

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

**GARDENIA GARDEN, INC.,
A Florida Not for Profit Corporation,
Petitioner,**

v.

FHFC CASE NO.: 2010-016UC

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on April 30, 2010.

On or before August 20, 2009, Gardenia Garden Inc., (“Petitioner”), a Community Housing Development Organization (“CHDO”) submitted its 2009 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for an allocation of funding from the HOME Investment Partnership Program. Petitioner received a Final Score of 66 points, passed all threshold requirements, and is eligible for funding, but did not receive an allocation of HOME funds due to a lack of funds remaining to meet 75% of its requested amount as required in

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Harrell / DATE: *5/4/2010*

the 2009 Ranking Selection Criteria, pursuant to Rule 67-48.004(1)(a), Florida Administrative Code. Petitioner timely filed its “Petition for Formal Administrative Hearing,” (the “Petition”) challenging Florida Housing’s decision to not fund any CHDO’s in the 2009 Universal Cycle Program. A copy of the Petition is attached as Exhibit A. Petitioner alleged that Florida Housing acted in contravention of 24 CFR 92.300 when it failed to allocate any HOME funds to CHDO’s in the 2009 Universal Cycle. Florida Housing reviewed the Petition pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact.

On April 12, 2010, Florida Housing filed a Motion for Summary Final Order, and as a basis, stated that Petitioner failed state a cause of action for which relief could be granted. Florida Housing determined that as a matter of law it did not violate 24 CFR 92.300 as the 24 month time period by which it must allocate the HOME funds to CHDO’s had not expired. A copy of the Motion for Summary Final Order is attached as Exhibit B.

Petitioner has not responded to the Motion for Summary Final Order.

RULING ON THE MOTION FOR SUMMARY FINAL ORDER

The Board finds, that taking the facts as pled in its Petition, and viewed in the light most favorable to the Petitioner, the Petition fails to state

a cause of action as a matter of law. 24 CFR 92.300 provides in pertinent part:

Within 24 months after HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations.

Florida Housing as the Participating Jurisdiction has twenty-four months to allocate 15% of HOME funds to eligible CHDO's, upon execution of the HOME Partnership Agreement. Florida Housing executed its most recent HOME Investment Partnership Agreement on July 27, 2009. A copy of the HOME Investment Partnership Agreement is attached as Exhibit C. As the time period to allocate 15% of the 2009 HOME funds to eligible CHDO's will not expire until July 27, 2011, Florida Housing cannot have acted in contravention of the federal statute. Petitioner failed to allege a cause of action upon which relief can be granted.

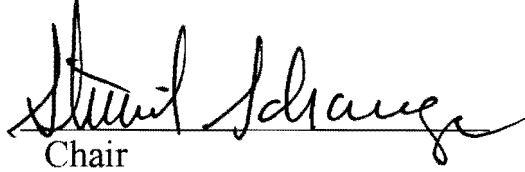
ORDER

IT IS HEREBY **ORDERED** that Petitioner's Petition for Formal Administrative Hearing is dismissed for failure to state a cause of action upon which relief can be granted.

DONE and ORDERED this 30th day of April, 2010.



FLORIDA HOUSING FINANCE
CORPORATION

By: 
Chair

Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Tim Schoenwalder
Blank & Meenan PA
204 South Monroe Street
Tallahassee, Florida 32301

FLORIDA HOUSING FINANCE CORPORATION

GARDENIA GARDEN, INC.,
A Florida Not For Profit Corporation,

Petitioner,

v.

Case No. 2010-014 UC

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

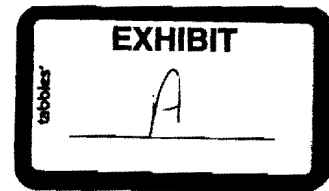
FILED
FLORIDA HOUSING FINANCE CORPORATION
TALLAHASSEE, FLORIDA
JAN 14 2010

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner Gardenia Garden, Inc. files this petition pursuant to sections 120.569 and 120.51(1), Florida Statutes, and rule 28-106.201, Florida Administrative Code, for a formal administrative hearing to contest the decision by Respondent Florida Housing Finance Corporation to not fund Petitioner's competitive loan application seeking HOME Program funds in the 2009 Universal Application Cycle.

