

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2005-053C
RFP 2006-04-10 SAIL Program Funds Request

BHG-79th St., LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**PETITION FOR WAIVERS OF RULES 67-48.004(14)(j) AND 67-48.004(1)'S
RESTRICTIONS ON CHANGING THE NUMBER OF UNITS AND FUNDING FOR
THE VILLA PATRICIA DEVELOPMENT, AS APPLIED TO RFP 2006-04 SAIL
PROGRAM FUNDS**

Petitioner BHG-79th St., LLC, a Florida limited partnership ("BHG") submits its Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for waivers of Rules 67-48.004(14)(j) and 67-48.004(1), Florida Administrative Code (2005) (collectively the "Rules"), as applied to BHG's RFP 2006-04 SAIL Program Funds Request No. 2006-04-10 ("2006-04-10 SAIL Request"). These Rules preclude changes to the 2005 Universal Application after the Application Deadline.

1. Pursuant to Section 120.542, Fla. Stat. (2005) and Rules 28-104.001 through 28-104.006, F.A.C., BHG requests waivers of the Rules, as applied to its 2006-04-10 SAIL Request, to allow for (a) the reduction in the total number of units from 160 to 125, and (b) the resulting *pro*

rata reduction of the 2006-04-10 SAIL Request from \$1,800,000 to \$1,562,500, for the high-rise project known as Villa Patricia (the "Development").¹

2. The name, address, telephone and facsimile numbers for BHG and its qualified representative are:

BHG-79th St., LLC
Attention: Lloyd J. Boggio, President
2950 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

3. The name, address, telephone and facsimile numbers of BHG's attorneys are:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
E-mail: bmcdonough@swmwas.com

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON, P.A.
200 East Las Olas Blvd., Suite 2100
Fort Lauderdale, Florida 33301
Telephone: 954-462-9575
Facsimile: 954-462-9524
E-mail: msall@swmwas.com

4. Pursuant to the 2005 Combined Rental Cycle Program, BHG timely submitted its 2005 Universal Application ("Universal Application") for competitive Housing Credits under the Low Income Housing Tax Credit program. *See* Application No. 2005-053C. Equity raised from Housing Credits will be used for the development of 160 very-low and low-income individual and

¹Simultaneously with the filing of this Petition, BHG is submitting its Petition for Waivers of Rules 67-48.004(14)(j) and 67-48.004(1)'s Restrictions on Changing the Number of Units and Funding for the Villa Patricia Development wherein BHG requests a reduction of housing units from 160 to 125, and a *pro rata* reduction of Housing Credits from \$2,368,500 to \$1,850,390, resulting in the return of \$518,110 in Housing Credits to Florida Housing.

household tax credit units known as Villa Patricia (the "Development"), with 80% of the units reserved for the elderly. The Development will serve individuals and elderly families in Miami, Miami-Dade County, Florida.

5. Florida Housing issued its Preliminary Allocation of Housing Credits reserved in the amount of \$2,368,500.00 ("Preliminary Allocation"), and as permitted by Rule 67-48.028, F.A.C., BHG and Florida Housing entered into a Carryover Allocation Agreement ("Carryover Agreement"). Under the Carryover Agreement, the Development's Placed-in-Service Date is December 31, 2007.

6. Consequently, it is anticipated that there will be a Final Housing Credit Allocation granted to BHG in accordance with Florida Housing's usual final allocation procedures.

7. On October 24, 2005, Hurricane Wilma struck the South Florida area. The impact of Hurricane Wilma contributed to substantial increases in construction costs for the Development and others in Miami-Dade County, and to substantial delays in the development process.

8. Recognizing the severity of Hurricane Wilma's impact, Florida Housing has provided additional funds through its Request for Proposals #2006-04 for 2005 Housing Credit Developments Located in Wilma GO Zone ("Wilma GO Zone Program") to offset increased construction costs and ensure that Housing Credit developments, such as Villa Patricia, are completed in a timely manner.

