

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2005-048VW

VILLAGE CENTRE APARTMENTS, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**VILLAGE CENTRE APARTMENTS, LTD.'S PETITION FOR MODIFICATION
OF ITS OWNERSHIP STRUCTURE, CHANGE OF DEVELOPER AND WAIVER
OF RULES 67-48.002(111), 67-48.002(31), 67-48.004(18)(b), AND 67-48.025**

Petitioner Village Centre Apartments, Ltd., a Florida limited partnership ("Village Centre") petitions Respondent Florida Housing Finance Corporation ("Corporation") for (a) a modification of Village Centre's ownership structure; (b) a change of its affordable housing project's Developer; (c) a modification of the Qualified Allocation Plan ("QAP"); (d) an extension of the date that the subject development, as hereinafter defined, is required to be placed in service; and (e) for waivers of Rules 67.48.002(111), 67-48.002(31), 67-48.004(14)(b), and 67-48.025, Florida Administrative Code. In support of its Petition, Village Centre states:

**A. FACTS COMMON TO REQUEST FOR
MODIFICATION OF OWNERSHIP STRUCTURE AND
TO REQUEST TO CHANGE ITS DEVELOPER**

1. The name, address, telephone and facsimile numbers for Village Centre and its qualified representative are:

Village Centre Apartments, Ltd.
c/o Village Centre GP, LLC
Its General Partner
Attention: Lloyd J. Boggio, its Managing Member
2950 S.W. 27th Avenue
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

2. Village Centre timely submitted its Universal Application for competitive Housing Credits ("HC") under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program") pursuant to the 2003 Combined Rental Cycle Program. *See* Application Number 2003-099C (the "2003 Application").

3. Equity raised from HC will be used for the development of 84 low-income family housing tax credit units known as Village Centre (the "Development"). The Development will serve families in the West Palm Beach, Palm Beach County, Florida area.

4. Village Centre's 2003 Application initially was not successful. Pursuant to Rule 67-48.005, F.A.C., Village Centre successfully appealed the final rankings to the Division of Administrative Hearings. As a result of the successful administrative appeal, the Corporation notified Village Centre that it was being provided with a Preliminary Allocation of Housing Credits from the Corporation's 2004 Housing Credit Allocation.

5. Village Centre applied for a carryover of the Housing Credits, as permitted by Rule 67.028, F.A.C. The Corporation granted the carryover pursuant to a Carryover Allocation Agreement executed by Village Center on December 14, 2004, and by the Corporation on December 21, 2004. Consequently, it is anticipated that there will be a Final Housing Credit Allocation granted to Village Centre in accordance with the Corporation's usual final allocation procedures.

6. In September 2004, two hurricanes, Hurricane Frances and Hurricane Jean, struck the Palm Beach County area wherein the Development is located. The area was declared a Tier II Major Disaster Area. These circumstances were outside Village Centre's control.

7. As a consequence of Hurricanes Frances and Jean, bids for construction of the Development are currently 33% higher than initially estimated in the Universal Application. The increased cost resulted from, in part, the scarcity of both building materials and laborers. To maintain the viability of the Development and in the exercise of due diligence, Village Centre brought in construction consultants to assist with value engineering to reduce the gap between the estimated construction costs and actual bids received. This action ultimately reduced construction costs by \$1.5 million.

8. To further the resolution of circumstances created by Hurricanes Frances and Jean and through the exercise of due diligence, Village Centre sought additional sources of funding that were required to make the Development economically viable. The best sources for such funding are local governmental agencies; such funding is generally more readily accessible for affordable housing developments sponsored by non-profit organizations.

9. Further, due to the impact on Palm Beach County caused by Hurricane Wilma, the area has recently been declared a Major Disaster Area. Such declaration will allow Village Centre to

request, pursuant to the provision of Revenue Procedure 95-28, up to an additional one-year period in which to place the Development in service.

10. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ the statute that created the HC Program. See § 420.5099, Fla Stat. (2003). The Act designates the Corporation 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, the Corporation 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. (2003). The Allocation Procedures were established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rules subject to Village Centre's waiver request are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2003).