Agency Affected

1. The agency affected by this proceeding is the Florida Housing Finance Corporation ("Florida Housing"), 227 N. Bronough Street, Suite 500, Tallahassee, Florida 32301-1329. The agency's telephone number is 850.488.4197. The agency identifies the application in issue by Registration No. 2009-183H.



Petitioner and Petitioner's Representative

2. The Petitioner is Gardenia Garden, Inc., a not for profit corporation organized and existing under Chapter 617, Florida Statutes, which has its principal offices at 1727 NE 8th Avenue, Gainesville, Florida 32641. Gardenia Garden is fully qualified as a 501(c)(3) non-profit entity. Gardenia Garden is small business party for purposes of section 57.111, Florida Statutes.

3. Gardenia Garden's local representative is Timothy G. Schoenwalder of Blank & Meenan, P.A., 204 South Monroe Street, Tallahassee, Florida 32301. Counsel's phone number is 850.681.6710.

Background Information

4. Florida Housing is a public corporation organized and existing under Chapter 420, Florida Statutes. Florida Housing is the governmental entity that bears statutory responsibility for administering the "HOME Investment Partnership Program" in Florida (the "HOME Program"), codified as section 420.5089, Florida Statutes.

5. Florida Housing's principal duty under the HOME Program is its obligation to distribute funds it has received from the U.S. Department of Housing and Urban Development ("HUD").

6. Florida Housing has adopted rules pertaining to the HOME Program in Rule Chapter 67-48, Florida Administrative Code. This rule chapter includes provisions that apply to Community Housing Development Organizations, also known as “CHDO(s).” HUD has described the term “CHDO” to mean a “private, nonprofit, community-based organization that has obtained or intends to obtain staff with the capacity to develop affordable housing for the community it serves, and meets the definition at 24 CFR 92.2.”

7. Florida Housing adopted Rule 67-48.014(2) which applies to CHDOs and provides in pertinent part:

The Corporation shall utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92.

8. Due in part to Florida Housing’s express duty to “utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92,” Gardenia Garden became pre-designated as a CHDO in order to be eligible to apply for HOME Program loans. By letter dated March 4, 2009 to Gardenia Garden, Florida Housing acknowledged in pertinent part the following:

Congratulations! Gardenia Garden, Inc. has been pre-designated as a CHDO by Florida Housing Finance Corporation through May 27, 2010. Your service area for the State of Florida CHDO has been stated as Gainesville, Florida.

If your application is funded, Gardenia Garden, Inc. will be officially designated as a CHDO with the execution of a CHDO Agreement between FHFC and Gardenia Garden, Inc.

9. Each year, Florida Housing prepares a report that is intended to confirm for HUD that Florida Housing is administering its duties in respect to CHDOs, consistent with the requirements under 24 CFR Part 92. Florida Housing's report is included within the State of Florida Annual Action Plan for July 1, 2009 – June 30, 2010 ("2009 Action Plan"), which Florida Housing and three other state agencies submitted to HUD.

10. In the 2009 Action Plan, Florida Housing affirmed the following facts in its portion of that report to HUD:

A minimum of 15 percent of the 2009 HOME allocation, or \$3,359,306, will be reserved for developments that are sponsored by qualified

CHDO applicants. Florida Housing has historically exceeded the 15% CHDO requirement between rental and homeownership activities. In the event insufficient applications meeting threshold are received to allocate this amount to rental developments, the remaining unallocated funds (including CHDO reservation amount) may be shifted to homeownership activities. The same applies to homeownership developments, so the remaining unallocated funds may be shifted to rental activities. In the event that more than 15% of the multifamily portion of the allocation is requested by applications meeting threshold submitted by qualifying CHDOs, up to 25% of the multifamily allocation will be used to fund CHDOs prior to funding non-CHDOs.

[No page citation is provided because this part of the report is not paginated.]

11. On or about August 19, 2009, Gardenia Garden submitted its competitive application to Florida Housing to obtain a low interest loan for rental housing funded through the HOME Program.

