

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

In Re: PARK AT REGENCY  
APARTMENTS, LLC.

FHFC Case No.: 2005-025VW

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FINANCE CORPORATION

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**ORDER GRANTING PETITION FOR WAIVER  
OF RULE 67-47.120(1), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on August 25, 2005, pursuant to a Petition for Waiver of Rule 67-21.008(1)(g), Fla. Admin. Code, (the "Petition"), filed by Park at Regency Apartments, LLC, a Delaware limited liability corporation ("Petitioner") on July 20, 2005. Notice of the Petition was published in Volume 31, Number 30, of the Florida Administrative Weekly. Florida Housing received no 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 finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner is the current owner of Park at Regency Apartments, a 159-unit development located in Orange County, Florida. Petitioner purchased this development in 2004 from Kings Waterford Apartments, LLC ("Seller"). The development had previously been

(1) Each Mortgage Loan for a Development made by the Corporation shall:

...

(g) Require the submission to the Corporation of an annual financial statement for the Development, and for the Applicant if revenue from multiple projects is being pledged. An annual financial statement compiled or reviewed by a licensed Certified Public Accountant may be submitted in lieu of an audited financial statement for the Development prior to the issuance of a certificate of occupancy for any unit in the Development, provided that the subsequent annual audited financial statement shall include all operations since inception.

4. Petitioner requests a waiver of the requirement to submit audited financial statements above rule for the fiscal year 2004.

5. The above requirement was incorporated into Section 14, pp. 15-17 of that certain Multifamily Mortgage and Assignment of Rents and Security Agreement recorded in the Official Records of Duval County, Florida, Book 11328, page 970.

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. As grounds for granting this waiver, Petitioner reports that since its purchase of Parks at Regency Apartments (aka Waterford Lakes Apartments), it has attempted to obtain the necessary information to complete a 2004 audited financial statement from the Seller, but has been unsuccessful and is currently unable to obtain the information or to submit an audited financial statement for fiscal year 2004.

8. The purpose of the underlying statutes, Sections 420.507 and 420.508, Fla. Stat.,

creditworthiness of entities to which MMRB loans have been granted and to monitor compliance with the key financial terms and conditions of such loans. In the instant case, the annual audited financial statements have been submitted for the Park at Regency Apartments for all, or substantially all, of the years prior to fiscal year 2004, and Petitioner reports that it will submit the required annual audited financial statement for fiscal year 2005. Furthermore, in connection with Petitioner's recent purchase of Park at Regency Apartments, Petitioner has already provided Florida Housing with numerous documents concerning Petitioner's financial capability and creditworthiness as well as Seller's previous compliance with the terms and conditions of the MMRB loan. Collectively, these documents demonstrate that the affordable housing provision purposes of Sections 420.507 and 420.508, Fla. Stat., are otherwise met in this particular case.


9. Moreover, not granting this waiver will create a substantial hardship for Petitioner, as Petitioner is now placed in the awkward position of facing potential sanction for violation of this Rule under circumstances that make it physically and legally impossible for Petitioner to comply in a meaningful manner.

10. Refusing to grant this waiver under Petitioner's circumstances would also lead to unreasonable, unfair and unintended consequences which would violate the principles of fairness.

The Petition for Waiver of Rule 67-21.008(1)(g), Fla. Admin. Code, is hereby **GRANTED**. Petitioner shall not be required to submit audited financial statements regarding fiscal year 2004, but shall present information regarding fiscal year 2004, to the extent possible, in its 2005 annual audited financial statement.

DONE and ORDERED this 25th day of July, 2005.

Florida Housing Finance Corporation

By:   
Terry Santoro  
Chair

**Copies furnished to:**

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

### **NOTICE OF RIGHT TO JUDICIAL REVIEW**

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.