

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

SP WINTER HAVEN GARDENS LP,

File No. 2008-109S

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

PETITION FOR INFORMAL HEARING

Petitioner, SP WINTER HAVEN GARDENS LP ("SP"), pursuant to Rule 28-106.301, Florida Administrative Code, requests an informal administrative hearing to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes, to contest the scoring decision with respect to SP's application for the Gardens at Winter Haven development. In support thereof, SP states:

Identification of Agency Affected

1. The name, address and telephone number of the agency affected is:

Florida Housing Finance Corporation, Inc. ("FHFC")
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329
(850) 488-4197
The agency's file or identification number is 2008-109S.

Identification of Petitioner and Petitioner's Representative

2. The name, address and telephone number of SP is:

SP Winter Haven Gardens LP
2430 Estancia Blvd., Suite 101
Clearwater, FL 33761
(727) 669-3360

3. The name, address and telephone number of SP's representative, which shall be the address for service purposes during the course of these proceedings, is:

Lawrence E. Sellers, Jr.
HOLLAND & KNIGHT, LLP
315 South Calhoun Street, Suite 600
Post Office Drawer 810
Tallahassee, FL 32301-0801
(850) 425-5670

Background

4. FHFC has established a competitive application process for the award of funds (the "Universal Application Cycle") under various state programs, including SAIL, HOME or HC. The State Apartment Incentive Loan ("SAIL"), a state-funded program, provides mortgage loans or loan guarantees to sponsors to provide housing affordable to very low income persons. See Section 420.507(22) and 420.5087, Florida Statutes.

5. Applicants compete for the limited financing provided under these programs by submitting a Universal Application. This application requests information from each applicant regarding the proposed project. The Application and related Application Instructions are adopted by rule. See Rule 67-48.004, Florida Administrative Code.

6. On April 7, 2008, SP submitted an application seeking financing under the SAIL program for its proposed Gardens at Winter Haven development (the Application). The proposed development is a multi-family rental project to be located in Winter Haven, Florida, and it is designed to provide housing for farm workers and other low- to moderate-income families.

7. Among other things, Part V of the Application Instructions requires information regarding and documentation of financing. This is a threshold requirement, which means that

applications that do not include this required information may be rejected. See Rule 67-48.004, Florida Administrative Code. If, as here, the financing is to be provided in part by bonds issued by other than FHFC (i.e., a non-Corporation source), such as a local government, the Application Instructions require the applicant to submit information showing a firm commitment of bond financing:

Non-Corporation-issued Multifamily Bonds

- If the first mortgage financing is to come from non-Corporation-issued Multifamily Bonds, evidence of the following items must be included to receive a firm commitment:
 1. Local government issuing of bonds: Letter signed by the Chairperson of the local County Housing Finance Authority (HFA) or Public Housing Authority, as applicable, which is Development-specific and includes the following:
 - a. Affirmation that the local HFA has passed an Inducement Resolution for the proposed Development;
 - b. Affirmation that a TEFRA hearing has been held by the Local HFA or designated hearing officer;
 - c. Affirmation that the TEFRA hearing has been approved by the local Board of County Commissioners; and
 - d. Affirmation that the Tax-exempt Bond allocation has been reserved or that the HFA has agreed to award the necessary allocation when available.

Application Instructions, V. D at page 71. Here, there is no requirement that any specific words or form be used in the letter, as is required in other places in the Application Instructions, such as for utility letters or local government contributions or incentives. See, e.g., Exhibits 28-31 and 43-46 to Application Instructions.

8. SP provided the required firm funding commitment in the form of a letter from Charles W. Johnson, as Chairman of the Housing Finance Authority of Polk County, dated June 16, 2008 (Exhibit A). In relevant part, this letter provides as follows:

In reference to the above-captioned matter, and at the request of SP Winter Haven Gardens LP (the "Owner"), this letter is supplied to you as part of the Owner's application to the Florida Housing Finance Corporation for funds from the SAIL Program for the development of a multi-family housing project located in Winter Haven (Polk County), Florida (the "Project"). The SAIL loan is to be made in conjunction with the issuance of Bonds (the "Bonds") by the Housing Finance Authority of Polk County, Florida (the "Issuer"), the proceeds of which will be loaned to the Owner [i.e., SP] to finance the Project.

Please be advised of the following:

1. The Housing Finance Authority of Polk County has passed an Inducement Resolution for the proposed Gardens at Winter Haven.
2. A TEFRA hearing has been held by the Housing Finance Authority of Polk County.
3. The TEFRA hearing has been approved by the Polk County Board of County Commissioners, and
4. The Issuer intends to prioritize Gardens at Winter Haven in its request for not to exceed \$4,500,000 in 2009 volume cap allocation;

Exhibit A (emphasis supplied).

9. Nonetheless, by its scoring summary dated July 16, 2008 (Exhibit B), FHFC determined that SP did not provide the required funding commitment. Specifically, the scoring summary provides the following reason for this determination:

As a cure for Item 5T, the Applicant provided a letter from the Polk County Housing Finance Authority showing a firm commitment for bond financing. However, the letter does not contain affirmation that the tax-exempt bond allocation has been reserved or that the HFA has agreed to award the necessary

allocation when available as required by the 2008 Universal Application Instructions. Therefore, the bond amount cannot be counted as a firm source of financing.

