

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. \_\_\_\_\_  
Application No. 2006-041C

HIGHLAND GARDENS DEVELOPMENT, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(14)(e) TO CHANGE  
THE SITE OF THE HIGHLAND GARDENS II DEVELOPMENT**

Petitioner Highland Gardens Development, Ltd., a Florida limited partnership (“Highland Gardens”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of restrictions on changing a development’s site. *See* Rule 67-48.004(14)(e), F.A.C. (2006) (the “Rule”).

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Highland Gardens requests a waiver of the Rule to allow for a change of its development site.

**A. The Petitioner and the Development**

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

Highland Gardens Development, Ltd.  
c/o PHG-Highland, LLC  
Attention: David O. Deutch  
9400 South Dadeland Boulevard, Suite 100  
Miami, Florida 33156  
Telephone: 305-854-7100  
Facsimile: 305-859-9858

3. The name, address, telephone and facsimile numbers, and e-mail address of Highland Gardens' attorney, for purposes of this Petition, are:

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](mailto:msall@swmwas.com)

4. Pursuant to the 2006 Combined Universal Cycle, Highland Gardens submitted its Universal Application for Housing Credits under the Low Income Housing Tax Credit program. *See* Application No. 2006-041C.

5. Florida Housing has issued its Preliminary Allocation of Housing Credits reserved in the amount of \$1.5 million, and it is anticipated that there will be a Final Housing Credit Allocation granted to Highland Gardens in accordance with Florida Housing's final allocation procedures.

6. Equity raised from Housing Credits will be used for the development of Highland Gardens, Phase II, a new 100-unit apartment development (the "Development") intended to serve very-low and low-income elderly individuals in Deerfield Beach, Broward County, Florida.

7. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Highland Gardens; (b) could deprive Broward County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

8. The waiver being sought is permanent in nature.

**B. Rule from Which Relief is Requested and Statute Implemented by the Rule**

9. Highland Gardens requests a waiver of Rule 67-48.004(14)(e). As applied to applications for Housing Credits, the Rule identifies certain non-curable matters and includes the following:

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 ... Those items are as follows:

(e) Site for the Development;

10. The applicable Rule for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that created the Housing Credits Program. § 420.5099, Fla. Stat. (2006).<sup>1</sup> 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. §§420.5099(1) and (2), Fla. Stat. (2006). Accordingly, the Rule that is the subject of Highland Gardens' waiver request is 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. (2006).

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<sup>1</sup>The Florida Housing Finance Corporation Act (the "Act") is set forth in Sections 420.501 through 420.516 of the Florida Statutes. *See also* Rule 67-40.020(1), F.A.C. (2006).

**C. Justification for Highland Gardens' Requested Waiver**

11. Highland Garden's Development is the second phase of a two-phase project for the development of housing for very-low and low income elderly individuals in Broward County, Florida. The site location is part of a larger parcel owned by the Broward County Housing Authority.

12. When Highland Gardens submitted its Universal Application, the Development's legal description included an adjoining road right-of-way used by the local municipality for density calculations. However, the right-of-way is not part of the Development's site location.

13. The purpose of this Petition, therefore, is to change only the Development's legal description by, in essence, carving out the right-of-way. There will be no change in either the location of the Development or the Tie-Breaker Measurement Point ("TBMP") identified in Exhibit 25 to Highland Garden's Universal Application. *See* Affidavit and Certification of Surveyor attached hereto as Exhibit A, and the revised legal description attached hereto as Exhibit B.

14. Additionally, because the Development's TBMP remains the same, the 7.5 Proximity Tie-Breaker Points awarded to Highland Gardens would not have changed.

15. The requested change to the Development's legal description would not have impacted the scoring of Highland Gardens' Universal Application, and would not have provided an unfair advantage over other applicants.

16. The requested waiver will not prejudice the Development or the affordable housing market to be served by the Development.

**D. Conclusion**

17. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 100 affordable housing units will be available in Broward County, Florida.

18. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

19. The requested waiver serves the purposes of Section 420.5099, Florida Statutes (2006), 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. (2006).

20. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act through new construction in an economical and efficient manner.

21. Should Florida Housing require additional information, Highland Gardens is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(e) to Change the Site of the Highland Gardens II Development.

WHEREFORE, Petitioner Highland Gardens Development, Ltd., respectfully requests that Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Waive the prohibition on changing a development's site location after submission of the Universal Application;
- B. Allow Highland Gardens II to be developed on the site identified in Exhibit B to this Petition; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for Highland Gardens Development, Ltd.  
200 East Las Olas Boulevard, Suite 2100  
Fort Lauderdale, Florida 33301  
Tel: (954) 462-9575  
Fax: (954) 462-9567  
E-mail: [msall@swmwas.com](mailto:msall@swmwas.com)

By:   
MIMI L. SALL

**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 North 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 2nd day of July, 2008.

By:   
Mimi L. Sall

Affidavit and Certification of Surveyor

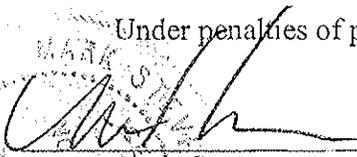
Before me, the undersigned authority, personally appeared Mark Steven Johnson, who being duly sworn, states that he personally knows the following facts and that the same are true and accurate.

My name is Mark Steven Johnson, and I am licensed by the State of Florida as a Professional Surveyor. My license number is 4775. I am the Secretary-Treasurer of Schwebke-Shiskin and Associates, Inc. I am submitting this Affidavit and Certification on behalf of Highland Gardens Development, Ltd. (the "Applicant"), and I am not related to the Applicant or any Principals or Financial Beneficiaries of the Applicant.

On or about June 30, 2008, I reviewed the Surveyor Certification and Sketches of Point Qualifiers "Tie-Breaker" Measurement Point provided and executed by me as Exhibit 25 to Applicant's Universal Application No. 2006-041C. These documents are attached to this Affidavit as Composite Exhibit 1. I also reviewed the revised legal description as prepared by Keith and Associates. The revised legal description is attached as Exhibit 2.

I have confirmed and thereby certify that the Tie-Breaker Measurement Point identified in Exhibit 25 remains unchanged and is within 100 feet of a residential building to be constructed as part of the Development on the property described in the revised legal description.

Under penalties of perjury, I declare that these statements are true and correct.



Mark Steven Johnson, License #4775

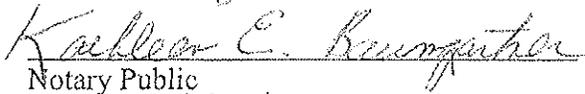
07/01/08

Dated

STATE OF FLORIDA  
COUNTY OF Broward

Sworn to and subscribed before me this 1 day of July, 2008, by Mark Steven Johnson who is personally known to me or has produced \_\_\_\_\_ as identification.

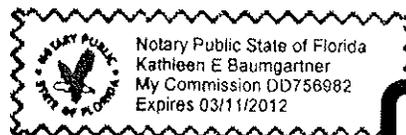
WITNESS my hand and official seal, this 1 day of July, 2008.



Notary Public

State of Florida

My Commission Expires: \_\_\_\_\_



**SURVEYOR CERTIFICATION**

Name of Development: Highland Gardens, Phase II

Located along the east side of NE 3rd Ave, at the intersection of NE 48th St. and NE 3rd Ave.,

Development Location: \*Deerfield Beach, FL 33064

(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

\* If the Development consists of Scattered Sites, the Development Location stated above must reflect the site where the Tie-Breaker Measurement Point is located.

The undersigned Florida licensed surveyor confirms that the method used to determine the following latitude and longitude coordinates conforms to Rule 61G17-6, F.A.C.