12. On February 26, 2010, Florida Housing released its rankings for the 2009 Universal Application Cycle. Florida Housing determined that Gardenia Garden's application was eligible for funding, but declined to fund the application. It is Gardenia Garden's understanding that Florida Housing declined to fund any loan applications submitted by a designated or pre-designated CHDO in respect to the HOME Program.

13. Florida Housing's decision to not fund Gardenia Garden's application will harm Gardenia Garden's substantial interests, in ways which include but are not limited to: Gardenia Garden will suffer financial harm from its inability to timely and affordably renovate 100 apartments dedicated for rental to low income housing residents, and from the likely cancellation of loan commitments which Gardenia Garden's received from its lender and the City of Gainesville.

Ultimate Facts and Law

14. Florida Housing's decision to not fund Gardenia Garden's eligible application for a loan under the HOME Program is arbitrary and capricious; it violates the agency's rules and the agency's duties under the

HOME Program; it contravenes the federal objectives for CHDOs set forth in Title 24, section 92.300 CFR *et seq.*; and it contravenes Florida Housing's express representations to HUD regarding Florida Housing's use of HUD monies for CHDOs in the HOME Program for 2009-2010.

Disputed Issues of Material Fact and Law

15. Disputed issues of material fact and law include:
- a. whether Florida Housing acted arbitrarily and capriciously when it decided not to fund Gardenia Garden's application, which has been found to be eligible for funding;
 - b. whether Florida Housing acted arbitrarily and capriciously when it decided not to fund Gardenia Garden's application, despite Florida Housing's acknowledgment in the 2009 Annual Plan of its obligation to eligible CHDOs that seek to provide low income rental housing;
 - c. whether Florida Housing acted in violation of its own rules, including Rule 67-48.014(2), when it decided not to fund Gardenia Garden's application; and
 - d. whether Florida Housing acted in violation of its duties to HUD, in contravention of Title 24, section 92.300 CFR *et*

seq., when Florida Housing decided not to fund Gardenia Garden's application.

Ultimate Facts and Law

16. The ultimate facts and law are that Gardenia Garden will suffer a significant and adverse financial impact as a result of Florida Housing's decision to not fund Gardenia Garden's application for a loan under the HOME Program, and that by refusing to fund Gardenia Garden's application, Florida Housing has acted arbitrarily and capriciously; has acted in violation of its own rules, federal rules and its program duties to HUD; and has contravened its express commitment to HUD to fund CHDOs in Florida for 2009-2010.

Rules and Statutes

17. Rules and statutes entitling Gardenia Garden to the relief requested below are sections 120.569 and 120.57, Florida Statutes; Part V of Chapter 420, Florida Statutes; Rule Chapter 67-48, Florida Administrative Code, including rule 67.48.014; Rule 28-106.201; and Title 24, section 92.300 CFR *et seq.* Gardenia Gardens has identified the significance of these statutes and rules to this proceeding throughout this petition.

Relief Requested

WHEREFORE, Gardenia Garden respectfully requests:

A. That Florida Housing forward this petition to the Division of Administrative Hearings for the assignment of an Administrative Law Judge who will then conduct a *de novo* formal administrative proceeding pursuant to §§120.569 and 120.57(1), Fla. Stat.;

B. That each disputed issue of fact, each disputed issue of law, and each disputed combined issue of fact and law recited above be resolved in Gardenia Garden's favor;

C. That a recommended order and a final order be issued determining that Gardenia Garden's loan application for HOME Program funds is funded;


D. That an order granting an award of reasonable attorney fees and costs be issued under section 57.111, Florida Statutes, in favor of Gardenia Garden; and

E. That Gardenia Garden be afforded all additional relief deemed appropriate.

Date: March 22, 2010

Respectfully submitted,

BLANK & MEENAN, P.A.

By: 

Timothy G. Schoenwalder, Esq.
FL Bar ID No. 755930
204 South Monroe Street
Tallahassee, Florida 32301
850.681.6710 (voice)
850.681.6713 (fax)
ts@blanklaw.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true copy of this Petition For Formal Administrative Hearing have been delivered by hand to the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, and a copy has been provided by hand to Wellington J. Meffert, II, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, on this 22nd day of March 2010.



