

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2006-009VW

VALENCIA GARDEN APARTMENTS, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**PETITION FOR WAIVER OR EXTENSION OF TIME FOR COMPLIANCE WITH
RULES 67-48.004(1)(a), 67-48.007, AND 67-048.023**

Petitioner Valencia Garden Apartments, Ltd. a Florida limited partnership ("Valencia" or "Petitioner") petitions Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver or extension of the 7 calendar-day period ("Fee Submission Period") within which the non-refundable Preliminary Allocation administrative fee ("Preliminary Allocation Fee") and pre-final allocation compliance monitoring fee ("Compliance Fee") (collectively "Fees") must be submitted to the Corporation. See Rules 67-48.004(1)(a), 67-48.007, and 67-048.023, Florida Administrative Code (collectively the "Rules"). In support of its Petition, Valencia states as follows:

1. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Valencia requests a waiver of Rule 67-48.004(1)(a), which adopts and incorporates the Universal Application Package, as applied to the Universal Application Instructions for Fees, at Sections 5 and 7(b)(1), and Rule 67-48.023 which establishes the

procedures and requirements to qualify for Housing Credits under the Corporation's Housing Credits Program ("HC Program").

2. On February 7, 2006, Valencia submitted its \$78,000.00 Preliminary Allocation Fee and \$2,468.00 Compliance Fee to the Corporation, which were required to preserve Valencia's ability to obtain Housing Credits for Valencia Garden (the "Development"). However, the Fees were not submitted within the Fee Submission Period.

3. The requested Rule waivers or extension of the Fee Submission Period, therefore, would result in the determination that Valencia timely submitted its Fees, and would allow the Development to qualify for Housing Credits. The requested Rule waivers will not adversely affect the Development. However, a denial of the Petition would (a) prevent the Development from qualifying for Housing Credits; (b) result in substantial economic hardship to Valencia; (c) delay or otherwise prevent the development of essential affordable housing in Wauchula/Hardee Counties; and (d) violate principles of fairness.

4. The name, address, telephone and facsimile numbers for Valencia and its qualified representative are:

Valencia Garden Apartments, Ltd.
c/o TCG Valencia Garden, LLC
Its General Partner
Attention: Lloyd J. Boggio, its Managing Member
2950 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-9674

The name, address, telephone and facsimile numbers of Petitioner's attorneys are:

Brian J. McDonough
Mimi L. Sall
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Suite 2200
Museum Tower
150 West Flagler Street
Miami, Florida 33130
Telephone: 305 - 789-3200
Facsimile: 305 - 789-3395
E-mail: brmcdonough@swmwas.com
msall@swmwas.com

5. Rule 67-48.004(1)(a) requires that:

When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA1016 (Rev. 2-05) consists of the forms and instructions, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC, or SAIL and HC Program(s). **The Universal Application Package is adopted and incorporated herein by reference**, effective February 7, 2005. (Emphasis added).

6. The applicable Universal Application Instructions for Fees provide as follows:

5. Administrative Fees:

With respect to the HC Program, each Applicant to which a Preliminary Allocation, ... is granted shall submit to the Corporation a non-refundable administrative fee in the amount of 8% of the first annual Housing Credit Allocation amount to be received. ... The Corporation must receive the administrative fee within 7 Calendar Days of the date of the Preliminary Housing Credit Allocation, ... (Emphasis added).

7. Compliance Monitoring Fees:

- b. HC:

(1)Pre-final allocation compliance monitoring fee, ...
collected within 7 days of the date of the
Preliminary Housing Credit Allocation ...

7. Rule 67-48.007 authorizes the Corporation to collect Fees as described in the Universal Application Instructions:

The Corporation, ... shall collect via check or money order the following fees and charges in conjunction with the ... HC Program as outlined in the Universal Application instructions:

- (4) Administrative Fees. ...
- (6) Compliance monitoring fees.

Rule 67-48.007(4) and (6).

8. Rule 67-48.023 establishes procedures and requirements for the HC Program, including, but not limited to:

In order for a Development to qualify for Housing Credits it shall, at a minimum, meet or comply with the following:

- (1) Each Applicant **shall comply** with this rule chapter and with Section 42 of the IRC and federal regulations

Rule 67-48.023(1) (emphasis added).

9. The Rules 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").

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. ("Act" means

§§ 420.5099(1) and (2), Fla. Stat. (2003). These Allocation Procedures were established in Rule Chapter 67-48, F.A.C. Accordingly, the Rules subject to Valencia'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, Fla. Stat. (2005).

