

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2005-053C

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(l)'S
RESTRICTIONS ON CHANGING THE NUMBER OF UNITS AND FUNDING FOR
THE VILLA PATRICIA DEVELOPMENT**

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(l), Florida Administrative Code (2005) (collectively the “Rules”). 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 to allow for (a) the reduction in the total number of units from 160 to 125, and (b) a resulting *pro rata* reduction of funding through competitive housing credits (“Housing Credits”) from \$2,368,500 to \$1,850,390, for the high-rise project known as Villa Patricia (the “Development”).

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 Housing Credits under the Low Income Housing Tax Credit program ("Housing Credit Program"). *See* Application No. 2005-053C.

5. Equity raised from Housing Credits was to be used for the development of 160 very-low and low-income individual and household tax credit units for the Development, with 80% of the units reserved for the elderly. The Development would serve individuals and elderly families in Miami, Miami-Dade County, Florida.

6. On November 29, 2005, Florida Housing issued its Preliminary Allocation of Housing Credits ("Preliminary Allocation") reserved in the amount of \$2,368,500. A true and correct copy of the Certificate of the Preliminary Allocation is attached hereto as Exhibit A.

7. 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.

8. Numerous factors that were and are outside BHG's control, including the impact of Hurricanes Wilma and Katrina in 2005, have greatly increased development costs. As a result, BHG seeks relief through the reduction of housing units, with a corresponding *pro rata* reduction of Housing Credits.

9. The requested waivers will not adversely effect the Development. A denial of this Petition, however, would result in substantial economic hardship to BHG and violate principles of fairness.

10. 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).

11. The applicable Rules are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ 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

¹The 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.

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.*

12. 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* return of Housing Credits which will be available for use for other projects desperately needed in Miami-Dade County, Florida.

13. 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. The requested waivers are the result of unforeseen circumstances outside of BHG's control, such as escalating construction costs resulting from Hurricanes Katrina and Wilma. In fact, since December 2005, a 25% increase in crude oil prices alone has increased the cost of materials including, but not limited to, PVC, carpeting and gasoline. The substantial increase in development costs include, but are not limited to construction costs, building height impacts on construction, electrical, plumbing and elevator costs, and garage costs per space.²

²Florida Housing also recognized the severity of cost increases resulting from Hurricane Wilma, and offered funding through its SAIL Program's Hurricane Wilma Go-Zone SAIL Cycle (RFP 2006-04) ("RFP 2006-04"). BHG submitted its RFP 2006-04 Request to Florida Housing, and was awarded a preliminary commitment for a SAIL Program loan of up to \$1,800,000. Simultaneously 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, as Applied to RFP 2006-04 Sail Program Funds, that requests the

- c. These rapidly increasing and unexpected costs have created a situation wherein the project is not financially feasible. By reducing the number of units to 125 and the number of stories from 17 to 12,³ BHG will be able to compensate for increased construction costs, by reducing mechanical, electrical, elevator, plumbing and additional costs associated with the development of fewer units and stories while providing critically essential housing units for very-low and low-income individuals, households and the elderly.
- d. The affect of the requested reductions will not cause any appreciable decrease in the average square footage of each unit's living area.
- e. As a consequence of the reduction of the "total number of units" for the Development, BHG seeks to proportionately reduce its requested Housing Credits from \$2,368,500 to \$1,850,390, resulting in the return of \$518,110 in Housing Credits to Florida Housing.
- f. The proposed changes to the Development would have had no impact on the scoring of BHG's Universal Application, and would have not provided BHG with an unfair advantage over other applicants because of BHG's *pro rata* return of Housing Credits.
- g. 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.

14. 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

reduction of total units, and the resulting *pro rata* reduction of the preliminary commitment from \$1,800,000 to \$1,562,500.

^{3/}The five-story decrease of this high-rise Development would not change the Development Type.

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).

15. 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.

16. The requested waivers will not adversely impact the Development or Florida Housing. In fact, by granting the requested waivers, Housing Credits will be available to fund other projects for desperately needed affordable multi-family rental housing.

17. 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.

18. The waivers being sought are permanent in nature.

19. 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.

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

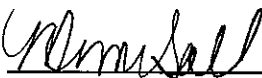
A. Waive the prohibition on changing the total number of units to permit a decrease from 160 to 125 units;

B. Waive the prohibition on changing the funding request amount to permit a proportionate decrease in Housing Credits from \$2,368,500 to \$1,850,390, with the resulting return of \$518,110 in Housing Credits 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 19th day of September, 2006.

By: Mimi L. Sall
Mimi L. Sall

we make housing affordable.

PRELIMINARY ALLOCATION CERTIFICATE
HOUSING CREDIT PROGRAM

The Florida Housing Finance Corporation ("Florida Housing") grants to

BHG-79th St., LLC ("Applicant")

for

Villa Patricia (the "Development")

Miami-Dade County, Florida
Application # 2005-053C

Preliminary Allocation of Housing Credits reserved in the amount of

\$2,368,500.00

November 29, 2005

1. Authority. This Preliminary Allocation is granted by Florida Housing under the Housing Credit Program as authorized by Section 420.507(12), Florida Statutes, and Section 42 of the Internal Revenue Code of 1986, as amended, ("IRC"), and as administered pursuant to Program guidelines outlined in Rule 67-48, Florida Administrative Code. Under such guidelines, Florida Housing may allocate housing credits only in an amount necessary to ensure the financial feasibility of the Development and its viability as a low-income rental housing project.
2. Effect. This Certificate represents a preliminary determination only and is not binding on either Florida Housing or the Applicant. Subject to the preceding sentence, this Certificate inures to the benefit of the Applicant named above and its grantees, transferees, and other successors in interest to the maximum extent allowed under IRC Section 42.
3. Duration. The Preliminary Allocation will be valid until December 31, 2005.

Jeb Bush, Governor

Board of Directors: Terry Santini, Chairman • Lynn M. Stuliz, 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

"A"

tabbles

4. Contingencies. The Preliminary Allocation is contingent upon:
- a. The Applicant shall comply with all of the pertinent requirements of IRC Section 42 and the Treasury Regulations issued thereunder and the requirements of the State of Florida as set forth in Chapter 67-48, Florida Administrative Code.
 - b. A non-refundable administrative fee of \$189,480.00, which is based on 8% of the allocation amount (\$2,368,500.00) and a one time non-refundable compliance payment of \$2,972.00 in accordance with Rule 67-48 is payable by the Applicant to Florida Housing **no later than December 6, 2005**. Checks should be made payable to the Florida Housing Finance Corporation, and should be mailed to:

Florida Housing Finance Corporation
ATTN: Housing Credit Program
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
 - c. Approval by Florida Housing of a positive credit underwriting recommendation that housing credits be allocated to this Development.
 - d. The receipt of an eligible market analysis for the property.
 - e. Verification from the Applicant and the Credit Underwriter that all contingency items as stated in the credit underwriting report and below have been met no later than nine (9) months from the date of execution of the Carryover Allocation Agreement.
 - f. Such other reasonable requests as made by Florida Housing during this time frame.
5. Final Determination. Florida Housing is required to make further tax credit determinations, with the final determination to be made at the time the Development is "placed in service" pursuant to IRC Section 42(m)(2)(C).
6. Carryover Allocation. A project may qualify for a carryover of the housing credit allocation if the guidelines set forth in Rule 67-48.028, Florida Administrative Code, are met.


Vicki A. Robinson
Deputy Development Officer

Dated this 29th day of November, 2005