11. The requested rule waivers will allow a modification of Village Centre's ownership structure through the replacement of the for-profit member of Village Centre's general partner with a non-profit member and through the substitution of the current for-profit Developer with a non-profit Developer. The requested rule waivers will ensure the availability of HC which might otherwise be lost as a consequence of development delays caused, by among other factors, several hurricanes in 2004 and 2005, that were and are outside Village Centre's control.

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.

12. The requested modifications will not adversely effect the Development which, in all respects, still meets the conditions upon which the HC were originally allocated. Moreover, the modifications will meet the neighborhood's need for affordable housing and will facilitate the development process. A denial of this request would result in substantial economic hardship to Village Centre by restricting access to development procedures and approvals offered by local governmental agencies for non-profit affordable housing developments which are sponsored by non-profit organizations.

13. A waiver of the Rules would serve the purposes of Section 420.5087, and the Act as a whole, because one of their primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. By granting the waivers and permitting Village Centre to change the ownership structure of its general partner and its developer before the issuance of a Final Housing Credit Allocation, the Corporation would recognize the economic realities of developing affordable housing. This recognition would promote participation by owners such as Village Centre in meeting the purpose of the Act by providing affordable housing in an economical and efficient manner.

14. The rule waivers being sought are permanent in nature.

15. Should the Corporation have questions or require any additional information, Village Centre is available to provide any additional information necessary for consideration of this Petition.

B. MODIFICATION OF VILLAGE CENTRE'S OWNERSHIP STRUCTURE

16. Village Centre realleges and incorporates Paragraphs 1 through 15 as though fully set forth herein.

17. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Village Centre requests a waiver of Rule 67-48.002(111), F.A.C., as applied to Part II.A.2.b. of the Universal Application Instructions ("Instruction A.2.").

18. Rule 67-48.002(111) sets forth the applicable rule which is the subject of this Petition:

"Universal Application Package"... means the forms and instructions, obtained from the Corporation ... which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). The Universal Application Package is adopted and incorporated herein by reference...

19. Instruction A.2.of the Universal Application Package provides that:

If applying for HC, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity shall be the recipient of the Housing Credits and cannot be changed until after a Final Housing Credit Allocation has been issued. Replacement of the Applicant or a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving an allocation and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification.

20. The following facts demonstrate the economic hardship and other circumstances which justify Village Centre's request for a waiver of Instruction A.2's restriction against a material change in its ownership structure:

- a. In its Application, Village Centre's general partner is identified as Village Centre GP, LLC. The members of Village Centre GP, LLC, are identified as:

- (i) TCG Village Centre, LLC, a for-profit limited liability company with a 49% ownership interest in Village Centre; and
- (ii) Northwood Business Development Corp, now known as Northwood Renaissance, Inc., a not-for profit corporation with a 51% ownership interest in Village Centre.

See Application at Exhibit 9.

- b. Since filing its Application, Village Centre has learned of express community needs for affordable housing units provided through not-for-profit developers. In addition, as a not-for-profit sponsor of an affordable housing development, Village Centre would have access to additional sources of funds from local non-profit and governmental programs and assistance. Through these programs, the Development may be completed and its affordable housing units may be placed in service in a shorter period of time which would result in substantial savings of both construction and financing costs;
- c. The proposed new member of Village Centre's general partner will be a limited liability company in which the sole member or shareholder will be Greater Miami Neighborhoods, Inc., a not-for-profit Florida corporation ("GMN");
- d. The modification of the ownership structure is requested solely to meet the community's needs for affordable housing controlled and operated by a 100% not-for-profit general partner in an expeditious and efficient manner; and
- e. The requested Rule waiver will not adversely impact completion of the Development. However, a denial of the requested waiver would result in substantial economic hardship to Village Centre.

**C. VILLAGE CENTRE'S REQUEST TO SUBSTITUTE ITS
FOR- PROFIT DEVELOPER WITH A NON-PROFIT
DEVELOPER**

21. Village Centre realleges and incorporates Paragraphs 1 through 15 as though fully set forth herein.

22. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Village Centre requests a waiver of Rules 67-48.002(31) and 67-48.004(14)(b), F.A.C., which would allow a change from the current for-profit developer to a non-profit corporation. The requested waiver would permit Village Centre to change its Developer from Carlisle Development Group, LLC, a for-profit limited liability company, to GMN, a non-profit corporation. The requested modification will have no adverse effect on the Development's construction and completion as the proposed Developer has the requisite expertise and experience to develop a successful low income rental project. However, a denial of the waiver request would violate principles of fairness.

