

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2005-053C
RFP 2006-04-01 SAIL Program Funds Request

AMBER GARDEN, LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

PETITION FOR A VARIANCE OF THE 2005 QUALIFIED ALLOCATION PLAN, AS APPLIED TO RFP 2006-04 SAIL PROGRAM FUNDS, TO ALLOW THE IMMEDIATE RETURN OF 2005 HOUSING CREDIT ALLOCATION, AND TO RECEIVE AN IMMEDIATE BINDING COMMITMENT FOR AN ALLOCATION OF 2007 HOUSING CREDITS

Petitioner Amber Garden, LLC, a Florida limited partnership (“Amber Garden”) submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a variance of the 2005 Qualified Allocation Plan, as applied to Amber Garden’s RFP 2006-04 SAIL Program Funds Request (“2006-04-01 SAIL Request), to allow the immediate return of its 2005 Housing Credit Allocation and to receive a binding commitment for an allocation of 2007 Housing Credit Allocation. *See* Rules 67-48.002(83) and 67-48.025, F.A.C. (collectively the “Rules”), and 2005 Qualified Allocation Plan at ¶ 11.

1. Pursuant to Section 120.542, Fla. Stat. (2005) and Rules 28-104.001 through 28-104.006, F.A.C., Amber Garden requests a variance of the Rules and of Paragraph 11 of the Qualified Allocation Plan (“2005 QAP”), as applied to its 2006-04-01 SAIL Request.

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

Amber Garden, 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 Amber Garden'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, Amber Garden timely submitted its 2005 Universal Application ("Universal Application") for competitive Housing Credits under the Low Income Housing Tax Credit program. *See* Application No. 2005-041C. Equity raised from Housing Credits will be used for the development of 110 very-low and low-income individual and household tax credit units known as Amber Garden (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 \$1,088,940.00 ("2005 Housing Credit Allocation"), and as permitted by Rule 67-48.028,

F.A.C., Amber Garden and Florida Housing entered into a Carryover Allocation Agreement (“2005 Carryover Agreement”). Under the 2005 Carryover Agreement, the Development’s Placed-in-Service Date is December 31, 2007.

6. Consequently, it is anticipated that there will be a Final 2005 Housing Credit Allocation granted to Amber Garden 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 to offset increased construction costs and ensure that Housing Credit developments are completed in a timely manner through its Request for Proposals #2006-04 for 2005 Housing Credit Developments Located in Wilma GO Zone (“Wilma GO Zone Program”).

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.

10. On April 19, 2006, Amber Garden submitted its sealed 2006-04 SAIL Request to Florida Housing for funding through the Wilma GO Zone Program, and thereafter, received a preliminary commitment of up to \$1,250,000. True and correct copies of Amber Garden’s Exhibit A to RFP 2006-04, and Florida Housing’s August 7, 2006 notice of “Preliminary SAIL Allocation \$1,250,000,” are attached hereto as Exhibits 1 and 2, respectively.

11. Because Amber Garden’s 2006-04 SAIL Request was “ranked based on its Development’s Universal Application score,” and additional factors related to the Universal

Application, Amber Garden requests a variance of the 2005 QAP's restriction against returning housing credit allocations before the last calendar quarter of 2007, and to allow the immediate return of its 2005 Housing Credit Allocation. Amber Garden further requests that, upon the return of its 2005 Housing Credit Allocation, Florida Housing immediately provide a binding commitment for an allocation of 2007 Housing Credits, instead of an allocation reservation in 2008, the year after the current Placed-in-Service Date.

12. Simultaneously with the filing of this Petition, Amber Garden is submitting its Petition for a Variance 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.¹

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

14. One of the Rules subject to this Petition is Rule 67-48.025 that requires distributions of Housing Credits "in accordance with Florida Housing's Qualified Allocation Plan."

15. Also subject to Amber Garden's Petition is Rule 67-48.002(83)'s definition of QAP:

"QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2005 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits.

¹Amber Garden also received a 2006 Housing Credit Allocation. *See* Application 2006-04-01. However, a variance is not required because the 2006-04 SAIL Program applies only to Housing Credit Allocations awarded under the 2005 Universal Application Cycle.

16. The 2005 QAP provides that Housing Credits may be returned **only** in the last calendar quarter of the year (October through December) in which a development is required to be placed in service, and an allocation may only be made for the year after the Placed-in-Service Date:

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, 2007], 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 it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant **for the year after the year** [2008] in which the Development was otherwise required to be placed in service, provided [certain] conditions have been met...

2005 QAP at ¶ 11 (emphasis added).

17. The applicable Rules and 2005 QAP for which variances are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),² 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 and 2005 QAP that are subject to Amber Garden's variance requests are implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2005).

²The 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.

18. The requested variances will ensure the availability of both Housing Credits which might otherwise be lost as a consequence of development delays caused by factors outside Amber Garden's control, and additional funds from the Wilma GO Zone Program to offset increased construction costs and ensure that Housing Credit developments are completed in a timely manner.

