

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: VALENCIA GARDEN APARTMENTS, LTD.

FHFC Case No.: 2006-009VW  
Application No.: 2005-046C

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**ORDER GRANTING WAIVER OF RULES 67-48.004(1)(a), 67-48.007  
AND 67-48.023, FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on April 21, 2006, pursuant to a Petition for Waiver or Extension of Time For Compliance With Rules 67-48.004(1)(a), 67-48.007 and 67-48.023, Fla. Admin. Code (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on March 22, 2006 from Valencia Garden Apartments, Ltd., ("Petitioner"). On March 31, 2006, Florida Housing published the Notice of the Petition in Volume 32, Number 13, 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 hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. During the 2005 Universal Cycle, Florida Housing awarded an allocation of \$975,000 in Low Income Housing Tax Credits ("LIHTC") to Valencia Garden Apartments, Ltd. ("Petitioner")
3. Petitioner requests a waiver of Rules 67-48.004(1)(a), 67-48.007 and 67-48.023, Fla. Admin. Code, as well as specific provisions of the incorporated 2005 Universal Cycle

Application Instructions, to seek an extension of the deadline to submit the Preliminary Allocation Fee and Compliance Monitoring Fee.

4. Rule 67-48.004(1)(a), Florida Administrative Code (2005), states in pertinent part:

The Universal Application Package is adopted and incorporated herein by reference, effective February 7, 2005.

The particular portions of the 2005 Universal Application Instructions which apply to this Petition state, in pertinent part:

5. Administrative Fees:

With respect to the HC Program, each Applicant to which a Preliminary Allocation ... is granted shall submit to the Corporation a **non-refundable** administrative fee in the amount of 8% of the first annual Housing Credit Allocation amount to be received. ... The Corporation must receive the administrative fee within 7 calendar days of the date of the Preliminary Housing Credit Allocation ...

(Emphasis added)

7. Compliance Monitoring Fees:

b. HC:

(1) Pre-final allocation compliance monitoring fee ... collected within 7 days of the date of the Preliminary Housing Credit Allocation ...

Rule 67-48.007, Florida Administrative Code (2005), states in pertinent part:

The Corporation ... shall collect via check or money order the following fees and charges in conjunction with the ... HC Program as outlined in the Universal Application Instructions:

(4) Administrative Fees ...

(6) Compliance Monitoring Fees.

Rule 67-48.023, Florida Administrative Code (2005), states in pertinent part:

In order for a Development to qualify for Housing Credits it shall, at a minimum, meet or comply with the following:

(1) Each Applicant shall comply with this rule chapter and with Section 42 of the IRC and federal regulations...

5. 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.

6. Florida Housing issued the Preliminary Allocation Certificate ("Certificate") dated November 30, 2005. This Certificate was contingent upon, among other things, the payment of the fees that are the subject of this Petition on or before December 7, 2005. Florida Housing did not sign the certificate until December 22, 2005. **Valencia subsequently submitted the required fees on February 7, 2006.** Petitioner explains the delay in the submission of these non-refundable fees was due to uncertainty on whether the proposed development would be financially feasible due to concerns over rising construction costs, as well as a lack of available general contractors.

7. The Board finds that the denial of these requested waivers would constitute a substantial hardship, in that the penalty for late payment of these fees could include loss of their HC allocation, which would have a significant negative economic impact which would threaten the viability of the Development, whereas the granting of the waivers would serve the purpose of the underlying statute by ensuring that the affordable housing units are provided.

8. In addition, the Board finds that not granting the requested waiver may violate the principles of fairness, in that the Preliminary Allocation Agreement provided by Florida Housing

was incorrectly completed and therefore created confusion regarding the due date of the Administrative and Initial Compliance Fees.

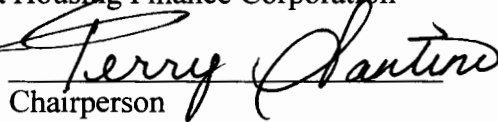
**IT IS THEREFORE ORDERED:**

The Petition for Waiver of Rules 67-48.004(1)(a), 67-48.007, and 67-48.023, Florida Administrative Code, and those provisions of the 2005 Universal Cycle Application Instructions, is hereby **GRANTED** to permit the acceptance of the Preliminary Allocation Fee and Compliance Monitoring Fee for Application #2005-046C as timely filed. All other relief requested in the Petition, if any, is hereby denied.

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

Florida Housing Finance Corporation

By:

  
Chairperson

**Copies furnished to:**

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Valencia Garden Apartments, Ltd.  
c/o TCG Valencia Garden, LLC,  
its General Partner  
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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
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**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.**