Exhibit B at page 2. As a direct result of this determination, FHFC also concluded that there is a shortfall in both construction financing and permanent financing, and that the application does not qualify for the automatic 5 points for the local government contribution. Id.; see also Application Instructions, IV. A at pages 56-61.

10. Based on this determination, FHFC concluded that SP's Application did not meet an applicable threshold requirement and therefore does not qualify for the requested SAIL loan from FHFC.

SP's Substantial Interests

11. If SP does not receive the requested SAIL loan, it would have to substitute other, more expensive financing for that portion of the construction and permanent financing and would either not construct the proposed development, or would construct the development but would not operate it as affordable rental housing. SP believes that a determination that its Application has provided the required funding commitment and meets this threshold requirement would make its Application eligible for the requested SAIL loan. Accordingly, SP is a named party and its substantial interests will be affected by FHFC's determination.

Receipt of Notice of Agency Decision

12. On or about July 17, 2008, SP received notice of FHFC's decision as to the scoring of its Application as reflected in the attached scoring summary (Exhibit B).

Statement of Ultimate Facts

13. SP provided the required firm funding commitment from the Housing Finance Authority of Polk County, and therefore met the applicable threshold requirement. This is

demonstrated by the letter from Charles W. Johnson, as Chairman of the Housing Finance Authority (HFA) of Polk County, dated June 16, 2008, which states that bond proceeds "*will* be loaned to [SP] to finance the Project," and that the HFA "*intends to prioritize* Gardens at Winter Haven in its request for not to exceed \$4,500,000 in 2009 volume cap allocation." Exhibit A (emphasis supplied). This letter clearly provides the required affirmation from the HFA that the tax-exempt bond allocation has been reserved or that the HFA has agreed to award the necessary allocation when available. *See also* the Minutes of Special Meeting of the Housing Finance Authority of Polk County, Florida, dated May 21, 2008 (Exhibit C), the Inducement Resolution (Exhibit D), the Certificate of Approval for Purposes of Section 147(F) of the Internal Revenue Code (Exhibit E), and the signed Memorandum of Agreement between the Housing Finance Authority and SP (Exhibit F). Accordingly, FHFC erred in determining that SP failed to provide the required firm funding commitment for its Application, and therefore FHFC erred in determining that the Application failed to meet this threshold requirement.

Specific Rules that Require Reversal or Modification

14. SP is entitled to a determination that its Application meets all threshold requirements, and thus a reversal or modification of agency action, by the following statutes and rules: Chapter 120, including Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, including Rules 67-48.004 and 67-48.005, Florida Administrative Code.

No Material Facts Are in Dispute

15. SP is currently unaware of any disputed issues of material fact. However, SP reserves the right to request a formal hearing if FHFC or any other party disputes any of the material facts set out in this petition or otherwise relevant to SP's statement of ultimate facts or its requested relief.

Requested Relief

16. SP requests entry of recommended and final orders determining: (1) that SP provided the required firm funding commitment for its Gardens at Winter Haven Application; (2) that there is no shortfall in construction financing or permanent financing; (3) that the Application met the applicable threshold requirements and should be scored; and (4) that the Application qualifies for the automatic 5 points for the local government contribution.

Respectfully submitted,



Lawrence E. Sellers, Jr.
Florida Bar No. 300241
HOLLAND & KNIGHT LLP
Post Office Drawer 810
Tallahassee, FL 32302-0810
(850) 224-7000
larry.sellers@hklaw.com
Attorneys for Petitioner
SP Winter Haven Gardens LP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been delivered by hand to Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329; and that a true and correct copy has been provided by electronic mail to Wellington H. Meffert, General Counsel, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329; all on this 7th day of August, 2008.



Lawrence E. Sellers, Jr.

**HOUSING FINANCE AUTHORITY
OF POLK COUNTY, FLORIDA**

P. O. Drawer 7608
Winter Haven, FL 33883-7608

June 16, 2008

Florida Housing Finance Corporation
227 North Bronough Street – Suite 5000
Tallahassee, FL 32301

RE: Gardens at Winter Haven, South side of S. Deer Lake Drive,
Approximately 800 feet west of the intersection of S. Lake Deer
Drive and E. Lake Deer Drive, Winter Haven, Florida 33880

Ladies and Gentlemen:

In reference to the above-captioned matter, and at the request of SP Winter Haven Gardens LP (the "Owner"), this letter is supplied to you as part of the Owner's application to the Florida Housing Finance Corporation for funds from the SAIL Program for the development of a multi-family housing project located in Winter Haven (Polk County), Florida (the "Project"). The SAIL loan is to be made in conjunction with the issuance of bonds (the "Bonds") by the Housing Finance Authority of Polk County, Florida (the "Issuer"); the proceeds of which will be loaned to the Owner to finance the Project.

