

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In re: Winter Haven Lakeside Terrace, Ltd., LLLP

Case No. 2007-068VW

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**ORDER GRANTING PETITION FOR VARIANCE FROM SECTION 10  
OF THE 2006 QUALIFIED ALLOCATION PLAN AND FOR A WAIVER  
OF RULE 67-48.004(14)(E), FLORIDA ADMINISTRATIVE CODE (2006)**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on January 25, 2008, pursuant to a "Petition for Variance [from] the 2006 Qualified Allocation Plan Requirements fro Returning Housing Credit Allocations and for an Immediate Allocation of 2008 Housing Credits and for a Waiver of Rule 67-48.004(14)(e), Florida Administrative Code [2006]" filed by Winter Haven Lakeside Terrace, Ltd., LLLP ("Petitioner") on December 19, 2007. Notice of the Petition was published on January 4, 2008 in Volume 34, Number 01, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Sherry Shear* /DATE. 1-28-08

2. During the 2006 Universal Cycle, Winter Haven Lakeside Terrace, Ltd., LLLP, (“Petitioner”) applied for and was awarded competitive low-income housing tax credits (“Housing Credits”) to finance the construction of Lakeside Terrace Senior Apartments (the “Development”) located in Polk County, Florida.

3. Rule 67-48.004(14)(e), Florida Administrative Code (2006), provides in pertinent part:

(14) 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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

...(e) Site for the Development;

4. Petitioner requests a waiver of the above provision to allow a change in the legal description of the Development site. The City of Winter Haven vacated an existing right-of-way known as Orrin Circle Northeast. While the legal description will change, the location of the Development on the site and thus the tie-breaker measurement point will be unaffected.

5. Section 10 of the 2006 Qualified Allocation Plan, provides in pertinent part:

... 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, 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 the Development was otherwise required to be placed in service, provided the following conditions have been met...

6. Petitioner requested a variance from the above provision to allow Petitioner to return its 2006 Housing Credit Allocation immediately, rather than wait until the last calendar quarter of 2008, as required by the QAP, and to receive an immediate allocation of 2008 Housing Credits rather than a reservation of 2009 Housing Credits.

7. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

8. The Board finds that strict application of the rule prohibiting changing of the site for the Development under these circumstances, where the city has vacated an existing right-of-way and thus modified the metes and bounds of the property, where the Tie Breaker Measurement Point for the Development remains unchanged, and Petitioner will not gain any unfair advantage over other applicants, would cause substantial hardship and violate the principles of

fairness, and thus Petitioner will not gain any unfair advantage over other applicants. The Board further finds that permitting the requested action would also serve the underlying purpose of the statute.

9. Further, unless the Petition for variance from the Qualified Allocation Plan is granted, Petitioner will not be able to complete construction of the Development before its existing placed-in-service deadline.

10. The Board finds that substantial delays caused by friction between the Winter Haven Housing Authority and HUD officials, and by no fault of Petitioner, resulted in significant delays in the commencement of construction of the Development. The Tax Credit Syndicator has expressed concerns that the existing December 31, 2008 placed-in-service deadline will not be met and has indicated unwillingness to undertake the equity financing necessary to begin construction.

11. The Board finds that strict application of the above Rule contained in the Qualified Allocation Plan under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. Petitioner's requested variance would also serve the underlying purpose of the statute by ensuring that the Development not fail in the face of these substantial delays which arose outside of Petitioner's control.

**IT IS THEREFORE ORDERED:**

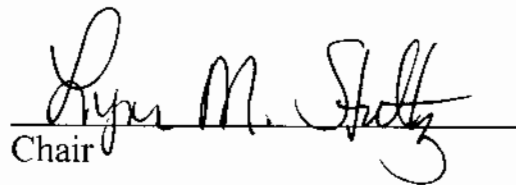
The Petition for Waiver of Rule 67-48.004(14)(e), F.A.C. (2006), is hereby **GRANTED**, to allow Petitioner to update the legal description of the property in light of the City's retreat from the existing right-of-way, but only to the extent that the Tie Breaker Measurement Point for the Development remains unchanged. A copy of the legal description is attached as Exhibit A. Petitioner's request to waive the requirements of Section 10 of the 2006 Qualified Allocation Plan is hereby **GRANTED**, but only to the extent that Petitioner shall be permitted to return its 2006 Housing Credit allocation immediately, rather than wait to the last calendar quarter of 2008, and to receive an allocation of 2008 Housing Credits rather than a reservation of 2009 Housing Credits. Petitioner's new placed-in-service deadline shall be December 31, 2009.

DONE and ORDERED this 25th day of January, 2008.

Florida Housing Finance Corporation



By:

  
Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

**NOTICE OF RIGHTS**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**

## EXHIBIT A

A TRACT OR PARCEL OF LAND FORMERLY KNOWN AS "REPLAT OF SEGO SUBDIVISION" AS RECORDED IN PLAT BOOK 73 AT PAGE 5 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA AND VACATED BY RESOLUTION R-07-45, INSTRUMENT NUMBER 2007220327 AS RECORDED IN OFFICIAL RECORD BOOK 7465 AT PAGES 1069-1072 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 7, BLOCK 2, HESS AND NAGLE SUBDIVISION AS RECORDED IN PLAT BOOK 32 AT PAGE 10 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA, SAID CORNER ALSO BEING THE POINT OF BEGINNING; THENCE RUN N00°00'24"E FOR 283.60 FEET; THENCE RUN N89°07'53"E FOR 524.55 FEET; THENCE RUN N00°45'04"E FOR 5.00 FEET; THENCE RUN N89°07'53"E FOR 795.00 FEET MORE OR LESS TO THE WATERS OF LAKE MAUD; THENCE SOUTHEASTERLY ALONG THE WATERS OF SAID LAKE MAUD WITH A SURVEY TIE-LINE BEARING S39°01'26"E FOR 155.46 FEET; THENCE S45°38'06"W LEAVING THE WATERS OF SAID LAKE MAUD FOR 191.00 FEET TO A POINT ON A CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A NON-TANGENTIAL CURVE TO RIGHT OF RADIUS 75.00 FEET (DELTA 01°09'29")(CHORD BEARING S01°54'23"E)(CHORD 1.52 FEET) FOR 1.52 FEET TO THE POINT OF TANGENCY; THENCE RUN S01°19'38"E FOR 10.00 FEET; THENCE RUN S88°40'22"W FOR 151.97 FEET; THENCE S88°40'22"W FOR 709.80 FEET; THENCE S86°53'24"W FOR 420.20 FEET TO THE POINT OF BEGINNING.

CONTAINING 8.44 ACRES, MORE OR LESS.