

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Highland Gardens Development, Ltd.

Case No. 2007-043VW

**ORDER GRANTING PETITION FOR WAIVER OF PART III.D.1.f. OF
THE 2006 UNIVERSAL APPLICATION INSTRUCTIONS**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on September 21, 2007, pursuant to a "Petition for Waiver of Part III.D.1.f of the 2006 Universal Application Instructions to Provide Specific Features in Units Developed for Elderly Residents" (the "Petition"), filed by Highland Gardens Development, Ltd. ("Petitioner") on August 21, 2007. Notice of the Petition was published in Volume 33, Number 35, 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 2006 Universal Cycle, Highland Gardens Development, Ltd. ("Petitioner") applied for Housing Credits ("HC") to finance the construction of

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HOUSING FINANCE CORPORATION

D. Green

/DATE. 10-29-07

Highland Gardens, Phase II (the “Development”) located in Broward County, Florida.

3. The 2006 Universal Application Instructions¹ at Part III.D.1.f., provides in pertinent part:

In order for a proposed Development to be classified as Elderly (ALF or non-ALF), the Development must meet the following requirements...

- f. The Applicant must provide the following features in specified percentages of all units in new construction (NC) and Rehabilitation/Substantial Rehabilitation (SR) Developments.

The requirement to provide the following features is in addition to the features committed to by the Applicant in the Construction Features and amenities section of the Application....

Tight-napped Berber-type carpet...

4. Petitioner has requested a waiver of the above rule to allow Petitioner to install Non-skid ceramic tile flooring instead of the tight-napped Berber-type carpet.
5. Petitioner asserts that the non-skid ceramic tile flooring will provide greater mobility by elderly individuals who rely on

¹ Rule 67-48.004(1)(a), F.A.C. (2006) adopts and incorporates the Universal Application Package and its contents, including, without limitation, the Universal Application Instructions.

walkers, wheelchairs and other forms of ambulatory assistance. Furthermore, Petitioner asserts that its proposed non-skid ceramic tile flooring is easier to maintain and relatively less problematic for allergic and respiratory ailments, as carpet is prone to accumulation of dust, molds, and other pollutants.

6. The requested change would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants.

7. 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.

8. The Board finds that strict application of the above Rule under these circumstances, where the Petitioner is attempting to install an upgraded amenity which would be more effective in addressing the health, safety, and daily-living needs of the elderly demographic for whom the Development is intended would cause substantial hardship to Petitioner and violate the principles of fairness. Permitting this change in Development would also serve the underlying purpose of the statute.

IT IS THEREFORE ORDERED:

The “Petition for Waiver of Part III.D.1.f of the 2006 Universal Application Instructions to Provide Specific Features in Units Developed for Elderly Residents” is hereby **GRANTED** to permit Petitioner to install non-skid ceramic tile flooring in lieu of the required tight-napped Berber-type carpet, with the additional condition that the non-skid, ceramic tile must also be non-glossy. All other relief requested in the Petition, if any, is denied.

DONE and ORDERED this 26th day of October, 2007.

Florida Housing Finance Corporation

By: *Lynne M. Stultz*
Chair



Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.