Please be advised of the following:

1. The Housing Finance Authority of Polk County has passed an Inducement Resolution for the proposed Gardens at Winter Haven.
2. A TEFRA hearing has been held by the Housing Finance Authority of Polk County.
3. The TEFRA hearing has been approved by the Polk County Board of County Commissioners, and
4. The Issuer intends to prioritize Gardens at Winter Haven in its request for not to exceed \$4,500,000 in 2009 volume cap allocation;

Very Truly Yours,

HOUSING FINANCE AUTHORITY OF POLK COUNTY, FLORIDA

By: 
Name: Charles W. Johnson
Title: Chairman

Exhibit A

2008 MMRB, SAIL & HC Scoring Summary

As of: 07/16/2008

File # 2008-109S

Development Name: Gardens at Winter Haven

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points
07 - 16 - 2008	61	N	7.5
Preliminary	61	N	7.5
NOPSE	60	N	7.5
Final	61	N	7.5
Final-Ranking	0	N	0

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Features & Amenities									
1S	III	B	2.a.	New Construction	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	12	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
4S	III	B	3	Green Building	5	5	5	5	0
Set-Aside Commitments									
5S	III	E	1.b.(2)(b)	Total Set-Aside Commitment	3	3	3	3	0
6S	III	E	3.	Affordability Period	5	5	5	5	0
Resident Programs									
7S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
7S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3.	Programs for Elderly	6	0	0	0	0
8S	III	F	4.	Programs for All Applicants	8	8	8	8	0
Local Government Support									
9S	IV	A		Contributions	5	0	0	0	0
10S	IV	B		Incentives	4	4	3	4	0

2008 MMRB, SAIL & HC Scoring Summary

As of: 07/16/2008

File # 2008-1095

Development Name: Gardens at Winter Haven

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
9S	Because the Applicant failed to qualify for the Polk County Bonds (see Item 5T), the Application does not qualify for automatic points. The Applicant did not provide any of the Local Government Contribution forms. Therefore, no local Government Contribution points were awarded.	Preliminary	Final
9S	Because the Applicant failed to qualify for the Polk County Bonds (see Item 7T), the Application does not qualify for automatic points. The Applicant did not provide any of the Local Government Contribution forms. Therefore, no local Government Contribution points were awarded.	Final	
10S	Because the Applicant failed to provide the Local Government Verification of Affordable Housing Incentives Modification of Fee Requirements for Affordable Housing Properties or Developments form, it is not eligible to receive 1 point for this incentive.	NOPSE	Final

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	B		Construction Financing Shortfall	The Applicant has a construction financing shortfall of \$5,601,899.	Preliminary	Final
2T	V	B		Permanent Financing Shortfall	The Applicant has a permanent financing shortfall of \$5,601,899.	Preliminary	Final
3T	V	D		Equity Commitment	Per page 73 of the 2008 Universal Application Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner. The Applicant stated at Exhibit 9 of the Application that the Limited Partner's interest in the Applicant entity is 99%. However, the syndication agreement at Exhibit 57 states that 99.99% of the HC allocation is being purchased. Because of this inconsistency, the equity commitment cannot be considered a firm source of financing.	Preliminary	Final
4T	V.	B		Pro Forma	Contingency reserves were listed for the Development in the Application, however, the Applicant did not provide detail of those reserves as required by the pro forma.	Preliminary	Final
5T	V	D		Funding Commitment	Although the Applicant listed Bonds from Polk County HFA in the amount of \$4,250,120 for construction and permanent financing (with evidence to be provided at Exhibit 56), no commitment for this has been provided. Therefore, the Bond amount cannot be counted as a source of financing.	Preliminary	Final
6T	III	C	1	Site Plan Approval	The Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form.	Preliminary	Final
7T	V	D		Funding Commitment	As a cure for Item 5T, the Applicant provided a letter from the Polk County Housing Finance Authority showing a firm commitment for bond financing. However, the letter does not contain affirmation that the tax-exempt bond allocation has been reserved or that the HFA has agreed to award the necessary allocation when available as required by the 2008 Universal Application Instructions. Therefore, the bond amount cannot be counted as a firm source of financing.	Final	
8T	V	B		Construction Financing Shortfall	The Applicant has a construction financing shortfall of \$4,206,691.	Final	

2008 MMRB, SAIL & HC Scoring Summary

As of: 07/16/2008

File # 2008-109S

Development Name: Gardens at Winter Haven

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
GT	V	B		Permanent Financing Shortfall	The Applicant has a permanent financing shortfall of \$3,608,745.	Final	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(a)	Grocery Store	1.25	1.25	1.25	1.25	0
2P	III	A	10.a.(2)(b)	Public School	1.25	1.25	1.25	1.25	0
3P	III	A	10.a.(2)(c)	Medical Facility	1.25	0	0	0	0
4P	III	A	10.a.(2)(d)	Pharmacy	1.25	1.25	1.25	1.25	0
5P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop	1.25	0	0	0	0
6P	III	A	10.b.	Proximity to Development on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C				Financial Arrears	A party to this Application (the Applicant or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer) is listed on the May 15, 2008 Past Due Report as being in arrears to the Corporation as a related party (the Applicant or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer) of Pinewood Pointe. The May 15, 2008 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm . The arrearage was satisfied prior to issuance of the NOPSE Scoring Summary.	NOPSE	

**MINUTES OF A SPECIAL MEETING OF THE HOUSING FINANCE
AUTHORITY OF POLK COUNTY, FLORIDA**

May 21, 2008

Pursuant to notice, the meeting was called to order by Chairman Johnson at 5:34 p.m. Authority members Johnson, Thornhill, Webb and Coulombe were present. Authority member Fazzini was not able to attend.

