rule 67ER06-25, *et seq.* to administer the hurricane recovery funds. The Florida Legislature appropriated additional

moneys for the 2006 RRLP to assist those counties impacted by both the 2004 and 2005 hurricane seasons, which additional funding allowed the Corporation to increase the subsidy limits for which an applicant could apply during the 2006 RRLP application cycle. In addition to increasing the subsidy limits, the Corporation decreased the rate of interest for the 2006 RRLP loans. In contrast to Section 67ER05-17(3)(b), F.A.C. (2005), Section 67ER06-34(3), F.A.C. (2006) provides:

(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.

* * *

6. Petitioner seeks a variance from Rule 67ER05-17(3)(b), F.A.C. (2005) to obtain, on the pro-rata portion of the base loan attributable to the non-ELI units, the 1% interest rate, as permitted under the 2006 RRLP rules.

7. The Corporation is authorized by Section 120.542, Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant variances to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Variances shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principles of fairness¹;

¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to Rule 120.542(2), Florida Statutes.

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

8. In this case, strict application of Rule 67ER05-17(3)(b), F.A.C. (2005) will lead to unreasonable, unfair and unintended consequences. Petitioner should not receive a less favorable interest rate on the RRLP loan simply because Petitioner was the subject of an earlier hurricane season and an earlier RRLP application cycle. The RRLP program was new in 2005, and the Corporation continued to hone the program terms during the 2006 RRLP funding cycle. Petitioner is subject to the same increased construction and insurance costs as those affected by the 2005 hurricane season and should receive the benefit of the lower interest rate, which will mitigate some of the financial stress on the Development resulting from these increased costs. Further, the variance will serve the underlying purpose of the statutes because the variance will ensure the viability of this affordable housing development by allowing Petitioner the benefit of a lower interest rate which will mitigate some of the financial stress created by the increased construction and insurance costs and provide greater economic viability to the Development, and thus continue the Corporation's purpose to provide decent, safe and affordable housing in Florida.

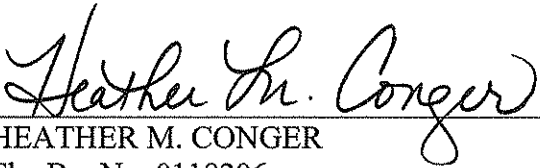
ACTION REQUESTED

9. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested variance of Rule 67ER05(3)(b), F.A.C. (2005), to provide a 1% interest rate on that portion of Petitioner's RRLP loan that was previously subject to a 3% interest rate.

10. The variance would be permanent as to the Petitioner.

11. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, as required by Section 120.542(5), Florida Statutes.

Respectfully submitted this 18th day of September, 2006.



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