State the Tie-Breaker Measurement Point. Tie-Breaker Measurement Point means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprises the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.	Latitude			Longitude		
	26 Degrees	17 Minutes	26.5 Seconds (truncated after 1 decimal place)	80 Degrees	07 Minutes	09.1 Seconds (truncated after 1 decimal place)
If the Development consists of Scattered Sites, is a part of the boundary of each parcel located within 1/2 mile of the Tie-Breaker Measurement Point? <input type="checkbox"/> Yes <input type="checkbox"/> No (check one)						
Scattered Sites for a single Development means a Development consisting of more than one parcel in the same county which two or more of the parcels (i) are not contiguous to each other or are divided by a street or easement and (ii) it is readily apparent from the plan map of the site, plan of lot, or other information available to the Corporation that the properties are part of a common or related scheme of development.						
Location of closest Public Bus Stop or Metro-Rail Stop	26 Degrees	17 Minutes	29.1 Seconds (truncated after 1 decimal place)	80 Degrees	07 Minutes	10.4 Seconds (truncated after 1 decimal place)
State the name, Address and latitude and longitude coordinates of the closest service(s) on the chart below. The latitude and longitude coordinates for each service must represent a point that is on the doorway threshold of an exterior entrance that provides direct public access to the building where the service is located. If there is no exterior public entrance to the service, then a point should be used that is at the exterior entrance doorway threshold that is the closest walking distance to the doorway threshold of the interior public entrance to the service.						
Grocery Store: Name: <u>American Latin Super Market</u> Address: <u>4811 N. Dixie Hwy</u> <u>Deerfield Beach, FL 33064</u>	26 Degrees	17 Minutes	24.9 Seconds (truncated after 1 decimal place)	80 Degrees	06 Minutes	38.6 Seconds (truncated after 1 decimal place)
Public School: Name: _____ Address: _____	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)
Medical Facility: Name: <u>North Broward Medical Center</u> Address: <u>301 E Sample Rd</u> <u>Deerfield Beach, FL 33064</u>	26 Degrees	16 Minutes	37.0 Seconds (truncated after 1 decimal place)	80 Degrees	07 Minutes	14.2 Seconds (truncated after 1 decimal place)
Pharmacy: Name: _____ Address: _____	Degrees	Minutes	Seconds (truncated after 1 decimal place)	Degrees	Minutes	Seconds (truncated after 1 decimal place)

If the Corporation discovers that there are any false statements made in this certification, the Corporation will forward a copy to the State of Florida Department of Business and Professional Regulation for investigation.

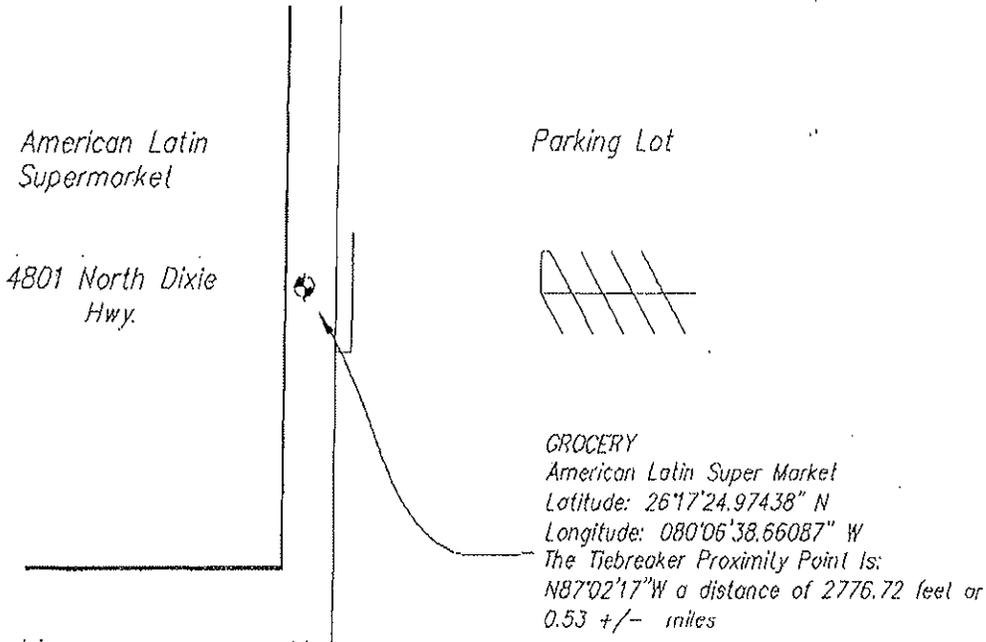
CERTIFICATION: In the penalties of perjury, I declare that the foregoing statement is true and correct.