Also present were Mrs. Marianne Edmonds of Public Resources Advisory Group, the Financial Advisor to the Authority; Mr. John Sabatier of RBC Dain Rauscher; Mr. Randy Clement of Bryant, Miller & Olive, P.A., Bond Counsel to the Authority; Mr. David Hurd of CenterState Bank; Scott Seckinger, Mary Thurman and Mike Molinari of Southport Financial Services, Inc.; and Mr. Kerry M. Wilson, Attorney for the Authority.

Upon motion made and unanimously adopted, the Minutes of the Authority's meeting on February 6, 2008, were approved.

Mr. Wilson distributed current bank statements with respect to the Authority's CenterState Bank accounts. Following up on matters addressed at the last meeting, Mr. Wilson reported that all of the Authority's funds previously deposited with Bank of America had been transferred to CenterState Bank, that the current recipient agreement with Keystone Challenge Fund, Inc. had been finalized and executed by all parties, and that the funding therefore (\$300,000) had been placed in a segregated account with CenterState.

Mr. Wilson reported that an application had been received from SP Winter Haven Gardens, LP, a subsidiary of Southport Financial Services, Inc., with respect to financing by the Authority, in conjunction with funding from the Florida Division of Bond Finance's SAIL program, of a 50-unit multi-family, rental project located in Winter Haven, Florida, that would be targeted to farm worker and other low to moderate income families. The rental market and funding mechanism for the project were discussed in detail and an inducement resolution previously prepared by Mr. Clement was reviewed. After making the findings recited therein, a motion was made, seconded and unanimously approved to adopt the Inducement Resolution attached hereto, which, among other things, authorized and directed the Authority to enter into the Memorandum of Agreement attached to said resolution.

Chairman Johnson asked Mr. Clement to report on the status of the Authority's current allocation to issue up to \$12,000,000 of single-family mortgage revenue bonds. Mr. Clement explained that a validation proceeding was necessary if the Authority thought it likely that it would proceed with such a bond program during the balance of this year or for three years thereafter. Mr. Sabatier and Mrs. Edmonds discussed the current state of the bond markets and Authority members expressed their continued interest in offering such a program when and if it made financial sense. After reviewing the contents thereof, and upon

motion made and seconded, the resolution attached hereto regarding a validation proceeding, was unanimously adopted, and Mr. Johnson and Mr. Wilson were authorized to pay Mr. Clement's reasonable statement for attorneys' fees in connection with preparing said resolution and assisting with the filing of the validation proceeding.

Mr. Wilson distributed a draft of the audit of the Authority's financial affairs for the 2006-2007 fiscal year. Mrs. Edmunds reported that the auditor's suggestion regarding adjusting entries would be addressed, and Mr. Wilson suggested that Authority members review the draft in detail and that they could approve the final audit at the next meeting.

Mr. Coulombe inquired as to the Authority's interest in pursuing an independent down payment assistance loan program to stimulate low and middle income housing in the county. A discussion ensued regarding the possible parameters of such a program, and Mr. Coulombe was asked to work with Mrs. Edmonds and Helen Feinberg to assemble more details regarding a possible program.

Upon motion made, seconded and unanimously adopted, the following invoices were approved for payment:

<u>PAYEE</u>	<u>INVOICE NUMBER</u>	<u>DATE</u>	<u>AMOUNT</u>
Public Resources Advisory Group	8540	3/26/08	\$ 675.00
Dufresne & Associates, CPA, PA	2847	2/11/08	475.00
Dufresne & Associates, CPA, PA	2884	3/06/08	950.00
Dufresne & Associates, CPA, PA	2971	4/21/08	2,375.00

There being no further business to be discussed, the meeting was adjourned at 6:20 P.M.

Chairman

Secretary

RESOLUTION NO. 2008-078

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA, DESIGNATING THE CHAIRMAN OF THE BOARD AS THE APPLICABLE ELECTED REPRESENTATIVE FOR PURPOSES OF SECTION 147(f) OF THE INTERNAL REVENUE CODE; AUTHORIZING THE CHAIRMAN TO APPROVE, FOR PURPOSES OF SECTION 147(f) OF THE INTERNAL REVENUE CODE, THE ISSUANCE BY THE HOUSING FINANCE AUTHORITY OF POLK COUNTY, FLORIDA OF ITS MULTIFAMILY HOUSING REVENUE BONDS IN THE AGGREGATE FACE AMOUNT NOT TO EXCEED \$4,500,000 TO PROVIDE FUNDS TO FINANCE A MULTIFAMILY RESIDENTIAL RENTAL HOUSING FACILITY FOR PERSONS OR FAMILIES OF MODERATE, MIDDLE OR LESSER INCOME TO BE OWNED BY SP WINTER HAVEN GARDENS LP, LOCATED IN POLK COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, SP Winter Haven Gardens LP (the "Borrower"), desires to finance the acquisition and construction of an approximately 50 unit multifamily rental housing facility for persons or families of moderate, middle or lesser income, located on the south side of South Lake Deer Drive, approximately 800 feet west of the intersection of South Lake Deer Drive and East Lake Deer Drive, in Winter Haven, Florida (the "Development"), to be initially owned by the Borrower and has requested the Housing Finance Authority of Polk County, Florida (the "Authority") to issue its Multifamily Housing Revenue Bonds in one or more series (the "Bonds") to finance the acquisition and construction of the Development by the Borrower; and

