

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CHARLOTTE CROSSING, LTD.

FHFC Case No. : 2004-048VW

**ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR VARIANCE FROM RULES 67-48.002(111), 67-21.002(98),
67-48.004(14)(g), (h), & (i), 67-21.003(14)(g), and 67-48.012(2)(g),
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on December 3, 2004, pursuant to a Petition for Variance from Rules 67-48.002(111), 67-21.002(98), 67-48.004(14)(g), (h), & (i), 67-21.003(14)(g), and 67-48.012(1)(g)¹, F.A.C., (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 1, 2004, from Charlotte Crossing, Ltd. ("Petitioner"). On November 12, 2004, the Notice of the Petition was published in Volume 30, Number 46, 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 2004 Universal Application Cycle Petitioner was awarded an allocation of State Apartment Incentive Loan ("SAIL") funds and Multifamily Mortgage Revenue Bond ("MMRB") proceeds for the construction of Charlotte Crossing, a 200-unit

¹ The Petition cites Rule 67-48.012(1)(g), however the SAIL debt service ratio is set by Rule 67-48.012(2)(g), FAC.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

M. J. Jenson /DATE: 12/6/04

apartment development intended to serve the Family demographic, to be located in Charlotte County, Florida (the “Development”).

3. While Petitioner’s Application was pending before Florida Housing, Hurricane Charley struck Charlotte County. The hurricane resulted in increased demand for housing, especially affordable housing, which caused dramatic increase the costs of labor and materials and the cost of construction generally. This situation was further aggravated by the impacts of Hurricanes Frances, Jeanne, and Ivan, which increased demand and construction costs still more throughout Florida.

4. Because of the resulting significant increases in costs to develop much needed affordable housing in Charlotte County, Petitioner is seeking relief from certain Florida Housing rules that limit the amount of subsidy that would be available for the Development. Specifically, Petitioner requests a variance from Rule 67-48.012(2)(g), Florida Administrative Code, which provides in pertinent part:

The minimum combined debt service coverage shall be 1.10 ..., including the SAIL mortgage and all other superior mortgages.

5. Petitioner also requests relief from the 2004 Application Instructions

6. 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.

7. The purpose of the underlying statute is to encourage development of affordable housing. Petitioner has adequately demonstrated that due to the significant increases in the costs of development in Charlotte County as a result of Hurricane Charley the application of the debt

service coverage requirements to the Development imposes a substantial hardship on the Petitioner.

8. Florida Housing has an opportunity to facilitate the construction of much needed affordable housing in an area that has suffered a significant loss of housing stock this year due to Hurricane Charley. It is clear that the viability of this Development is questionable without some financial relief being granted.

9. Granting the relief requested by Petitioner serves the purpose of the underlying statutes. Waiving the debt service coverage requirements enhances the financial viability of the Development thus increasing the likelihood of successful completion of the project which will provide much needed affordable housing in an area that has suffered significant losses of housing stock this year due to Hurricane Charley.

10. Further, Florida Housing finds that it is appropriate to waive the limitations imposed by Rule 67-48.004(14)(l) and by Rule 67-48.002(111) in Part V.A.1. of the 2004 Application Instructions in the primary hurricane strike counties, by allowing SAIL financing in those counties to employ the maximum SAIL funding limits proposed for the 2005 Universal Cycle.

11. Florida Housing finds that it is not appropriate under the circumstances and in light of the relief granted below to grant a variance or waiver from any provision of the rules or instructions sought by Petitioner, except as specifically set forth in this Order.


IT IS THEREFORE ORDERED:

The Petition for Variance from Rule 67-48.012(2)(g), Florida Administrative Code, is hereby **GRANTED** to the extent that the SAIL loan to the Development not be required to meet any specific debt service coverage requirements, provided that the amount of developer fee that

can be paid out at conversion/stabilization be capped at 20% of the total developer fee; and that R. 67-48.002(111) and R. 67-48.004(14)(l) are hereby waived to the extent necessary to allow Petitioner to request additional funding in the amount of the difference between the 2004 SAIL request limits pursuant to Part V.A.1. of the Universal Application Instructions and the proposed 2005 SAIL request limits. All other relief requested in the Petition is hereby **DENIED**.

DONE and ORDERED this 3rd day of December, 2004.

Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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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 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 MARTIL L. KING, JR., BOULEVARD, 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.