9. As a 2005 Housing Credit development located in the Wilma GO Zone, the Development was eligible for additional funds through the Wilma GO Zone Program. As a result, BHG submitted its 2006-04-10 SAIL Request for funding and received a total preliminary commitment of up to \$1,800,000 ("Preliminary SAIL Commitment"). True and correct copies of BHG's (a) Exhibit A to RFP 2006-04, (b) Florida Housing's June 28, 2006 notice of "Preliminary

SAIL Commitment \$557,000,” and (c) August 7, 2006 notice of “Remaining Preliminary SAIL Commitment \$1,243,000,” are attached hereto as Exhibits 1 through 3, respectively.

10. Because BHG’s 2006-04-10 SAIL Request and Preliminary SAIL Commitment were “based on its Development’s Universal Application score,” and additional factors related to the Universal Application, BHG requests a waiver of the Rules, as applied to its 2006-04-10 SAIL Request, to allow the reduction in units from 160 to 125, with a proportional reduction in its Preliminary SAIL Commitment from \$1,800,000 to \$1,562,500.²

11. The requested waivers will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to BHG; (b) deprive Miami of essential affordable rental units; and (c) violate principles of fairness.

12. The Rules for which waivers are sought provide as follows:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline ... Those items are as follows:

(j) Total number of units; ...

(m) Funding Request ... amount; ...

Rules 67-48.004(j) and (m), F.A.C. (2005).

²Simultaneously with the filing of this Petition, BHG is also submitting its Petitions for Variances of the 2005 Qualified Allocation Plan’s Requirement for Returning its 2005 Housing Credit Allocations and to Immediately Receive a Binding Commitment for an Allocation of 2007 Housing Credits (“Petition for Variance of 2005 QAP”), and for variances of the 2005 QAP, as applied to RFP 2006-04 SAIL Program Funds.

13. The applicable Rules are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),³ the statute that created the Housing Credits Program. *See* § 420.5099, Fla Stat. (2005). The Act designates Florida Housing as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2005). Accordingly, the Rules subject to BHG’s waiver requests are implementing, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the Housing Credit Program. *Id.*

14. The requested waivers will (a) ensure the financial feasibility of the Development; (b) provide 125 desperately needed housing units; and (c) allow the *pro rata* reduction of its Preliminary SAIL Commitment, and the returned Wilma GO Zone Funds will then be available for other desperately needed housing in Miami-Dade County, Florida.

15. The following facts demonstrate the economic hardship and other circumstances which justify BHG’s request for Rules waivers:

- a. BHG timely submitted its Universal Application for the Housing Credit Program and received Florida Housing’s Preliminary Allocation of Housing Credits of \$2,368,500, for very-low and low-income individual and household tax credit units for the Development, with 80% of the units reserved for the elderly.
- b. As a consequence of Hurricane Wilma, BHG applied for additional funding through the Wilma GO Zone Program, and received the Preliminary SAIL Commitment of up to \$1,800,000, for crucial funds necessary to offset

³The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the “Act”). *See also* Rule 67-40.020(1), F.A.C.

increased construction costs and ensure that the Development is completed in a timely manner.

- c. BHG's 2006-04-10 SAIL Request was "ranked based on its Development's Universal Application score."
- d. As a consequence of the requested reduction of the "total number of units" for the Development, BHG seeks to proportionately reduce its Preliminary SAIL Commitment from \$1,800,000 to \$1,562,500, resulting in the return of \$237,500 in Wilma GO Zone Funds to Florida Housing.
- e. A denial of the requested waivers would result in a substantial economic hardship to BHG. Without the reduction in units, the Development will not be financially feasible. More significantly, very-low and low income families and the elderly in Miami, Miami-Dade County, Florida, would be deprived of essential apartment rental units.

16. As demonstrated above, the requested waivers serve the purposes of Section 420.5099 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2005).

17. Moreover, controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when they would not effect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

18. The requested waivers will not adversely impact the Development or Florida Housing. In fact, by granting the requested waivers, Wilma GO Zone Funds will be available for other eligible affordable multi-family rental housing projects in Miami-Dade County.

19. Finally, by granting the requested waivers, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities, such as BHG, in meeting the purpose of the Act through new construction in an economical and efficient manner, regardless of hurricanes and other factors outside their control.