WHEREAS, pursuant to a Notice of Public Hearing published in *The Ledger* on May 25, 2008, a public hearing (the "Public Hearing") concerning the issuance by the Authority of the Bonds to finance the Development will be held on behalf of the Authority on June 9, 2008; and

WHEREAS, the Bonds shall not be deemed to constitute a debt, liability or obligation, or a pledge of the faith and credit or taxing power of the Authority, the City of Winter Haven, Polk County, Florida or of the State of Florida or of any other political subdivision thereof, but shall be limited obligations of the Authority payable solely from the revenues and proceeds to be derived by the Authority under the financing agreements entered into with the Borrower in connection with the issuance of the Bonds and other security provided therefore; and

WHEREAS, the Authority desires that the Board of County Commissioners of Polk County, Florida (the "Board"), or its designee, approve the issuance by the Authority of the Bonds in one or more series, in an aggregate face amount of not to exceed \$4,500,000, to finance the acquisition and construction of the Development for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, to meet a June 16, 2008 filing deadline for the filing of a corrective application to the Florida Housing Finance Corporation for a SAIL Loan with respect to the Development, the

Borrower has requested that the Board to designate the Chairman of the Board as the "applicable elected representative" for purposes of providing approval of the issuance of the Bonds to finance the Development pursuant to Section 147(f) of the Code; and

WHEREAS, the Board desires to designate the Chairman of the Board as the applicable elected representative for purposes of providing approval of the issuance of the Bonds pursuant to Section 147(f) of the Code;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA, THAT:

SECTION 1. AUTHORITY. This Resolution is adopted pursuant to the laws of the State of Florida, including, in particular, Section 125.01 and Part IV of Chapter 159, Florida Statutes, and other applicable provisions of law (the "Act").

SECTION 2. DESIGNATION AND AUTHORIZATION.

A. The Chairman is hereby designated the applicable elected representative for purposes of granting approval of the issuance of the Bonds by the Authority to finance the Development pursuant to Section 147(f) of the Code.

B. The Chairman is authorized, following the Public Hearing, to provide approval of the issuance of the Bonds by the Authority to finance the Development for purposes of Section 147(f) of the Code.

C. The delegation and authorization provided herein and any approval by the Chairman of the Board of the issuance of the Bonds to finance the Development pursuant thereto shall be solely for purposes of complying with Section 147(f) of the Code and approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Borrower, or the financial viability of the Development, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Development, and the Board shall not be construed by reason of its adoption of this Resolution or any approval by the Chairman of the Board pursuant hereto, to make any such endorsement, finding or recommendation or to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval on behalf of the Board of the issuance of the Bonds by the Authority shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds, the acquisition, construction and equipping of the Development, and the Authority shall so provide in the financing documents setting forth the details of the Bonds.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 4th day of June, 2008.

BOARD OF COUNTY COMMISSIONERS
OF POLK COUNTY, FLORIDA

(SEAL)

By: *Sam Johnson*
Chairman

ATTEST:

RICHARD WEISS, CLERK

By: *Isidra L. Wade*
Deputy Clerk *N. 04*



Reviewed as to form and legal sufficiency

Michelle *6/3/08*
County Attorney's Office Date

CERTIFICATE OF APPROVAL FOR PURPOSES OF SECTION 147(F) OF THE
INTERNAL REVENUE CODE

SP Winter Haven Gardens LP (the "Borrower"), desires to finance the acquisition and construction of an approximately 50 unit multifamily rental housing facility for persons or families of moderate, middle or lesser income, located on the south side of South Lake Deer Drive, approximately 800 feet west of the intersection of South Lake Deer Drive and East Lake Deer Drive, in Winter Haven, Florida (the "Development"), to be initially owned by the Borrower and has requested the Housing Finance Authority of Polk County, Florida (the "Authority") to issue its Multifamily Housing Revenue Bonds in one or more series, in an aggregate face amount of not to exceed \$4,500,000 (the "Bonds") to finance the acquisition and construction of the Development by the Borrower.

Pursuant to a Notice of Public Hearing published in *The Ledger* on May 25, 2008, a public hearing (the "Public Hearing") concerning the issuance by the Authority of the Bonds to finance the Development was held on behalf of the Authority on June 9, 2008.

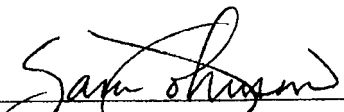
The Authority has requested that the Board of County Commissioners of Polk County, Florida (the "Board"), or its designee, approve the issuance by the Authority of the Bonds to finance the acquisition and construction of the Development for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code").

The Board adopted Resolution No. 2008-078 ("Resolution No. 2008-078") on June 4, 2008, designating the Chairman of the Board as the "applicable elected representative" for purposes of providing approval of the issuance of the Bonds pursuant to Section 147(f) of the Code.