23. Rule 67-48.002(31) sets forth one of the applicable rules which is the subject of this Petition. Rule 67-48.002(31) defines a "developer" under an Application submitted to the Corporation for, in this instance, financing through the allocation of housing tax credits under the HC Program. § 420.5099, Fla. Stat. (2001). In addition to defining "developer," Rule 67-48.002(31) precludes any change of developer until construction of the particular "Development" is complete. More specifically, Rule 67-48.002(31) defines a developer as follows:

(31) "Developer" means any individual, association, corporation, joint venturer, or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing pursuant to this rule chapter. **The Developer, as identified**

in an Application, may not change until the construction of the Development is complete. (Emphasis added).

24. The second rule subject to this Petition is Rule 67-48.004(14)(b). This Rule establishes specific items and information that (a) must be included in an Application for housing credits; and (b) cannot be changed:

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 ... **Any attempted changes to these items will not be accepted. Those items are as follows: ...**

(b) Name of the Developer:

Rule 67-48.004(14)(b), F.A.C. (Emphasis added).

25. The following facts demonstrate the circumstances which justify a waiver of the Rules' restrictions against changing developers before construction of a project is complete:

- a. The express purpose of the Rule prohibiting a change of Developers is to prevent: (i) a deterioration in the development team's ability to develop the Development and (ii) an Applicant from "flipping" its interest in a Development to a third party;
- b. Since filing its Application, Village Centre has learned of an express community desire for affordable housing units provided through non-profit developments. In addition, as a not-for-profit sponsor of an affordable housing development, Village Centre would have access to additional sources of funds from local non-profit and governmental programs and assistance. Through these programs, the Development may be completed and its affordable housing units may be placed in service in a shorter period of time which would result in substantial savings of both construction and financing costs;
- c. The proposed Developer of the Development is GMN;
- d. As defined in Rule 67-48.002(82), F.A.C., the Principals of GMN are Russell Sibley, Agustin Dominguez and Ron Revaes. They have extensive expertise, experience and knowledge of and access to resources for all aspects of development of quality affordable rental

housing developments for low-income or very-low-income persons or households. The scope of their skill and expertise include, but are not limited to, hiring and monitoring professional consultants, construction contracts, obtaining financing commitments and closing the transaction and monitoring construction progress;

- e. During the past 30 years, Messrs. Sibley, Dominguez and Revaes. acquired extensive expertise, experience, knowledge and access to resources from owning, qualifying, developing and managing quality affordable rental housing developments for low-income or very-low-income persons or households. On behalf of entities in which they were Principals and for other entities with or for whom they worked, they successfully applied for and obtained loans, bonds and other financial incentives available through the Corporation, local funding agencies and through syndication of equity interests. They have owned, qualified, and/or overseen the development, construction and management of more than 20 successful affordable rental housing projects with some 5,000 units. Through their efforts, Messrs. Sibley, Dominguez and Revaes have established, with the Corporation, a successful record in the specialized area of qualifying, developing and managing much-needed, quality affordable rental housing projects;
- f. The modification of the ownership structure is requested solely to meet the community's needs for not-for-profit controlled affordable housing in an expeditious and efficient manner; and
- g. The requested Rule waiver will not adversely impact completion of the Development. However, a denial of the requested waiver would result in substantial economic hardship to Village Centre.

D. WAIVER FROM 2004 QAP AND EXTENSION OF PLACED-IN-SERVICE DATE

26. Village Centre realleges and incorporates Paragraphs 1 through 15 as though fully set forth herein.

27. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Village Centre requests a waiver of Rule 67-48.025 which, in the absence of such waiver, would prevent Village Centre from seeking an extension of the Placed-in-Service Date for the Development before the last quarter of 2006, the year in which the Development is required to be placed in service. The QAP, adopted by the Corporation, states that:

where a development has not been placed in service by the date required or it is apparent that a development will not be placed in service by the date required [December 31, 2006], such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its housing credit allocation in the last calendar quarter of the year in which otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of credits returned, and may allocate such housing credits to the Applicant for the year after the year in which otherwise required to be placed in service provided [certain] conditions have been met.

