

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: OAKCREST APARTMENTS RRH II, LLLP

FHFC Case No.: 2006-033VW

Application No.: 2002-014C

**ORDER GRANTING WAIVER OF RULES 67-48.002(116) and 67-48.007,
FLORIDA ADMINISTRATIVE CODE (2002)**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on September 8, 2006, pursuant to an "Amended Petition for Waiver of Compliance Monitoring Fees Imposed by Rule 67-48.007, F.A.C. (2002), and the Universal Application Instructions Adopted as Rules under Section 67-48.002(116), F.A.C. (2002)" ("Amended Petition")¹. Florida Housing Finance Corporation ("Florida Housing") received the Amended Petition on August 7, 2006, from Oakcrest Apartments RRH II, LLLP ("Petitioner"). On August 18, 2006, Florida Housing published the Notice of the original Petition in Volume 32, Number 33, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Amended 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 2002 Universal Cycle, Florida Housing awarded an allocation of \$44,781 in Low Income Housing Tax Credits ("LIHTC") to Petitioner for application #2002-

¹ Petitioner submitted its Petition for Waiver on June 23, 2006. Petitioner's Amended Petition requests substantially the same relief, and corrects a Rule citation.

014C, to finance the construction of a 20-unit development located in Pasco County, Florida known as Oakcrest Apartments – Phase II (the “Development”). Petitioner selected the “Rural Development” set-aside as its demographic commitment.

3. The Development is financed in part through a United States Department of Agricultural Rural Development program (“USDA RD”) which provides a direct loan program for financing of multi-family housing. USDA RD and Florida Housing entered into an agreement to monitor compliance with the tax credit requirements of USDA RD borrowers. This agreement resulted in a reduced compliance monitoring fee imposed on USDA RD borrowers.

4. In 2001, the Annual Compliance monitoring fee for those developments with USDA RD funds was \$300.00 per development over the compliance monitoring terms, and the payment was discounted 2.75%. This reduced monitoring fee was inadvertently omitted from the 2002 Universal Application Instructions and rules.

5. Petitioner requests a waiver of Rules 67-48.002(116) and 67-48.007, Fla. Admin. Code (2002), as well as specific provisions of the incorporated 2002 Universal Cycle Application Instructions, to partially waive Annual Compliance monitoring fee and impose an Annual Compliance monitoring fee for the Development based on \$300.00 per development over the compliance monitoring term, 50 years, and the payment discounted at 2.75%, with no per unit annual fee.

6. Rule 67-48.002(116), Fla. Admin. Code (2002), states in pertinent part:

The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the last amendment of this rule chapter.

7. The particular portions of the 2002 Universal Application Instructions which apply to this Petition state, in pertinent part:

6. Compliance Monitoring Fees:

b. HC Only: Annual fee of \$1,380 + \$5.75 per set-aside unit, paid up front for the full Housing Credit Extended Use Period at Final Housing Credit Allocation, based on a quarterly payment stream of discounted at a rate of 2.75%.

8. Rule 67-48.007, Florida Administrative Code (2002), states in pertinent part:

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

(7) Compliance Monitoring Fees.

9. 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.

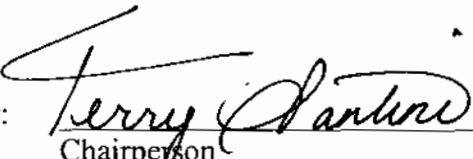
10. The Board finds that the reduced Annual Compliance monitoring fee for Developments with USDA RD funds was inadvertently omitted from the 2002 Universal Application Instructions and said fee should be in the amount of \$350 per development over the compliance monitoring term with the payment discounted at 2.75%, with no per unit annual fee. Denial of these requested waivers would violate principles of fairness, in that requiring payment of the entire fee where monitoring is also being conducted by the USDA would result in an overpayment by Petitioner. Granting the Petition would serve the purpose of the underlying statute which provides for compliance and the collection of monitoring fees, and by ensuring that the affordable housing units are provided.

IT IS THEREFORE ORDERED:

The Petition for Waiver of Rules 67-48.002(116), and 67-48.007, Fla. Admin. Code, and the above-described provisions of the 2002 Universal Cycle Application Instructions, is hereby **GRANTED**. Florida Housing shall impose an Annual Compliance monitoring fee for Oakcrest Apartments – Phase II based on \$350.00 per development over the compliance monitoring term (50 years), and the payment discounted at 2.75%, with no per unit annual fee. All other relief requested in the Petition, if any, is hereby denied.

DONE and ORDERED this 8th day of September, 2006.

Florida Housing Finance Corporation

By: 
Chairperson

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 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.