

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Dixie Court III, Ltd.

Case No. 2007-093VW

**ORDER GRANTING VARIANCE FROM SECTION 11 OF THE 2007
QUALIFIED ALLOCATION PLAN**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on October 31, 2008, pursuant to a "Petition for Waiver of the 2007 Qualified Allocation Plan Requirements for Returning Housing Credit Allocations and For an Immediate Allocation of 2008 Housing Credits" filed by Dixie Court III, Ltd., ("Petitioner") on October 1, 2008. Notice of the Petition was published on October 10, 2008 in Volume 34, Number 41, 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.
2. During the 2007 Universal Cycle, Petitioner applied for and was awarded competitive low-income housing tax credits ("Housing Credits") in the amount of \$1,213,116 to finance the construction of Dixie Court III Apartments (the

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

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“Development”) located in Broward County, Florida. Petitioner also received a forward binding commitment of the 2008 Housing Credit Allocation in the amount of \$516,884 for the same Development.

3. Rule 67-48.002(88), Fla. Admin. Code (2007), states in pertinent part:

“QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2007 Qualified Allocation Plan which is adopted and incorporated by reference...

4. Section 11 of the 2007 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...

5. Petitioner requests a waiver from the above provision to allow Petitioner to return its 2007 Housing Credit Allocation now, rather than wait until the last calendar quarter of 2009, as required by the QAP, and to receive an immediate allocation of 2008 Housing Credits, instead of an allocation in 2010, the year after the current Placed-in-Service Date, in an amount not to exceed the amount of the returned Housing Credit Allocation.

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

Variances 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.

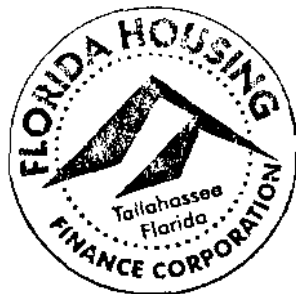
7. The Board finds that a variance is the appropriate relief and that strict application of the above Rule contained in the Qualified Allocation Plan under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. At the time Petitioner entered into its Carryover Agreement, it elected to use the “applicable percentage” of 8.03%, per Section 42(b)(2) of the Internal Revenue Code. The Housing and Economic Recovery Act of 2008 modified the applicable percentage to no less than 9% for projects place in service after July 30, 2008. Petitioner’s tax syndicator indicated that it will be unable to fund the amount of equity needed for the development of the apartment complex without the certainty of the higher 9% applicable percentage applying to the Development.

8. The Board further finds that without the swap of the 2007 Housing Credit Allocation for a 2008 Housing Credit Allocation, it will be unable to fund a substantial amount of equity that would otherwise be available at the higher applicable percentage rate, resulting in a shortfall of funds needed for construction.

IT IS THEREFORE ORDERED:

Variance from the requirements of Section 11 of the 2007 Qualified Allocation Plan is hereby **GRANTED**, but only to the extent that Petitioner shall be permitted to return its 2007 and 2008 Housing Credit allocation now, rather than wait to the last calendar quarter of 2009, waive the 2007 Qualified Allocation Plan's requirement that a Housing Credit Allocation cannot be reserved until the year after the Development's Placed-in-Service Date, and contingent upon payment of the processing fee, receive an immediate allocation of 2008 Housing Credits in an amount not to exceed the combined amount of the 2007 and 2008 Housing Credit Allocation. The Placed-in-Service deadline shall remain December 31, 2009.

DONE and ORDERED this 31st day of October, 2008.



Florida Housing Finance Corporation

By:

Lynn M. Stutz
Chair

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Debbie Blinderman
Deputy Development Officer
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Brian McDonough
Stearns, Weaver, Miller, Wessler, Alhadeff & Sitterson, P.A.
150 West Flagler St., Suite 2200
Miami, Florida 33130

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.