2004 Qualified Allocation Plan at ¶ 10.

28. As stated in Sections B and C above, Village Centre has requested a modification of its ownership structure and for the replacement of the for-profit member of its general partner with a non-profit member and for the replacement of its current for-profit Developer with a non-profit Developer. The non-profit entities, however, have conditioned their willingness to become a member of the general partner and Developer of the Development upon the Corporation's recognition of Village Centre's ability to request and obtain an extension of the placed in service requirement without waiting until the last quarter of 2006.

29. Village Centre may also be entitled to an extension of the Placed-in-Service Date from December 31, 2006 to December 31, 2007, pursuant to Revenue Procedure 95-28, Section 5, which provides as follows:

If an owner of a project located in a major disaster area has a carryover allocation and the area is declared a major disaster area during the 2-year period described in Section 42(h)(1)(E)(I) [i.e. January 1, 2005 through December 31, 2006], the Service will treat the owner as having satisfied the applicable placed in service requirement if the owner places the project in service by December 31 of the year following the end of the 2-year period.

Rev.Proc. 95-28 § 5.02.

30. On October 24, 2005, Hurricane Wilma struck the South Florida area, and as a result of the damage caused, Palm Beach County, as well as Miami-Dade and Broward Counties have been declared major disaster areas.

31. Consequently, and unfortunately, Village Centre falls or will fall squarely within the provisions of Rev. Proc. 95-28, and Village Centre would be entitled to an extension of the Placed-in-Service Date to not later than December 31, 2007.

32. The QAP waiver is requested solely to meet the community's needs for not-for-profit controlled affordable housing in an expeditious and efficient manner.

33. The requested Rule waiver will not adversely impact completion of the Development. However, a denial of the requested waiver could result in substantial economic hardship to Village Centre.

CONCLUSION

WHEREFORE, Petitioner Village Centre Apartments, Ltd. respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested herein;
- B. Waive Universal Application Instruction Part II.A.2.b.'s restriction against changing its ownership structure before a Final Housing Credit Allocation, by allowing Village Centre to replace TCG Village Centre, LLC, the for-profit member of its general partner Village Centre GP, LLC, with a corporation or limited liability company wholly owned by GMN, a non-profit entity;
- C. Waive Rules 67-48.002(31) and 67-48.004(14)(b)'s prohibition against changing developers before completion of the Development, permitting the withdrawal of Carlisle Development Group, LLC, as Village Centre's developer and allowing the substitution of Greater Miami Neighborhoods, Inc., as the Developer for Village Centre's affordable housing Development;
- D. Waive Rule 67-48.025 and the 2004 Qualified Allocation Plan's prohibition from requesting an extension of the Placed-in-Service Date for the Development prior to the last quarter of 2006, the year in which the Development is otherwise required to be placed in service;
- E. Grant an extension of the Placed-in-Service Date from December 31, 2006 to December 31, 2007; and

F. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

Village Centre GP, LLC,
Qualified Representative for Village Centre
Apartments, Ltd.

By: Ken 2. Murray
Its: President

CERTIFICATE OF SERVICE

The Original Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. 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 ___ day of November, 2005.

LAW-LIT-34756-000-GMC-Petition-waiver-ownership-developer-v10.wpd

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. _____

VILLAGE CENTRE APARTMENTS, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**VILLAGE CENTRE APARTMENTS, LTD.'S PETITION FOR MODIFICATION
OF ITS OWNERSHIP STRUCTURE, CHANGE OF DEVELOPER AND WAIVER
OF RULES 67-48.002(111), 67-48.002(31), 67-48.004(18)(b), AND 67-48.025**

Petitioner Village Centre Apartments, Ltd., a Florida limited partnership ("Village Centre") petitions Respondent Florida Housing Finance Corporation ("Corporation") for (a) a modification of Village Centre's ownership structure; (b) a change of its affordable housing project's Developer; (c) a modification of the Qualified Allocation Plan ("QAP"); (d) an extension of the date that the subject development, as hereinafter defined, is required to be placed in service; and (e) for waivers of Rules 67.48.002(111), 67-48.002(31), 67-48.004(14)(b), and 67-48.025, Florida Administrative Code. In support of its Petition, Village Centre states:

A. FACTS COMMON TO REQUEST FOR MODIFICATION OF OWNERSHIP STRUCTURE AND TO REQUEST TO CHANGE ITS DEVELOPER

1. The name, address, telephone and facsimile numbers for Village Centre and its qualified representative are:

Village Centre Apartments, Ltd.
c/o Village Centre GP, LLC
Its General Partner
Attention: Lloyd J. Boggio, its Managing Member
2950 S.W. 27th Avenue
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

2. Village Centre timely submitted its Universal Application for competitive Housing Credits ("HC") under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program") pursuant to the 2003 Combined Rental Cycle Program. *See* Application Number 2003-099C (the "2003 Application").

3. Equity raised from HC will be used for the development of 84 low-income family housing tax credit units known as Village Centre (the "Development"). The Development will serve families in the West Palm Beach, Palm Beach County, Florida area.

4. Village Centre's 2003 Application initially was not successful. Pursuant to Rule 67-48.005, F.A.C., Village Centre successfully appealed the final rankings to the Division of Administrative Hearings. As a result of the successful administrative appeal, the Corporation notified Village Centre that it was being provided with a Preliminary Allocation of Housing Credits from the Corporation's 2004 Housing Credit Allocation.

5. Village Centre applied for a carryover of the Housing Credits, as permitted by Rule 67.028, F.A.C. The Corporation granted the carryover pursuant to a Carryover Allocation Agreement executed by Village Center on December 14, 2004, and by the Corporation on December 21, 2004. Consequently, it is anticipated that there will be a Final Housing Credit Allocation granted to Village Centre in accordance with the Corporation's usual final allocation procedures.

6. In September 2004, two hurricanes, Hurricane Frances and Hurricane Jean, struck the Palm Beach County area wherein the Development is located. The area was declared a Tier II Major Disaster Area. These circumstances were outside Village Centre's control.

7. As a consequence of Hurricanes Frances and Jean, bids for construction of the Development are currently 33% higher than initially estimated in the Universal Application. The increased cost resulted from, in part, the scarcity of both building materials and laborers. To maintain the viability of the Development and in the exercise of due diligence, Village Centre brought in construction consultants to assist with value engineering to reduce the gap between the estimated construction costs and actual bids received. This action ultimately reduced construction costs by \$1.5 million.

8. To further the resolution of circumstances created by Hurricanes Frances and Jean and through the exercise of due diligence, Village Centre sought additional sources of funding that were required to make the Development economically viable. The best sources for such funding are local governmental agencies; such funding is generally more readily accessible for affordable housing developments sponsored by non-profit organizations.

9. Further, due to the impact on Palm Beach County caused by Hurricane Wilma, the area has recently been declared a Major Disaster Area. Such declaration will allow Village Centre to

request, pursuant to the provision of Revenue Procedure 95-28, up to an additional one-year period in which to place the Development in service.

10. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ the statute that created the HC Program. See § 420.5099, Fla Stat. (2003). The Act designates the Corporation 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, the Corporation 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. (2003). The Allocation Procedures were established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rules subject to Village Centre's waiver request are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2003).

11. The requested rule waivers will allow a modification of Village Centre's ownership structure through the replacement of the for-profit member of Village Centre's general partner with a non-profit member and through the substitution of the current for-profit Developer with a non-profit Developer. The requested rule waivers will ensure the availability of HC which might otherwise be lost as a consequence of development delays caused, by among other factors, several hurricanes in 2004 and 2005, that were and are outside Village Centre's control.

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.

12. The requested modifications will not adversely effect the Development which, in all respects, still meets the conditions upon which the HC were originally allocated. Moreover, the modifications will meet the neighborhood's need for affordable housing and will facilitate the development process. A denial of this request would result in substantial economic hardship to Village Centre by restricting access to development procedures and approvals offered by local governmental agencies for non-profit affordable housing developments which are sponsored by non-profit organizations.

13. A waiver of the Rules would serve the purposes of Section 420.5087, and the Act as a whole, because one of their primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. By granting the waivers and permitting Village Centre to change the ownership structure of its general partner and its developer before the issuance of a Final Housing Credit Allocation, the Corporation would recognize the economic realities of developing affordable housing. This recognition would promote participation by owners such as Village Centre in meeting the purpose of the Act by providing