Timothy G. Schoenwalder

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**GARDENIA GARDEN, INC.,
A Florida Not for Profit Corporation,**

Petitioner,

v.

FHFC CASE NO.: 2010-016UC

FLORIDA HOUSING FINANCE CORPORATION,

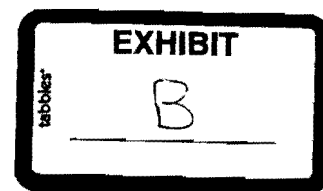
Respondent,

MOTION FOR SUMMARY FINAL ORDER

Comes now Respondent Florida Housing Finance Corporation, "Florida Housing" by and through the undersigned counsel files this Motion for Summary Final Order and in support thereof, states:

PRELIMINARY STATEMENT

On or before August 20, 2009, Gardenia Garden, Inc. ("Petitioner") submitted an Application to Florida Housing for a low interest loan for rental housing funded through the HOME Program through the 2009 Universal Cycle. Petitioner's Application number was 2009-183H. On December 3, 2009, Florida Housing notified Petitioner of the results of scoring its Application. Petitioner received a total of 66 points and had passed all threshold requirements. On February 26, 2010, Florida Housing released its rankings for the 2009 Universal Cycle. Petitioner's Application was eligible for funding, but was not funded due to a lack of HOME funds. Petitioner timely filed its Petition contesting Florida Housing's decision not to fund Petitioner's Application.



JUDGMENT ON THE PLEADINGS

1. As a matter of law, Florida Housing is entitled to Summary Final Order, as Petitioner has failed to state a cause of action. Taking the facts as pled in its Petition, and viewed in the light most favorable to the Petitioner, they are not entitled to funding as a matter of law. The following facts are established by Petitioner in its Petition, attached as Exhibit A:

- a. Petitioner, Gardenia Garden, Inc. is a 501(c)(3) non-profit entity, existing under Chapter 617, Fla. Stat., and is a small business party under Section 57.111, Fla. Stat. (paragraph 2 of the Petition)
- b. Florida Housing is the participating jurisdiction and administers the HOME program pursuant to section 420.5089, Fla. Stat. (paragraph 4 of the Petition)
- c. Florida Housing's principal duty under the HOME program is to distribute funds received from HUD. (paragraph 5 of the Petition)
- d. Florida Housing has adopted rules pertaining to the HOME program in Rule Chapter 67-48, Fla. Admin. Code, including rules that apply to Community Housing Development Organizations ("CHDO"). (paragraph 6 of the Petition)
- e. Florida Housing's rule, 67-48.014(2), F.A.C., specifically state that 15 percent of the HOME allocation will be utilized for CHDO's pursuant to 24 CFR Part 92. (paragraph 7 of the Petition)
- f. Petitioner's application was designated as a CHDO. (paragraph 8 of the Petition)
- e. Pursuant to 24 CFR Part 92, Florida Housing's 2009 State of Florida Annual Action Plan, 15 percent of the 2009 HOME allocation or \$3,359,306 was reserved for CHDO applicants. (paragraphs 9 and 10 of the Petition)

f. Petitioner applied for HOME funds in the 2009 Universal Cycle. (paragraph 11 of the Petition)

g. Petitioner's application was eligible for, but not funded in the 2009 Universal Cycle. (paragraph 12 of the Petition)

h. No CHDO's that applied for HOME funding in the 2009 Universal Cycle were funded. (paragraph 12 of the Petition)

Florida Housing does not dispute any of these facts as pled in the Petition.

2. Petitioner alleges that Florida Housing violated the federal and state HOME laws when it failed to fund its application for HOME funds without expressly alleging *how* Florida Housing violated the laws. Petitioner's only allegation is that Florida Housing has a duty to allocate HOME funds to eligible applicants and that somehow it failed to fulfill its duty when it failed to allocate HOME funds for its Gardenia Garden application. Petitioner conspicuously omits in its Petition the time requirements by which Florida Housing must allocate HOME funds to CHDO's.

