

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: HARBOUR COVE ASSOCIATES, LTD.

FHFC Case No. : 2006-004VW

**ORDER GRANTING PETITION FOR VARIANCE
FROM RULE 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 April 21, 2006, pursuant to a Petition for Variance from Rule 67-48.012(2)(g), F.A.C., (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on March 17, 2006, from Harbour Cove Associates, Ltd. ("Petitioner"). On March 31, 2006, the Notice of the Petition was published in Volume 32, Number 13, 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 2003 Universal Application Cycle Petitioner was awarded an allocation of State Apartment Incentive Loan ("SAIL") funds for the construction of Harbour Cove Apartments, a 212-unit apartment development intended to serve the Family demographic to be located in Broward County, Florida (the "Development").
3. Petitioner encountered unforeseen delay in the construction of the Development caused by the discovery of oil on the development site during construction and the ensuing Brownfield remediation process. The site work remediation has recently been concluded. There have been significant increases in the basic material costs during this period of delay, and these

additional costs, together with the additional costs associated with the remediation process, have resulted in significant cost overruns of approximately \$3.5 Million according to Petitioner.

4. The Development is also funded by a MMRB loan from the Housing Finance Authority of Broward County (the “Bond Loan”).

5. Petitioner requests a variance from Rule 67-48.012(2)(g), Florida Administrative Code (2003), which provides in pertinent part:

The minimum combined debt service coverage shall be 1.10 ..., including the SAIL mortgage and all other superior mortgages.¹

6. Specifically, Petitioner requests a variance from this rule to reduce the minimum combined debt service coverage from the minimum 1.10 required by the rule to 1.00.

7. In order for Petitioner to comply with the minimum SAIL loan combined debt service coverage of 1.10, the Bond Loan must be reduced by \$765,000. The requested variance to reduce the minimum combined debt service coverage to 1.00 could eliminate the requirement of paying down any portion of the Bond Loan at this time and enable Petitioner to use the \$765,000 for payment of development costs, thus offsetting some of the additional costs which have resulted from the delay due to the remediation process. In addition, Petitioner would be able to obtain 4% tax credits on this additional \$765,000 thus generating approximately \$500,000 in additional limited partner equity.

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.

¹ The current rule, Rule 67-48.0072(10), allows for a 1.00 combined debt service coverage if the Applicant defers at least 35% of the developer fee for at least six months after construction completion.

9. The granting of this request for variance will serve the purpose of the underlying statute in that the additional financing available for the Development will enhance the likelihood of its financial success 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 Rule 67-48.012(2)(g) will create a substantial hardship for Petitioner in that Petitioner will not have the use of approximately \$765,000 of bonds and \$500,000 in equity to offset the cost overruns described above.

IT IS THEREFORE ORDERED:

The Petition for Variance from Rule 67-48.012(2)(g), Florida Administrative Code (2003), is hereby **GRANTED** to reduce the minimum combined debt service coverage for the SAIL loan on the Development from 1.10 to 1.00 conditioned upon the deferral of at least 35% of the developer fee for at least six months after construction completion. All other relief, if any, requested in the Petition is hereby Denied.

DONE and ORDERED this 21st day of April, 2006.

Florida Housing Finance Corporation

By:


Chairperson

(SERVICE LIST APPEARS ON FOLLOWING PAGE)

Copies furnished to:

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

Ms. Vicki Robinson
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Maureen McCarthy Daughton, Esq.
Broad and Cassel
Suite 400
215 South Monroe Street (32301)
Post Office Drawer 11300
Tallahassee, Florida 32302
Attorney for Petitioner, Wickham Park, LLC

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

(NOTICE OF RIGHTS APPEARS ON FOLLOWING PAGE)

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 MARTIN 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.