19. The following facts demonstrate the economic hardship and other circumstances which justify Amber Garden's request for Rule variances:

- a. Amber Garden timely submitted its 2005 Universal Application to Florida Housing for its Low Income Housing Tax Credit Program and received a 2005 Housing Credit Allocation of \$1,088,940.00.
- b. As a consequence of Hurricane Wilma, Amber Garden applied for additional funding through the Wilma GO Zone Program, and received a preliminary commitment of up to \$1,250,000, for crucial funds necessary to offset increased construction costs and ensure that the Development is completed in a timely manner.
- c. Amber Garden's 2006-04-01 SAIL Request was "ranked based on its Development's Universal Application score."
- d. In light of the initial delays caused by the 2005 Hurricanes, and having entered the 2006 hurricane season, Amber Garden's tax-credit investor has serious concerns about whether the Development will meet the Placed-in-Service Date.
- e. The Development has received final site plan approval. Provided that Florida Housing grants the requested Rule variances, Amber Garden and its tax-credit investor should close on the tax-credit partnership and commence construction within a reasonable period of time.
- f. Amber Garden has continued to proceed with the pre-development process and has met the 10% test under Paragraph 5.b. of the Carryover Agreement.
- g. A denial of the requested variances would result in a substantial economic hardship to Amber Garden. Without the assurance of a 2007 Housing Credit Allocation from Florida Housing, and the additional funds provided through the 2006-04 SAIL Program, Amber Garden's tax-credit investor has indicated its concerns about taking the risk of closing on the tax credit partnership,

funding the initial capital contribution and commencing construction. This could result in the inability to obtain critical financing necessary to provide 110 apartment rental units needed for low-income individuals and the elderly in Miami, Miami-Dade County, Florida.

20. As demonstrated above, the requested variances 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).

21. Further, by granting the requested variances, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities, such as Amber Garden, in meeting the purpose of the Act, regardless of the possible delays from hurricanes and other factors outside their control.

22. The requested variances will not adversely impact the Development or Florida Housing.

23. The variances being sought are permanent in nature.

24. Should Florida Housing require additional information, Amber Garden is available to answer questions and to provide all information necessary for consideration of its Petition for a

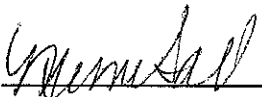
Variance of the 2005 Qualified Allocation Plan, as Applied to RFP 2006-04 Sail Program Funds, to Allow the Immediate Return of 2005 Housing Credit Allocation, and to Receive an Immediate Binding Commitment for an Allocation of 2007 Housing Credits.

WHEREFORE, Petitioner Amber Garden, LLC, respectfully requests that the Florida Housing Finance Corporation:

- A. Grant the Petition and all the relief requested herein;
- B. Provide a variance of the 2005 Qualified Allocation Plan, as applied to Amber Garden's RFP 2006-04-01 SAIL Program Funds Request, to allow the immediate return of its 2005 Housing Credit Allocation and to receive a binding commitment for an allocation of a 2007 Housing Credit Allocation; and
- C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Amber Garden
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 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 14th day of September, 2006.

By: Mimi L. Sall
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- 041 C was successful in receiving a tentative allocation of Competitive Housing Credits in the 2005 Universal Application Cycle for the following proposed Development:

Amber Garden, consisting of 110 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)

Amber Garden, LLC requests additional funding from the SAIL.
(Name of Applicant)

Program in the total amount of \$ 1,250,000 (based on 110 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 Amber 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.





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
Amber Garden, LLC
2950 SW 27th Avenue, Suite 200
Miami, FL 33133

Re: Amber Garden (2006-04-01/2005-041C)
Preliminary SAIL Allocation \$1,250,000

Dear Mr. Boggio:

Congratulations! 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 \$1,250,000.

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 August 14, 2006, you must submit a check for \$4,813, payable to First Housing Development Corporation, Inc., 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
1715 N. Westshore Blvd., Suite 700
Tampa, FL 33607
813-289-9410

Jeb Bush, Governor

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

Stephen P. Auger, Executive Director

EXHIBIT

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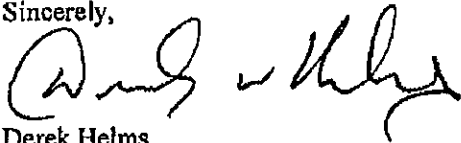
Mr. Lloyd Boggio
Amber Garden, LLC
August 14, 2006
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Please indicate your acceptance to enter credit underwriting by returning the enclosed Acknowledgment along with a copy of the check submitted to the credit underwriter by August 14, 2006, to the attention 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 Asset Management
Diane Carr, Servicing Administrator
Nicole Gibson, Loan Servicing Manager
Ed Busansky, First Housing Development Corporation

Mr. Lloyd Boggio
Amber Garden, LLC
August 14, 2006
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**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 _____

AMBER GARDEN
Development Name

2006-04-01/2005-041C
ID Number

Signature: 

Print Name: Lloyd Boggio

Date: 8/14/2006