3. The law that governs the HOME program is very specific in establishing the time by which Florida Housing, as participating jurisdiction, must allocate the HOME funds for the CHDO's. 24 CFR 92.300(a)(1) states in pertinent part:

Within 24 months after HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations.

Florida Housing executed the HOME Investment Partnership Agreement with HUD on July 27, 2009. See Attached Exhibit B. Pursuant to 24 CFR 92.300(a)(1), Florida Housing must allocate 15 percent of its 2009 allocation of HOME funds to CHDO's by July of 2011. Petitioner's claim

that Florida Housing acted in violation of its duties to HUD in contravention of 24 CFR 92 is at best premature as Florida Housing has 15 more months to meet its federal obligation. In fact, Florida Housing met its obligation on February 26, 2010, when the Board approved the credit underwriting report for North Central Heights II, a CHDO application, and directed Florida Housing's staff to issue a firm commitment and commence loan closing activities. See Attached Exhibit C.

4. The Florida Statutes also govern the HOME Investment Partnership Program. Section 420.5089(5), Fla. Stat. states:

Loans made under this program shall be made for eligible applicants and activities as enumerated in 24 C.F.R. part 92, and as enumerated in the program rules approved by the corporation's board of directors.

The Florida Legislature granted Florida Housing rule making authority to add further criteria when awarding allocation of HOME funds. The rules that govern the allocation process are found in Rule Chapter 67-48, F.A.C., and the 2009 Universal Cycle Application and Instructions¹.

5. Rule 67-48.014(2), F.A.C., states that Florida Housing shall utilize at least 15 percent of the HOME allocation for CHDO's pursuant to 24 CFR Part 92. The rule establishes that whatever allocations are awarded, they will be governed by the federal regulations, including the time period by which Florida Housing has to allocate these funds. Florida Housing has acted consistently with its rules and has met its time requirements as established under 24 CFR Part 92.

6. The fact that Florida Housing did not award any HOME funds to CHDO's during the 2009 Universal Cycle does not establish that Florida Housing acted arbitrarily or in contravention of the applicable law when it did not allocate HOME funds to Petitioner. Section 420.5089(2), Fla. Stat., provides that for the HOME program, Florida Housing shall make loans

¹ The 2009 Universal Application and Instructions are incorporated by reference in Rule 67-48.004, F.A.C.

to eligible providers on the basis of a selection process established by its rules. The Universal Cycle rules make clear that not every applicant who applies for funding will receive funding. See generally Rule 67-48.004(2), F.A.C.

7. Moreover, Petitioner fails to allege that Florida Housing ranked his application incorrectly. Petitioner alleges only the fact that Florida Housing did not fund any CHDO's during the 2009 Universal Cycle as a basis that it acted in contravention to state and federal law. Petitioner has not alleged how Florida Housing violated its rules, or that "but, for" Florida Housing's 'incorrect' interpretation of its rules, Petitioner's application would be funded. In fact, Petitioner's application is eligible but unfunded due only to a lack of HOME funds remaining in the 2009 cycle. Were additional HOME funds available, Petitioner would have been funded.²

8. Petitioner has failed to state a cause of action by which any relief may be granted. Taking all the facts as pled by Petitioner and reviewing only the facts as alleged in its Petition, in the light most favorable to it, Petitioner fails to make the case that Florida Housing as a matter of law acted arbitrarily or in contravention of its rules or the federal regulations when it did not allocate funding to its Gardenia Garden application. 24 CFR 92.300 clearly allows Florida Housing a full two years after it executes the HOME Partnership Agreement to allocate HOME funds to eligible CHDO's. Accordingly, the Petition should be dismissed. See Shay v. First Federal of Miami, Inc., 429 So. 2d 64 (Fla. 3d DCA 1983); McKinzie By and Through McKinzie v. Hollywood, Inc., 421 So. 2d 606 (Fla. 4th DCA 1982); Lutz v. Protective Life Ins. Co., 951 So. 2d 884 (Fla. 4th DCA 2007); Coddington v. Staab, 716 So. 2d 850 (Fla. 4th DCA 1998);

² At Final Ranking, \$1.9 million in HOME funds remained unallocated, which was less than 75% of Petitioner's requested allocation. Pursuant to Paragraph 5 of the Ranking and Selection Criteria of the Instructions, a HOME application will not be funded if there are not enough funds to fund at least 75% of the requested amount.