The undersigned Chairman of the Board, as the applicable elected representative of Polk County, Florida, pursuant to the designation provide by Resolution No. 2008-078, for purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds by the Authority to finance the acquisition and construction of the Development.

This approval of the issuance of the Bonds to finance the Development pursuant hereto shall be solely for purposes of complying with Section 147(f) of the Code and shall not be construed as (i) an endorsement of the creditworthiness of the Borrower, or the financial viability of the Development, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Development, and this approval shall not be construed as making any such endorsement, finding or recommendation or as waiving any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard.

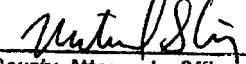
DATED this 16 day of June, 2008.



Sam Johnson, Chairman of the Board of
County Commissioners of Polk County,
Florida

{00252280.DOCv1}

Reviewed as to form and legal sufficiency



County Attorney's Office Date: 6/12/08

Exhibit E

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT, dated as of the _____ day of May, 2008, between the HOUSING FINANCE AUTHORITY OF POLK COUNTY, FLORIDA (the "Authority") and SP WINTER HAVEN GARDENS LP, a Florida limited partnership, duly organized and existing under the laws of the State of Florida (the "Borrower").

SECTION 1. The matters of mutual inducement and reliance which resulted in the execution of this Memorandum of Agreement are as follows:

(a) The Authority is authorized and empowered by Chapter 159, Part IV, Florida Statutes, as amended, Ordinance No. 78-20 enacted by the Board of County Commissioners of Polk County, Florida (the "County"), as supplemented and amended (the "Ordinance") and other applicable provisions of law (the "Act"), to provide for the issuance of and to issue and sell its revenue bonds for the purpose of paying all or any part of the cost of any "qualified housing development" as defined in the Act.

(b) In order to assist in alleviating the shortage of housing and of capital to finance the construction of affordable housing in the County, it is desirable that the Authority issue and sell its Multifamily Housing Revenue Bonds (Gardens at Winter Haven Apartments), in the aggregate principal amount of not to exceed \$4,500,000, in one or more series at one or more times, a portion of which may be issued as taxable bonds (the "Bonds").

(c) If the Bonds are issued, the Authority intends to use the proceeds thereof, to make a loan to the Borrower: (i) to pay all or any part of the cost of issuance of the Bonds, (ii) to pay all or any part of the cost of acquiring, constructing and equipping a multifamily residential rental facility and facilities directly related or ancillary thereto to be known as Gardens at Winter Haven Apartments (the "Development") to be located in Winter Haven, Florida (the "City"), and (iii) to pay any other "cost" (as defined in the Act) of the Development.

(d) The Authority intends to make a loan to the Borrower to finance the Development for the Borrower from proceeds of the sale of its Bonds, such loan to be payable by the Borrower in installments sufficient to pay the principal of, premium (if any), interest and costs due on the Bonds when and as the same become due.

(e) The Borrower has requested that the Authority enter into this Memorandum of Agreement for the purpose of declaring the Authority's intention to provide financing to pay a portion of the cost of the Development.

(f) The Authority, by resolution duly passed and adopted, has made certain findings and determinations and has approved and authorized the execution and delivery of this Memorandum of Agreement.

(g) The Borrower represents that Bond proceeds will not be used to finance any costs for the Development incurred prior to the date that is 60 days prior to the date on which the Authority first declared its "official intent" to issue its revenue bonds to finance the

Development as described in Treasury Regulation Section 1.150-2, except to the extent allowed by federal tax law.

SECTION 2. The Authority will cooperate with the Borrower and its agents in the Borrower's efforts to find one or more credit enhancers or purchasers for the Bonds, and if purchase arrangements satisfactory to the Authority and the Borrower can be made by the Borrower and its agents and if the Borrower meets all of the prerequisites established by the Authority for the issuance of the Bonds, the Authority will authorize the issuance and sale of the Bonds, and will use its reasonable efforts to issue and sell the Bonds, all upon such terms and conditions as shall be approved by the Borrower and the Authority and authorized by law; *provided, however*, that in the event and during the time in which the Bonds are not rated in one of the two highest rating categories by at least one nationally recognized credit rating agency, the Authority will approve the sale of the Bonds solely as a single bond in a denomination equal to the principal amount thereof (or of each series thereof) and solely to a single accredited investor which will at no time cause the Bonds to be offered for sale to the general public (unless the Bonds are then rated in one of the two highest rating categories by a nationally recognized rating agency). The Bonds will be payable solely from the revenues and proceeds derived by the Authority from payments by the Borrower derived from the operation, leasing or sale of the Development, and will not constitute a debt, liability or obligation of the Authority, the City, the County, the State or of any other political subdivision thereof. The Authority shall not be obligated to pay the same nor interest, premium (if any) or costs thereon except from the revenues and proceeds pledged therefor, and neither the faith and credit nor the taxing power of the Authority, the City, the County, the State or of any other political subdivision thereof will be pledged to the payment of the principal of, premium (if any), interest or costs due pursuant to or under such Bonds.