20. The waivers being sought are permanent in nature.

21. Should Florida Housing require additional information, BHG is available to answer questions and to provide all information necessary for consideration of its Petition for Waivers of Rules 67-48.004(14)(j) and 67-48.004(l)'s Restrictions on Changing the Number of Units and Funding for the Villa Patricia Development, as Applied to RFP 2006-04 Sail Program Funds.

WHEREFORE, Petitioner BHG-79th St., LLC., respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

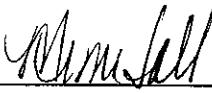
A. As applied to the RFP 2006-04 Sail Program Funds, waive the prohibition on changing the total number of units to permit a decrease from 160 to 125 units;

B. As applied to the RFP 2006-04 Sail Program Funds, waive the prohibition on changing the funding request amount to allow BHG to proportionately reduce its Preliminary SAIL Commitment \$1,800,000 to \$1,562,500, resulting in the return of \$237,500 in Wilma GO Zone Funds to Florida Housing; and

C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for BHG-79th St., LLC
200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301
Tel: (954) 462-9575
Fax: (954) 462-9567

By: 
MIMI L. SALL
E-mail: msall@swmwas.com

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 9th day of September, 2006.

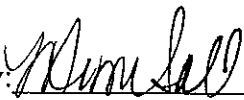
By: 
Mimi L. Sall

EXHIBIT A TO RFP 2006-04
RFP 2006-04 SAIL Program Funds Request

Developments located in the counties damaged by Hurricane Wilma that were awarded an allocation of only Competitive Housing Credits (HC) in the 2005 Universal Application Cycle may request SAIL funds as follows:

- Eligible Counties: Brevard, Broward, Collier, Glades, Hendry, Indian River, Lee, Martin, Miami-Dade, Monroe, Okeechobee, Palm Beach and St. Lucie.
- Maximum Request: \$12,500 per set-aside unit
- Evaluation Criteria: Requests will be ranked based on the Development's 2005 Universal Application score and proximity tie-breaker points, as well as the leveraging of this SAIL request amount as a percentage of the Development Cost as stated on the Development's 2005 Universal Application Development Cost Pro Forma. The Applicant requesting the lower amount of SAIL funds as a percentage of Development Cost will receive preference.

Application No. 2005- 053 C was successful in receiving a tentative allocation of Competitive Housing Credits in the 2005 Universal Application Cycle for the following proposed Development:

Villa Patricia, consisting of 160 total units, with a total
(Name of Proposed Development) (Part III.A.6 of the Application)

Set-aside percentage of 100 %.
(Part III.E.1.b.(2)(a) of the Application)

BHG-79th St., LLC requests additional funding from the SAIL.
(Name of Applicant)

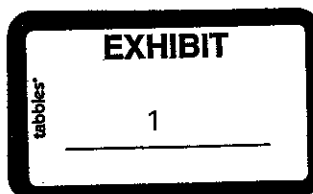
Program in the total amount of \$ 1,800,000 (based on 160 set-aside units) for the construction/rehabilitation of the above referenced Development.

I certify that the above information is true and correct; that I have the authority to make this request on behalf of the above-named Applicant; and that, if funded, at least 50 percent of the Developer fee will be utilized as a permanent source of financing to be paid from Development Cash Flow.

I agree to abide by all conditions of RFP 2006-04 and certify that all information provided in this Proposal is true and correct, that I am authorized to sign this Proposal for the Offeror and that the Offeror is in compliance with all requirements of the RFP, including but not limited to, the certification requirements stated in Section Five of this RFP.

<u>[Signature]</u> Signature	<u>4/19/2006</u> Date	<u>2950 SW 27th Avenue, Ste. 200</u> Mailing Address
<u>Lloyd J. Boggio</u> Name of Signatory (typed or printed)		<u>Miami, FL 33133</u>
<u>President, TCG Villa Patricia, LLC</u> Title of Signatory (typed or printed)		<u>305-476-8118</u> Telephone No. (Including Area Code)
<u>lwong@carlisledevelopmentgroup.com</u> E-Mail Address		<u>305-476-1557</u> Facsimile No. (Including Area Code)
<u>Paola P Roman</u> Signature of Witness	<u>4/19/2006</u> Date	<u>PAOLA ROMAN</u> Name of Witness (typed or printed)

Failure to provide a manual signature on this RFP 2006-04 SAIL Program Funds Request (Request) shall result in rejection of the Proposal. Signatures in blue ink are preferred. If the Request contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Request shall be rejected. The Request may be photocopied.



we make housing affordable
Via E-Mail

June 28, 2006

Mr. Lloyd Boggio
BHG-79th St., LLC
2950 SW 27th Avenue, Suite 200
Miami, FL 33133

Re: Villa Patricia (2006-04-10/2005-53C)
Preliminary SAIL Allocation \$557,000

Dear Mr. Boggio:

Congratulations! On June 9, 2006, Florida Housing's Board of Directors approved the proposals for the RFP 2006-04 Wilma Go Zone. Your development has been selected for participation in the State Apartment Incentive Loan (SAIL) Program's Wilma Go Zone RFP, pursuant to Rule Chapter 67-48, Florida Administrative Code (F.A.C.). This letter represents a preliminary commitment for a loan from the SAIL Program for up to \$557,000.

This funding is contingent upon:

1. Borrower and Development meeting all requirements of Rule Chapter 67-48, F.A.C. and all other applicable state and FHFC requirements; and
2. A positive credit underwriting recommendation; and
3. Final approval of the credit underwriting report by the Florida Housing Board of Directors.

By July 5, 2006, you must submit a check for \$4,627 payable to First Housing Development Corporation, the credit underwriter assigned to your development at the address listed below. Florida Housing will forward your SAIL Application to the credit underwriter.

Mr. Ed Busansky
The Westshore Center
1715 N. Westshore Blvd., Suite 700
Tampa, FL 33607
813-289-9410

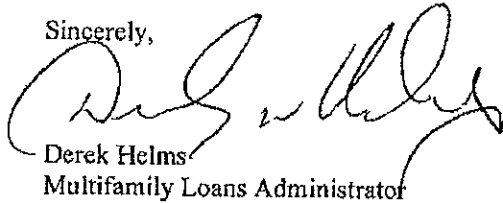
Mr. Lloyd Boggio
BHG-79th St., LLC
June 28, 2006
Page 2

Please indicate your acceptance to enter credit underwriting by returning the enclosed Acknowledgment along with a copy of the check submitted to the credit underwriter by July 5, 2006, to the attention of Melanie Jordan, Florida Housing. Pursuant to Rule Chapter 67-48.012, F.A.C., all items required by the Credit Underwriter must be provided to the Credit Underwriter within 35 calendar days of notification from the Credit Underwriter. You will have an additional 25 calendar days to submit the appraisal, survey and final plans.

Unless an extension is approved by Florida Housing, failure to submit the required materials to the Credit Underwriter within the appropriate timeframe shall result in the withdrawal of the preliminary commitment and the funds will be made available to the next eligible applicant.

Florida Housing looks forward to working with you and the development team to facilitate the need for affordable housing in Florida. If you have any questions, please do not hesitate to contact me or a member of the SAIL staff.

Sincerely,



Derek Helms
Multifamily Loans Administrator

cc: Jan Rayboun, Loan Closing Coordinator
Laura Cox, Director of Assets Management
Diane Carr, Servicing Administrator
Nicole Gibson, Loan Servicing Manager
Ed Busansky, First Housing Development Corporation

Mr. Lloyd Boggio
BHG-79th St., LLC
June 28, 2006
Page 3

**OPPORTUNITY TO ENTER CREDIT UNDERWRITING
2006 RFP 2006-04 Wilma Go Zone
ACKNOWLEDGMENT**

The undersigned hereby acknowledges and agrees to enter credit underwriting in accordance with the terms and conditions of Florida Housing's subject letter dated June 28, 2006.

Accept X

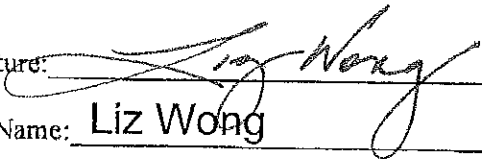
Decline _____

Villa Patricia

Development Name

2006-04 - 10/2005-53C

ID Number

Signature: 

Print Name: Liz Wong

Date: 7/3/2006



227 North Bronough Street, Suite 5000 • Tallahassee, Florida 32301
850.488.4197 • Fax 850.488.9809 • www.floridahousing.org

we make housing affordable

Via E-Mail

August 7, 2006

Mr. Lloyd Boggio
BHG-79th St., LLC
2950 SW 27th Avenue, Suite 200
Miami, FL 33133

Re: Villa Patricia (2006-04-10/2005-53C)
Remaining Preliminary SAIL Allocation \$1,243,000

Dear Mr. Boggio:

Congratulations! Your development has been selected for an additional preliminary commitment from the State Apartment Incentive Loan (SAIL) Program's Wilma Go Zone RFP, pursuant to Rule Chapter 67-48, Florida Administrative Code (F.A.C.). This letter represents an additional preliminary commitment for a loan from the SAIL Program for up to \$1,243,000.

This funding is contingent upon:

1. Borrower and Development meeting all requirements of Rule Chapter 67-48, F.A.C. and all other applicable state and FHFC requirements; and
2. A positive credit underwriting recommendation; and
3. Final approval of the credit underwriting report by the Florida Housing Board of Directors.

In regards to the preliminary commitment letter sent to you on June 28, 2006, it has come to our attention that the fees you were charged for credit underwriting were inaccurately calculated. The total fee should have been \$4813.

Please submit a check for an additional \$186, payable to Seltzer Management Group, Inc., at the address listed below.

Mr. Ben Johnson
Seltzer Management Group, Inc.
7500 McElvey Road
Panama City Beach, FL 32408-4629
850-233-3616

Jeb Bush, Governor

Board of Directors: Terry Santini, Chairman • Lynn M. Stultz, Vice Chairman • Thaddeus Cohen, Ex Officio
Cesar E. Calvet • David E. Oellerich • Zully Ruiz • Robert J. Taylor • Sandra Terry

Stephen P. Auger, Executive Director

EXHIBIT

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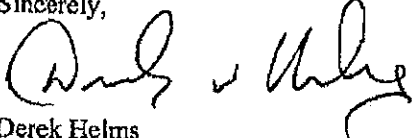
Mr. Lloyd Boggio
BHG-79th St., LLC
August 7, 2006
Page 2

Please indicate your acceptance to enter credit underwriting by returning the enclosed Acknowledgment along with a copy of the additional check submitted to the credit underwriter by August 14, 2006, to the attention of Melanie Jordan, Florida Housing. Pursuant to Rule Chapter 67-48.012, F.A.C., all items required by the Credit Underwriter must be provided to the Credit Underwriter within 35 calendar days of notification from the Credit Underwriter. You will have an additional 25 calendar days to submit the appraisal, survey and final plans.

Unless an extension is approved by Florida Housing, failure to submit the required materials to the Credit Underwriter within the appropriate timeframe shall result in the withdrawal of the preliminary commitment and the funds will be made available to the next eligible applicant.

Florida Housing looks forward to working with you and the development team to facilitate the need for affordable housing in Florida. If you have any questions, please do not hesitate to contact me or a member of the SAIL staff.

Sincerely,



Derek Helms
Multifamily Loans Administrator

cc: Jan Rayboun, Loan Closing Coordinator
Laura Cox, Director of Assets Management
Diane Carr, Servicing Administrator
Nicole Gibson, Loan Servicing Manager
Ben Johnson, Seltzer Management Group, Inc.

Mr. Lloyd Boggio
BHG-79th St., LLC
August 7, 2006
Page 3

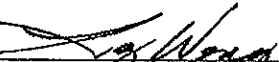
**OPPORTUNITY TO ENTER CREDIT UNDERWRITING
2006 RFP 2006-04 Wilma Go Zone
ACKNOWLEDGMENT**

The undersigned hereby acknowledges and agrees to enter credit underwriting in accordance with the terms and conditions of Florida Housing's subject letter dated August 7, 2006.

Accept

Decline

VILLA PATRICIA
Development Name
(2006-04-10/2005-53C)
ID Number

Signature: 

Print Name: CR2 WORKS

Date: 8/16/2006