Squires III, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 593 So. 2d 272 (Fla. 5th DCA 1992)

WHEREFORE, Florida Housing respectfully requests that the Board enter a Summary Final Order dismissing Petitioner, Gardenia Garden, Inc.'s Petition, "Petition for Formal Administrative Hearing," for failure to state a cause of action for which relief could be granted.

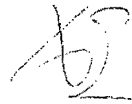
Respectfully submitted this 12 day of April, 2010.



Matthew A. Sirmans
Assistant General Counsel
Fla. Bar No. 0961973
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32309
(850) 488-4197
(850) 414-6548 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via hand delivery to counsel for Petitioner, Timothy G. Schoenwalder, Blank & Meenan, P.A., 204 South Monroe Street, Tallahassee, Florida 32301, this 12 day of April, 2010.



Matthew A. Sirmans
Assistant General Counsel
Florida Housing Finance Corporation

FLORIDA HOUSING FINANCE CORPORATION

GARDENIA GARDEN, INC.,
A Florida Not For Profit Corporation,

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Case No. 2010-014 UC

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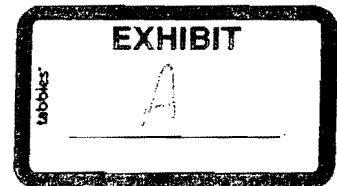
FILED
FLORIDA HOUSING
FINANCE CORPORATION
2010 JUN 18 PM 1:00
TALLAHASSEE, FLORIDA

PETITION FOR FORMAL ADMINISTRATIVE HEARING

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Agency Affected

1. The agency affected by this proceeding is the Florida Housing Finance Corporation ("Florida Housing"), 227 N. Bronough Street, Suite 500, Tallahassee, Florida 32301-1329. The agency's telephone number is 850.488.4197. The agency identifies the application in issue by Registration No. 2009-183H.



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2. The Petitioner is Gardenia Garden, Inc., a not for profit corporation organized and existing under Chapter 617, Florida Statutes, which has its principal offices at 1727 NE 8th Avenue, Gainesville, Florida 32641. Gardenia Garden is fully qualified as a 501(c)(3) non-profit entity. Gardenia Garden is small business party for purposes of section 57.111, Florida Statutes.

3. Gardenia Garden's local representative is Timothy G. Schoenwalder of Blank & Meenan, P.A., 204 South Monroe Street, Tallahassee, Florida 32301. Counsel's phone number is 850.681.6710.

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The Corporation shall utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92.

8. Due in part to Florida Housing’s express duty to “utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92,” Gardenia Garden became pre-designated as a CHDO in order to be eligible to apply for HOME Program loans. By letter dated March 4, 2009 to Gardenia Garden, Florida Housing acknowledged in pertinent part the following:

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If your application is funded, Gardenia Garden, Inc. will be officially designated as a CHDO with the execution of a CHDO Agreement between FHFC and Gardenia Garden, Inc.

9. Each year, Florida Housing prepares a report that is intended to confirm for HUD that Florida Housing is administering its duties in respect to CHDOs, consistent with the requirements under 24 CFR Part 92. Florida Housing's report is included within the State of Florida Annual Action Plan for July 1, 2009 – June 30, 2010 ("2009 Action Plan"), which Florida Housing and three other state agencies submitted to HUD.

10. In the 2009 Action Plan, Florida Housing affirmed the following facts in its portion of that report to HUD:

A minimum of 15 percent of the 2009 HOME allocation, or \$3,359,306, will be reserved for developments that are sponsored by qualified

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11. On or about August 19, 2009, Gardenia Garden submitted its competitive application to Florida Housing to obtain a low interest loan for rental housing funded through the HOME Program.

12. On February 26, 2010, Florida Housing released its rankings for the 2009 Universal Application Cycle. Florida Housing determined that Gardenia Garden's application was eligible for funding, but declined to fund the application. It is Gardenia Garden's understanding that Florida Housing declined to fund any loan applications submitted by a designated or pre-designated CHDO in respect to the HOME Program.