From the date hereof, until the sale of the Bonds, the Borrower will, within ten (10) days after its occurrence, notify the Authority of any material change, whether or not adverse, in the business, operations or financial condition of the Borrower. In the event the Authority shall, at any time prior to sale of the Bonds, determine in its sole discretion that there has been a material adverse change in the business, operations or financial condition of the Borrower based upon financial statements or notices provided by the Borrower in accordance herewith, the agreement of the Authority to issue and sell the Bonds shall, at the option of the Authority, be terminated.

SECTION 3. The Authority will, at the proper time, and subject in all respects to the prior advice, consent and approval of the Borrower, submit applications, adopt such proceedings and authorize the execution of such documents as may be necessary and advisable for the authorization, sale and issuance of the Bonds and the construction and equipping of the Development, all as shall be authorized by law and mutually satisfactory to the Authority and the Borrower.

SECTION 4. The Bonds issued shall be in such aggregate principal amount, shall bear interest at such rate or rates, shall be payable at such times and places, shall be in such forms and denominations, shall be sold in such manner and at such time or times, shall have such provisions for redemption, shall be executed, and shall be secured, all as shall be

authorized by the Act and all on terms mutually satisfactory to the Authority and the Borrower. The Borrower acknowledges that the designated underwriter for the Authority is RBC Dain Rauscher.

SECTION 5. The Authority will use and apply the proceeds of the issuance and sale of the Bonds, or cause such proceeds to be used and applied, to the extent of such proceeds, to pay the cost of the Development, and will loan such Bond proceeds to the Borrower for the Development pursuant to a financing agreement requiring the Borrower to make payment for the account of the Authority in installments sufficient to pay all of the interest, principal, redemption premiums (if any) and other costs due under and pursuant to the Bonds when and as the same become due and payable, to operate, repair and maintain the Development at the Borrower's own expense, to pay all other costs incurred by the Authority in connection with the financing of the acquisition, construction, equipping and administration of the Development which are not paid out of the Bond proceeds or otherwise for so long as any of the Bonds remain outstanding, and for the conveyance to the Borrower of all rights, title and interest of the Authority in and to the Development when all of the obligations of the Borrower under the financing agreement have been performed and satisfied.

SECTION 6. The Borrower hereby acknowledges and accepts that the Borrower shall be solely responsible for the acquisition, construction and equipping of the Development, it being understood and agreed that the Borrower shall provide all services incident to the construction and equipping of the Development (including, without limitation, the preparation of plans, specifications and contract documents, the award of contracts, the inspection and supervision of work performed, the employment of engineers, architects, building and other contractors) and that the Borrower shall pay all costs of the Development, subject to reimbursement by the Authority upon the issuance and sale of the Bonds, from and to the extent of the available proceeds thereof, as permitted by applicable State law and federal tax law, and the use and application of such proceeds as provided above. The Authority shall have no responsibility for the provision of the aforesaid services. The Borrower agrees that to the extent that the proceeds derived from the sale of the Bonds are not sufficient to complete the Development, the Borrower, as the developer of the Development, will be responsible for supplying all additional funds which are necessary for the completion of the Development. So long as this Memorandum of Agreement is in effect all risk of loss to the Development will be borne by the Borrower.

SECTION 7. At or prior to the time of issuance and sale of the Bonds, the Authority will enter into a trust indenture with a corporate trustee (the "Trustee") to secure the Bonds, whereby the Authority's interest in the Development, the financing agreement with the Borrower, and all fees, rents, charges, proceeds from the operation of the Development, and other funds and revenues in respect of the Development, other than certain rights reserved to the Authority, will be pledged and assigned to the Trustee, and held by the Trustee in trust, for the benefit of the holders, from time to time, of the Bonds. In addition, the Borrower hereby agrees, on behalf of itself and other guarantors to be designated by subsequent resolution of the Authority, that they will execute and deliver such guarantees and monitoring agreements as are customarily required by the rules, policies and practices of the Authority.

SECTION 8. At or prior to the time of issuance and sale of the Bonds, the following conditions precedent shall have been satisfied:

(a) The Borrower shall have satisfactorily completed and satisfied all procedures and requirements established by the Authority for the review and approval of multifamily housing revenue bond issues including, without limitation, the delivery of a credit underwriting report acceptable to the Authority and the satisfaction of all conditions stated therein, and has provided for the payment of all costs of issuance associated with the issuance of the Bonds, including, but not limited to, the fees and expenses of the Authority, its counsel, Financial Advisor and Bond Counsel (in accordance with the Authority's fee schedule), fees and expenses of the trustee, credit underwriter fees and expenses, credit enhancement fees, rating fees, printing costs and any underwriting fees and expenses.

(b) The Authority and the County shall have duly passed and adopted resolutions making all findings required by law and authorizing the issuance and sale of the Bonds and the execution and delivery of the financing agreement, the trust indenture a land use restriction agreement pertaining to the use and operation of the Development and such other agreements, instruments and documents as may be required to be specifically authorized. It is an express condition of this Memorandum of Agreement that the Bonds be sold only in the manner and with such security, terms and conditions as shall be approved by the Authority.

(c) The Authority shall have received a credit underwriting report with respect to the Development and the proposed financing, prepared by a credit underwriter designated by the Authority, acceptable to the Authority and the Borrower shall have satisfied all of the conditions thereof to the satisfaction of the credit underwriter and the Authority.