10. The following facts demonstrate the economic hardship and other circumstances which justify Valencia's request for Rules waivers:

- a. Valencia timely submitted its Universal Application for the Corporation's HC Program.
- b. Thereafter, the Corporation issued its Preliminary Allocation Certificate ("Certificate"), dated November 30, 2005, for the Development. A true and correct copy of the Certificate is attached hereto as Exhibit A.
- c. The Preliminary Allocation reserved \$975,000.00 of Housing Credits for the Development.
- d. The Preliminary Allocation was contingent on several factors, including but not limited, to the following:

A non-refundable administrative fee of \$78,000.00, ... and a one-time non-refundable compliance payment of \$2,468.00 ... payable by the Applicant to Florida Housing no later than December 7, 2005.

Certificate at ¶ 4.b (emphasis in original).

- e. On December 22, 2005, the Certificate was signed on behalf of the Corporation.
- f. Valencia submitted the Fees on February 7, 2006.
- g. The delay in submitting the Administrative Fee resulted from uncertainty on whether or not the proposed development would be financially feasible due to concerns over rising construction costs, lack of available general contractors and sub-contractors in the area and gap in sources.

the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

- h. The requested Rule waivers will enable Valencia to obtain essential Housing Credits necessary for the development of essential affordable housing in Wauchula/Hardee Counties.
 - i. A denial of the requested waiver would result in a substantial economic hardship to Valencia because Valencia has purchased the site, paid the Florida Housing administrative and compliance fees, and invested a substantial amount of time and effort in finding subsidies and contractors sufficient to complete the proposed development.
 - j. Moreover, without crucial financing incentives available through the HC Program, Valencia would be unable to proceed with the Development. In the alternative, Valencia would be unable to raise equity through its syndication of the Housing Credits and would have to obtain additional debt financing on less favorable terms which would significantly increase its debt service, and make it practically incapable of proceeding with the Development.
 - k. By waiving or otherwise extending the time in which to submit the Administrative Fee, Valencia will be able to proceed with the Development in an efficient, economical manner. As a result, 104 affordable residential housing units will be available for low-income families in Wauchula/Hardee Counties.
11. The requested Rule waivers and/or extension of the Fee Submission Period would serve the purposes of the Act as a whole, because one of their primary purposes is to facilitate the availability of decent, safe and affordable housing in the State of Florida to low and moderate income persons and households. By granting waivers and/or extending the time limitation for submitting Fees, the Corporation would recognize the economic realities of developing affordable housing. This recognition would promote participation by owners such as Valencia in meeting the purpose of the Act by providing affordable housing in an economical and efficient manner.
12. The waiver being sought is permanent in nature.

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

WHEREFORE, Petitioner Valencia Garden Apartments, Ltd. respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
 - B. Waive or otherwise extend the time limitation for submitting Administrative Fees;
- and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

TCG Valencia Garden, LLC, and General Partner of
and Qualified Representative for Valencia Garden
Apartments, Ltd.

By: 

Lloyd J. Boggio

Its: Managing Member

CERTIFICATE OF SERVICE

The Original Petition is being served by facsimile and 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 22nd day of March, 2006.

A handwritten signature in black ink, consisting of several loops and flourishes, is written over a horizontal line.



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

we make housing affordable

PRELIMINARY ALLOCATION CERTIFICATE
HOUSING CREDIT PROGRAM

The Florida Housing Finance Corporation ("Florida Housing") grants to
Valencia Garden Apartments, Ltd. ("Applicant")

for

Valencia Garden (the "Development")

Wauchula/Hardee County, Florida
Application # 2005-046C

Preliminary Allocation of Housing Credits reserved in the amount of

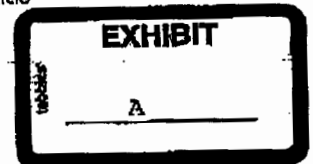
\$975,000.00

November 30, 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. Stultz, Vice Chairman • Thaddeus Cohen, Ex Officio
Cesar E. Calvet • David E. Oellerich • Zully Ruiz • Robert J. Taylor • Sandra Terry


Stephen P. Auger, Executive Director



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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 \$78,000.00, which is based on 8% of the allocation amount (\$975,000.00) and a one time non-refundable compliance payment of \$2,468.00 in accordance with Rule 67-48 is payable by the Applicant to Florida Housing no later than December 7, 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 22 day of December 2005