13. Florida Housing's decision to not fund Gardenia Garden's application will harm Gardenia Garden's substantial interests, in ways which include but are not limited to: Gardenia Garden will suffer financial harm from its inability to timely and affordably renovate 100 apartments dedicated for rental to low income housing residents, and from the likely cancellation of loan commitments which Gardenia Garden's received from its lender and the City of Gainesville.

Ultimate Facts and Law

14. Florida Housing's decision to not fund Gardenia Garden's eligible application for a loan under the HOME Program is arbitrary and capricious; it violates the agency's rules and the agency's duties under the

HOME Program; it contravenes the federal objectives for CHDOs set forth in Title 24, section 92.300 CFR *et seq.*; and it contravenes Florida Housing's express representations to HUD regarding Florida Housing's use of HUD monies for CHDOs in the HOME Program for 2009-2010.

Disputed Issues of Material Fact and Law

15. Disputed issues of material fact and law include:
 - a. whether Florida Housing acted arbitrarily and capriciously when it decided not to fund Gardenia Garden's application, which has been found to be eligible for funding;
 - b. whether Florida Housing acted arbitrarily and capriciously when it decided not to fund Gardenia Garden's application, despite Florida Housing's acknowledgment in the 2009 Annual Plan of its obligation to eligible CHDOs that seek to provide low income rental housing;
 - c. whether Florida Housing acted in violation of its own rules, including Rule 67-48.014(2), when it decided not to fund Gardenia Garden's application; and
 - d. whether Florida Housing acted in violation of its duties to HUD, in contravention of Title 24, section 92.300 CFR *et*

seq., when Florida Housing decided not to fund Gardenia Garden's application.

Ultimate Facts and Law

16. The ultimate facts and law are that Gardenia Garden will suffer a significant and adverse financial impact as a result of Florida Housing's decision to not fund Gardenia Garden's application for a loan under the HOME Program, and that by refusing to fund Gardenia Garden's application, Florida Housing has acted arbitrarily and capriciously; has acted in violation of its own rules, federal rules and its program duties to HUD; and has contravened its express commitment to HUD to fund CHDOs in Florida for 2009-2010.

Rules and Statutes

17. Rules and statutes entitling Gardenia Garden to the relief requested below are sections 120.569 and 120.57, Florida Statutes; Part V of Chapter 420, Florida Statutes; Rule Chapter 67-48, Florida Administrative Code, including rule 67.48.014; Rule 28-106.201; and Title 24, section 92.300 CFR *et seq.* Gardenia Gardens has identified the significance of these statutes and rules to this proceeding throughout this petition.

Relief Requested

WHEREFORE, Gardenia Garden respectfully requests:

A. That Florida Housing forward this petition to the Division of Administrative Hearings for the assignment of an Administrative Law Judge who will then conduct a *de novo* formal administrative proceeding pursuant to §§120.569 and 120.57(1), Fla. Stat.;

B. That each disputed issue of fact, each disputed issue of law, and each disputed combined issue of fact and law recited above be resolved in Gardenia Garden's favor;

C. That a recommended order and a final order be issued determining that Gardenia Garden's loan application for HOME Program funds is funded;

D. That an order granting an award of reasonable attorney fees and costs be issued under section 57.111, Florida Statutes, in favor of Gardenia Garden; and

E. That Gardenia Garden be afforded all additional relief deemed appropriate.

Date: March 22, 2010

Respectfully submitted,

BLANK & MEENAN, P.A.

By:



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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true copy of this Petition For Formal Administrative Hearing have been delivered by hand to the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, and a copy has been provided by hand to Wellington J. Meffert, II, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, on this 22nd day of March 2010.