Signature: Mark Steven Johnson Date (mm/dd/yyyy): 01/30/2006  
 Name of Surveyor: Schwabke-Shiskin & Associates, Inc.  
 Print or Type Name of Signatory: Mark Steven Johnson Address: 3240 Corporate Way  
 Vice President: 40, 1375 Miramar, FL 33025  
 Print or Type Title of Signatory: \_\_\_\_\_ Telephone Number (including area code): (305) 652-7010  
 Florida License Number: \_\_\_\_\_

This certification may not be signed by the Applicant, any related parties of the Applicant, or any Principals or Field Office Director of the Applicant. If the certification is improperly signed, the Application will not receive priority tie-breaker points. If this certification contains corrections or "white-out", or if it is copied, imaged, altered, or retyped, the Applicant will not receive priority tie-breaker points and will fail to meet threshold and will be rejected. This certification may be photocopied.

SPECIFIC PURPOSE SKETCH  
GROCERY

Highland Gardens-Phase II



NOTE:

Positions are referenced to NAD83(90) as referenced by GPS Survey to Florida Department of Transportation Station No. 8791009.

File: x:\Proj\PINNACLE HOUSING-TAX CREDIT APPLICATION\BROWARD SITES\Highland Gardens



*Schwabke-Shiskin & Associates, Inc.* (LB-87)  
LAND SURVEYORS • ENGINEERS • LAND PLANNERS • SOILS

3240 CORPORATE WAY, MIRAMAR, FLORIDA 33025 • DADE:(305)652-7010 BROWARD:(954)435-7010 FAX:(305)652-8284  
11941 S.W. 144th. STREET MIAMI, FLORIDA 33186 • TEL:(305) 233-9210 FAX:(305)251-1183

THIS IS NOT A "LAND SURVEY".

ORDER NO.: 444050

PREPARED UNDER MY SUPERVISION:

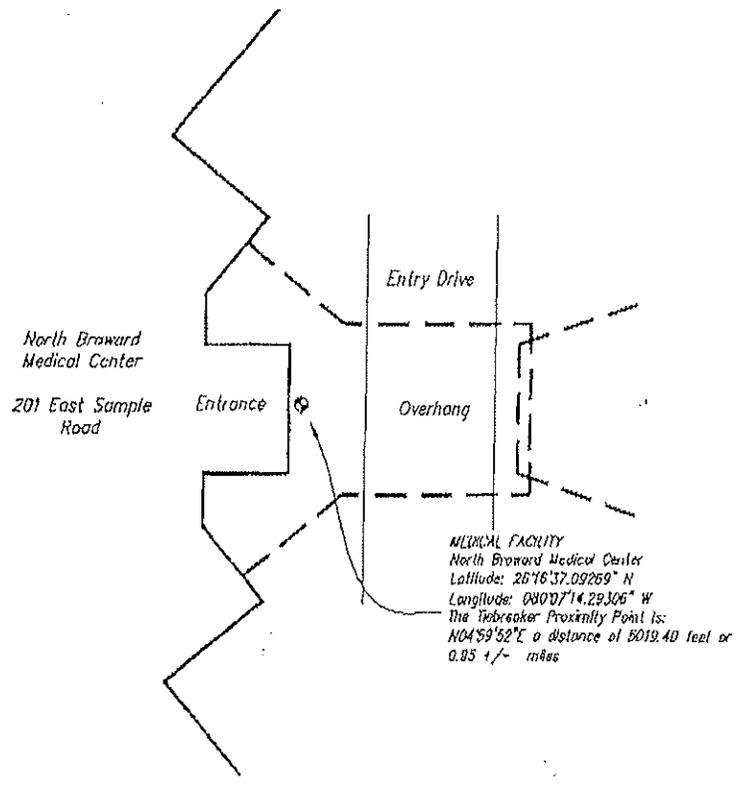
DATE: 01/14/2006

MARK STEVEN JOHNSON VICE PRES.  
FLORIDA PROF. LAND SURVEYOR NO. 4775

SHEET 1 OF 1 SHEET(S)

F.B.: SD-495B, Pg.41

SPECIFIC PURPOSE SKETCH  
MEDICAL FACILITY  
Highland Gardens-Phase II



**NOTE:**

Positions are referenced to NAD83(90) as referenced by GPS Survey to Florida Department of Transportation Station No. 8791D09.

x:\Proj\PINNACLE HOUSING-TAX CREDIT APPLICATION\BROWARD SITES\Highland Gardens

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11941 S.W. 144th. STRFET MIAMI, FLORIDA 33186 • TEL:(305) 233-9210 FAX:(305)251-1183

THIS IS <u>NOT</u> A "LAND SURVEY".	ORDER NO.: <u>441050</u>	PREPARED UNDER MY SUPERVISION:
	DATE: <u>01/14/2006</u>	
SHEET <u>1</u> OF <u>1</u> SHEET(S)	F.B.: <u>SD-495B, Pg.41</u>	MARK STEVEN JOHNSON VICE PRES. FLORIDA PROF. LAND SURVEYOR NO. 4775

Exhibit "A"

A portion of Parcel 'A', "Highland Gardens Condominium", according to the plat thereof as recorded in Plat Book 82 at page 5 of the Public Records of Broward County, Florida, and being more particularly described as follows:

Commence at the Northwest Corner of said Parcel "A"; thence run North 89° 49' 47" East along the northerly line of said Parcel "A" for 7.00 feet to the POINT OF BEGINNING of the parcel of land hereinafter described: Thence North 88°18'09" East, along the northerly line of said Parcel "A", 603.24 feet; Thence South 01°29'51" East, along the easterly line of said Parcel "A", 341.62 feet; Thence South 88°12'50" West, 83.47 feet; Thence North 46°41'51" West, 165.11 Feet; Thence South 88°18'09" West, 402.50 feet to a point on a line 7.00 feet easterly of and parallel with the westerly line of said Parcel "A"; Thence North 01°31'38" West, along said parallel line 225.00 feet to the POINT OF BEGINNING.

Said lands lying and being in Section 12, Township 48 South, Range 42 East, Broward County, Florida.

Exhibit "A"

A portion of Parcel 'A', "Highland Gardens Condominium", according to the plat thereof as recorded in Plat Book 82 at page 5 of the Public Records of Broward County, Florida, and being more particularly described as follows:

Commence at the Northwest Corner of said Parcel "A"; thence run North 89° 49' 47" East along the northerly line of said Parcel "A" for 7.00 feet to the POINT OF BEGINNING of the parcel of land hereinafter described: Thence North 88°18'09" East, along the northerly line of said Parcel "A", 603.24 feet; Thence South 01°29'51" East, along the easterly line of said Parcel "A", 341.62 feet; Thence South 88°12'50" West, 83.47 feet; Thence North 46°41'51" West, 165.11 Feet; Thence South 88°18'09" West, 402.50 feet to a point on a line 7.00 feet easterly of and parallel with the westerly line of said Parcel "A"; Thence North 01°31'38" West, along said parallel line 225.00 feet to the POINT OF BEGINNING.

Said lands lying and being in Section 12, Township 48 South, Range 42 East, Broward County, Florida.