(d) The Borrower shall have authorized the execution, delivery and performance of the financing agreement and the land use restriction agreement, and approved the trust indenture and the issuance and sale of the Bonds, and authorized or approved such other agreements, instruments and documents for which specific authorization or approval may be required. The Borrower shall have provided guaranties of completion, of recourse obligations and of operating deficits and of such other matters as required by the Authority and shall have provided an environmental indemnity, all by financially responsible parties and in such forms as shall be approved by the Authority.

(e) The Borrower shall have provided a satisfactory opinion of its counsel with respect to the due authorization, execution and delivery of the financing agreement, the land use restriction agreement, the guaranties and environmental indemnity and related agreements, instruments and documents, their legality, validity, binding effect and enforceability in accordance with their respective terms, and the absence of any violation of law, rule, regulation, judgment, decree or order of any court or other agency of government and agreements, indentures or other instruments to which the Borrower is a party or by which it or any of its property, is or may be bound and to such other matters as may be reasonably requested.

(f) The Borrower and the Authority shall have executed and delivered such non-arbitrage certificates and representations, as may be required to comply with Section 148 of

the Internal Revenue Code of 1986, as amended, or any similar successor provisions and the regulations, rulings and interpretative court decisions thereunder.

(g) Bryant Miller Olive P.A., as bond counsel, shall have delivered its opinion with respect to the validity of the Bonds, and to, to the extent applicable, the income tax status of the interest on the Bonds.

(h) The Borrower shall have provided such other or additional representations, warranties, covenants, agreements, certificates, financial statements, and other proofs as may be required by the Authority, its Counsel or by Bryant Miller Olive P.A., as bond counsel.

(i) There shall have been obtained, to the extent necessary, confirmation of a private activity bond volume cap allocation from the Division of Bond Finance of the State of Florida or any successor thereto for issuance of the Bonds to finance the Development.

SECTION 9. As a condition to publishing notice of the public hearing required by Section 147(f) of the Code, the Borrower shall pay to the Authority a non-refundable commitment fee in the amount of \$3,000 and shall make a good faith deposit with the Authority by cashier's check, wire transfer or other method acceptable to the Authority in the amount equal to 0.5% of the anticipated principal amount of the Bonds (the "Good Faith Deposit"). Upon the issuance of the Bonds, the Good Faith Deposit shall be applied toward payment of costs of issuance of the Bonds. Upon abandonment of the financing, or upon failure of the Borrower to meet any of the conditions of the Authority to the issuance of the Bonds, the Good Faith Deposit shall be applied to reimburse the Authority for any expenses incurred by the Authority in connection with the proposed financing and to pay the fees and expenses of the Authority's Counsel, Financial Advisor, Bond Counsel, Credit Underwriters and Underwriters and any related costs and expenses in connection with the proposed financing and the balance shall be returned to the Borrower. If the fees and expenses of the Authority exceed the Good Faith Deposit, the Borrower agrees to promptly remit such additional amounts to the Authority.

SECTION 10. The Borrower agrees to indemnify, defend and hold harmless the Authority, its members and its agents against any and all liability, loss, costs, expenses, charges, claims, damages and attorneys' fees and expenses of whatever kind or nature, which the Authority, its members or its agents may incur or sustain by reason or consequence of the relationships existing between the Authority and the Borrower with respect to the execution, delivery or performance of this Memorandum of Agreement, the consideration, processing or analysis of the proposed financing, the authorization, offering, issuance or sale of the Bonds, or the acquisition, construction or operation of the Development. The Borrower releases the Authority, the members and officers of the Authority and the agents, attorneys and employees of the Authority from any liability, loss, cost, expense, charge, claim, damage and reasonable attorneys' fees and expenses which may result from the failure of the Authority to issue the Bonds regardless of the reason therefor.

SECTION 11. No covenant or agreement contained in this Memorandum of Agreement or the Bonds, the trust indenture, the financing agreement, the land use restriction agreement or in any other instrument relating to the Bonds or the Development, shall be

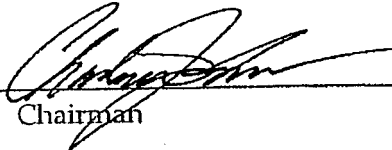
deemed to be a covenant or agreement or any member, officer, employee or agent of the Authority in an individual capacity, and neither the members or any other officer of the Authority executing the Bonds or any such agreements or instruments shall be liable personally thereon or be subject to any personal liability or accountability by reason thereof.

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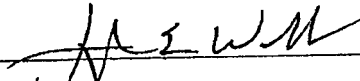
IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement and affixed their respective seals, as of the date first written above.

HOUSING FINANCE AUTHORITY OF
POLK COUNTY, FLORIDA

(SEAL)

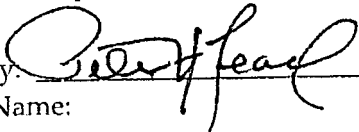
By: 
Chairman

ATTEST:


Secretary

SP WINTER HAVEN GARDENS LP, a
Florida limited partnership

By: SP Winter Haven Gardens GP, Inc., a
Florida corporation, its general partner

By: 
Name:
Title: