

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CREATIVE CHOICE HOMES
XXVIII, LTD.

FHFC Case No.: 2010-003VW
Application No.: 2002-026CS

**ORDER GRANTING WAIVER OF PART III.D.3.f.
OF THE UNIVERSAL APPLICATION INSTRUCTIONS
INCORPORATED BY REFERENCE INTO
RULE 67-48.002(116) (2002), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on December 10, 2010, pursuant to “Amended Petition for Variance From or Waiver of Rule 67-48.002(116), F.A.C. ” (the “Amended Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Amended Petition on November 22, 2010, from Creative Choice Homes XXVIII, Ltd. (“Petitioner”). On January 22, 2010, Florida Housing received a “Petition for Variance From or Waiver From Application (2002 Cycle) Section III.D.1.F.,” (the “Petition”) from Petitioner. On February 2, 2010, Florida Housing published the Notice of the Petition in Volume 36, Number 05, of the Florida Administrative Weekly.¹ Florida Housing received no comments

¹ As the Amended Petition was substantially similar to the Petition and requested the same relief, it was not necessary to notice the Amended Petition in the FAW.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M Harrell / DATE: 12/13/2010

regarding the Petition or Amended 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 2002 Universal Cycle, Florida Housing awarded an allocation of \$748,670 in housing credits under the Low-Income Housing Tax Credits program and \$1,100,000 in State Apartment Incentive Loan funds to Creative Choice Homes XXVIII, Ltd. (“Petitioner”) to construct a 100-unit elderly rental apartment complex, known as Marina Del Ray Apartments, located in Citrus County, Florida (the “Development”).

3. Petitioner requests a waiver of Part III.D.3.f. of the Universal Application Instructions incorporated by reference in Rule 67-48.002(116) (2002) and the requirement that 15% of all units in the Development be equipped with roll-in showers.

4. Rule 67-48.002(116), Florida Administrative Code (2002), states in pertinent part:

(116) “Universal Application Package” or “UA1016” means the forms and instructions, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). The Universal Application Package is adopted and

incorporated herein by reference, effective on the date of the latest amendment to this rule chapter.

The 2002 Universal Application Instructions, Specific Instructions, Part III. D.3.f. provide:

Roll-In Showers will be provided in 15% of NC (new construction) and 10% of SR (substantial rehabilitation) units. 5% of this requirement may be met with walk-in type shower stalls with permanently affixed seat.

5. 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.

6. The Board finds that a waiver of the above Rules is necessary and that denial thereof would create a substantial hardship for Petitioner. Petitioner completed construction on the Development in 2004 and the units are currently occupied. Due to a miscalculation, there are 10 roll-in shower units and five walk-in shower stalls with permanently affixed seats, instead of the required 14 roll-in shower units and one walk-in shower stall with a permanently affixed seat. Petitioner demonstrated that the miscalculation was not intentional or committed in bad faith.

7. Petitioner further demonstrated that it would create a substantial hardship to reconfigure the bathrooms in order to comply with Florida Housing's

requirements. Petitioner's architect, Robert P. Snow, determined that installation of roll-in showers is not readily feasible given the configuration of the units. Petitioner would have to redesign, demolish and reconstruct the units at great expense, and Petitioner would have to relocate the residents currently occupying the units with a potential loss of revenue. The granting of a waiver of the aforementioned rules would serve the purpose of the underlying statute, Chapter 420, Part V, Fla. Stat., in that it would further the goal of facilitating the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households.

8. The granting of a waiver of the aforementioned rules would serve the purpose of the underlying statute, Chapter 420, Part V, Fla. Stat., in that it would further the goal of facilitating the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households.


IT IS THEREFORE ORDERED:

The Petition for Waiver of Part III.D.3.f. of the Universal Application Instructions incorporated by reference in Rule 67-48.002(116) (2002), Florida Administrative Code, is hereby **GRANTED** specifically to waive the requirement that 15% of all units in the Development have roll- in showers. Petitioner has satisfied this requirement with its currently constructed mix of roll-in showers and walk-in showers with permanently affixed seats.

DONE and ORDERED this 10th day of December, 2010.



Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Kevin Tatreau
Director of Multifamily Development Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

J. Martin Hayes
Akerman Senterferfitt
106 E. College Ave., Suite 1200
Tallahassee, Florida 32301

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

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.