Timothy G. Schoenwalder

Investment Partnerships Agreement

Office of Community Planning and Development

Title II of the National Affordable Housing Act

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

The HOME statute imposes a significant number of data collection and reporting requirements. This includes information on assisted properties, on the owners or tenants of the properties, and on other programmatic areas. The information will be used: 1) to assist HOME participants in managing their programs, 2) to track performance of participants in meeting fund commitment and expenditure deadlines, 3) to permit HUD to determine whether each participant meets the HOME statutory income targeting and affordability requirements, and 4) to permit HUD to determine compliance with other statutory and regulatory program requirements. This data collection is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act or related authorities. Access to Federal grant funds is contingent on the reporting of certain project-specific data elements. Records of information collected will be maintained by the recipients of the assistance. Information on activities and expenditures of grant funds is public information and is generally available for disclosure. Recipients are responsible for ensuring confidentiality when public disclosure is not required.

1. Participant Name and Address State Of Florida The Sadowski Building 2555 Shumard Oak Blvd. Tallahassee, FL 32399-2100		2. Participant Number M09-SG120100	
		3. Tax Identification Number 59-3451366	
		4. Appropriation Number 866/80205	
		5. FY (yyyy) 2009	
6. Previous Obligation (Enter "0" for initial FY allocation)			\$ 0
a. Formula Funds		\$	
b. Community Housing Development Org. (CHDO) Competitive		\$	
7. Current Transaction (+ or -)			\$22,395,379.
a. Formula Funds		\$22,395,379.	
1. CHDO (For deobligations only)		\$	
2. Non- CHDO (For deobligations only)		\$	
b. CHDO Competitive Reallocation or Deobligation (see #18 below)		\$	
8. Revised Obligation			\$
a. Formula Funds		\$	
b. CHDO Competitive Reallocation		\$	
9. Special Conditions (check applicable box) <input type="checkbox"/> Not applicable <input type="checkbox"/> Attached		10. Date of Obligation (Congressional Release Date) (mm/dd/yyyy) July 17, 2009	

This Agreement between the Department of Housing and Urban Development (HUD) and the Participating Jurisdiction/Entity is made pursuant to the authority of the HOME Investment Partnerships Act (42 U.S.C. 12701 et seq.). The Participating Jurisdiction's/Entity's approved Consolidated Plan submission/Application and the HUD regulations at 24 CFR Part 92 (as is now in effect and as may be amended from time to time) and this HOME Investment Partnership Agreement, form HUD-40093, including any special conditions, constitute part of this Agreement. Subject to the provisions of this Agreement, HUD will make the funds for the Fiscal Year specified, available to the Participating Jurisdiction/Entity upon execution of this Agreement by the parties. All funds for the specified Fiscal Year provided by HUD by formula reallocation are covered by this Agreement upon execution of an amendment by HUD, without the Participating Jurisdiction's execution of the amendment or other consent. HUD's payment of funds under this Agreement is subject to the Participating Jurisdiction's/Entity's compliance with HUD's electronic funds transfer and information reporting procedures issued pursuant to 24 CFR 92.502. To the extent authorized by HUD regulations at 24 CFR Part 92, HUD may, by its execution of an amendment, deobligate funds previously awarded to the Participating Jurisdiction/Entity without the Participating Jurisdiction's/Entity's execution of the amendment or other consent. The Participating Jurisdiction/Entity agrees that funds invested in affordable housing under 24 CFR Part 92 are repayable when the housing no longer qualifies as affordable housing. Repayment shall be made as specified in 24 CFR Part 92. The Participating Jurisdiction agrees to assume all of the responsibility for environmental review, decision making, and actions, as specified and required in regulation at 24 CFR 92.352 and 24 CFR Part 58.

11. For the U.S. Department of HUD (Name and Title of Authorized Official) Gary A. Causey, Director CPD Division		12. Signature <i>Gary A. Causey</i>	13. Date 07/20/2009
14. For the Participating Jurisdiction/Entity (Name and Title of Authorized Official) <i>Stephen P. Auger, Executive Director</i>		15. Signature <i>[Signature]</i>	16. Date 7/20/2009

17. Check one: Initial Agreement Amendment #

18. Funding Information:

Source of Funds	Appropriation Code	PAS Code	Amount
FY2009 HOME		HMC	\$22,395,379



Funding Approval and HOME Investment Partnerships Agreement

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-0171
(Exp. 05/31/2007)

Title II of the National Affordable Housing Act

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