

PELICAN COVE RRH, LTD.

POST OFFICE BOX 358626
GAINESVILLE, FLORIDA 32635-8626

AMENDED PETITION
FOR WAIVER OF COMPLIANCE MONITORING FEES IMPOSED BY
RULE 67-48.007, F.A.C. (2002), AND THE UNIVERSAL APPLICATION
INSTRUCTIONS ADOPTED AS RULES UNDER
SECTION 67-48.002 (116), F.A.C. (2002))

1. **Petitioner:** Pelican Cove RRH, Ltd.
P. O. Box 358626
Gainesville, FL 32635-8626
Telephone: 386-454-1460
Facsimile: 386-454-1988

2. **Subject Project:** Pelican Bay Apartments
Project No. 2002-165C

3. **Respondent:** Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329
Telephone: 850-488-4197
Facsimile: 850-488-9809

4. **Qualified Representative:** J. Rolando Sanchez, Manager, for
Sanchez Rental Housing, LLC, the General Partner
Pelican Cove RRH, Ltd.
P. O. Box 358626
Gainesville, FL 32635-8626
Telephone: 386-454-1460
Facsimile: 386-454-1988

5. **Applicable Rules:** 67-48.007, F.A.C. (2002) and 67-48.002(116), F.A.C., (2002)

6. **Action Requested:** Petitioner requests a partial waiver of the compliance fees for the Pelican Bay project so that the total of such fees charged for this project will be calculated on an Annual Base of \$350.00, with no per unit annual fee, over the compliance term of 50 years with the payment discounted at 2.75%.

7. **Statement of Facts Justifying Request for Waiver:**


- Petitioner applied for and received Housing Credits from the Rural Development Set-aside in the 2002 Application Cycle of the Florida Housing Finance Corporation ("FHFC"). The Housing Credits received were for the acquisition and rehabilitation of an existing garden apartment complex with 21 buildings containing 84 set-aside units.
- The Housing Credit compliance monitoring fees for the 2002 Application Cycle were adopted as rules pursuant to 67-48.002(116) and 67-48.007, Florida Administrative Code (2002). (Copy of the applicable fee pages attached hereto as Exhibit 'A'.)
- The rules requiring compliance monitoring fees implement § 420.507, Florida Statutes, which provides for the collection and payment of fees and § 420.5099(7) which authorizes the expenditure of fees received in conjunction with the allocation of Housing Credits.
- Pelican Bay Apartments is financed through the 515 Direct Loan Program of Rural Development, an Agency of the United States Department of Agriculture (USDA/RD) for financing of multi-family housing. USDA/RD and FHFC entered into agreements to, in part, monitor compliance with tax credit requirements of RD borrowers. (Copies are attached hereto as Exhibit 'B'.)
- Because of the compliance monitoring done by USDA/RD and its prior agreements to share this information, there has been a different compliance monitoring fee imposed by FHFC on USDA/RD projects through 2001. The reduced fee, however, was inadvertently omitted from the rules in 2002.
- In 2001, the monitoring fee for USDA/RD projects was an Annual Base of \$300 per development over the compliance monitoring term, which is 50 years for Pelican Bay Apartments, with the payment due up front and discounted at a rate of 2.75%.

8. **Purpose Justification:** The requested waiver is fair and in accord with the prior rule and the attached agreements between FHFC and USDA/RD, which were still in force during the 2002 Application Cycle and which agreements relieve FHFC from some of its monitoring responsibilities. The assessment of additional fees over prior years without any increase in monitoring responsibilities violates the principles of fairness. Also, the waiver does not contradict the purpose of the underlying statute that provides for compliance and the collection of monitoring fees, both of which are still being accomplished by FHFC.

9. **Type of Waiver:** Permanent

Dated this 4th day of August 2006.

Petitioner

By: 

J. Rolando Sanchez, Manager, for
Sanchez Rental Housing, LLC, the General Partner
Pelican Cove RRH, Ltd.

administrator and contain the specific reasons for the extension and the date needed by which to close the loan.

- (a) Non-Profit sponsors who provide a certification indicating that funds will not be available prior to closing shall be permitted to pay the commitment fee at closing.
- (b) All Applicants shall remit the commitment fee payable to the Florida Housing Finance Corporation.

6. Compliance Monitoring Fees:

The following fees are not the fees that will be charged, but are listed below for estimation purposes of completing your pro-forma in the Application. The actual fees will be determined based upon a contract for services between Florida Housing Finance Corporation and the Credit Underwriter(s) to commence in 2002:

- a. SAIL Only: Annual fee of \$1,380 + \$5.75 per set-aside unit, billed annually following loan closing
- b. HC Only: Annual fee of \$1,380 + \$5.75 per set-aside unit, paid up front for the full Housing Credit Extended Use period at Final Housing Credit Allocation, based on a quarterly payment stream discounted at a rate of 2.75%
- c. HC with SAIL:
 - (1) HC Portion –
 - (a) Pre-final allocation compliance monitoring fee of \$1,380 + \$5.75 per set-aside unit, collected within 7 days of the date of the Preliminary Housing Credit Allocation or Binding Commitment; and
 - (b) Annual Compliance monitoring fee - \$1,380 + \$5.75 per set-aside unit, for the full Housing Credit Extended Use period collected at final allocation based on a quarterly payment stream discounted at a rate of 2.75%.
 - (2) SAIL Portion –
Additional Program fee – annual fee of \$600, billed annually following loan closing.



- d. MMRB (with or without HC): Annual fee of 4 basis points on the outstanding balance or a minimum of \$1,380 + \$5.75 per set-aside unit, billed annually following loan closing.

7. Loan Servicing Fees (SAIL Only):

The following fees are not the fees that will be charged, but are listed below for estimation purposes of completing your pro-forma in the Application. The actual fees will be determined based upon a contract for services between Florida Housing Finance Corporation and the Credit Underwriter(s) to commence in 2002:

- a. Construction --
 - (1) On-site review - \$130 per hour, not to exceed \$1,300 per inspection;
 - (2) In-house review - \$130 per hour, not to exceed \$1,560 per draw request; and
 - (3) Extraordinary services - \$130 per hour, plus actual travel costs.
- b. Permanent – An annual servicing fee equivalent to 25 basis points on the unpaid principal balance of the SAIL loan, which fee shall never be less than \$1,200 annually.

8. Financial Monitoring Fees:

The following fees are not the fees that will be charged, but are listed below for estimation purposes of completing your pro-forma in the Application. The actual fees will be determined based upon a contract for services between Florida Housing Finance Corporation and the Credit Underwriter(s) to commence in 2002:

An annual financial monitoring fee of 1.5 basis points on the unpaid principal balance of the SAIL loan, which fee shall never be less than \$1,250 annually.

9. Tax-exempt Mortgage Financing:

If Corporation tax-exempt mortgage financing is used for the first mortgage loan, the same fee schedule as described above shall be applied to both the first mortgage loan and the SAIL loan. Additional legal, cost of issuance, bond underwriting, credit enhancement, liquidity facility and servicing fees associated with the financing shall also be paid by the Applicant.

HOUSING CREDIT COMPLIANCE MONITORING FEES

Compliance fees will be indexed for inflation and the difference billed directly to the owner on an annual basis

Fees are based on set-aside units

See other tab for additional fees

Construction Inspection Fees (not included in figures below)

1. Annual Base fee \$1,475
2. Per Unit Annual Fee \$9.00 To be billed directly to the Applicant at \$130 per hour not to exceed \$1,300 per inspection.
3. Discount Rate 2.75% Developments receiving competitive credits are required to have 4 inspections & any required reinspection. Developments receiving non-competitive credits are required to have at least 1 inspection.

# of Units	Number of Years Setaside																													
	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50												
61	43,808	44,613	45,397	46,159	46,901	47,623	48,325	49,008	49,673	50,320	50,949	51,562	52,157	52,737	53,301	53,850	54,384	54,903												
62	44,002	44,811	45,599	46,364	47,110	47,835	48,540	49,226	49,894	50,544	51,176	51,791	52,389	52,972	53,538	54,089	54,626	55,147												
63	44,197	45,010	45,800	46,570	47,318	48,046	48,755	49,444	50,115	50,767	51,402	52,020	52,621	53,206	53,775	54,329	54,867	55,392												
64	44,392	45,208	46,002	46,775	47,527	48,258	48,970	49,662	50,336	50,991	51,629	52,249	52,853	53,441	54,012	54,568	55,109	55,636												
65	44,587	45,407	46,204	46,980	47,735	48,470	49,185	49,880	50,557	51,215	51,855	52,479	53,085	53,675	54,249	54,808	55,351	55,880												
66	44,782	45,605	46,406	47,185	47,944	48,682	49,399	50,098	50,777	51,439	52,082	52,708	53,317	53,910	54,486	55,047	55,593	56,124												
67	44,976	45,803	46,608	47,391	48,152	48,893	49,614	50,316	50,998	51,662	52,309	52,937	53,549	54,144	54,723	55,287	55,836	56,368												
68	45,171	46,002	46,810	47,598	48,361	49,105	49,828	50,534	51,219	51,886	52,535	53,167	53,781	54,379	54,960	55,526	56,077	56,612												
69	45,366	46,200	47,012	47,801	48,569	49,317	50,044	50,752	51,440	52,110	52,762	53,396	54,013	54,613	55,197	55,765	56,318	56,856												
70	45,561	46,398	47,213	48,006	48,778	49,529	50,259	50,970	51,661	52,334	52,988	53,625	54,245	54,848	55,434	56,005	56,560	57,100												
71	45,756	46,597	47,415	48,212	48,987	49,740	50,474	51,188	51,882	52,557	53,215	53,854	54,477	55,082	55,671	56,244	56,802	57,345												
72	45,950	46,795	47,617	48,417	49,195	49,952	50,699	51,405	52,103	52,781	53,441	54,084	54,709	55,317	55,908	56,484	57,044	57,589												
73	46,145	46,994	47,819	48,622	49,404	50,164	50,904	51,623	52,324	53,005	53,668	54,313	54,941	55,551	56,145	56,723	57,286	57,833												
74	46,340	47,192	48,021	48,827	49,612	50,376	51,119	51,841	52,545	53,229	53,894	54,542	55,172	55,786	56,382	56,963	57,527	58,077												
75	46,535	47,390	48,223	49,033	49,821	50,587	51,333	52,059	52,765	53,453	54,121	54,771	55,404	56,020	56,619	57,202	57,769	58,321												
76	46,730	47,589	48,425	49,238	50,029	50,799	51,548	52,277	52,986	53,676	54,348	55,001	55,636	56,255	56,856	57,442	58,011	58,565												
77	46,924	47,787	48,627	49,443	50,238	51,011	51,763	52,495	53,207	53,900	54,574	55,230	55,868	56,489	57,093	57,681	58,253	58,809												
78	47,119	47,986	48,828	49,648	50,446	51,223	51,978	52,713	53,428	54,124	54,801	55,459	56,100	56,724	57,330	57,920	58,495	59,054												
79	47,314	48,184	49,030	49,854	50,655	51,434	52,193	52,931	53,649	54,348	55,027	55,689	56,332	56,958	57,567	58,160	58,737	59,298												
80	47,509	48,382	49,232	50,059	50,863	51,646	52,408	53,149	53,870	54,571	55,254	55,918	56,564	57,193	57,804	58,399	58,978	59,542												
81	47,704	48,581	49,434	50,264	51,072	51,858	52,623	53,367	54,091	54,795	55,480	56,147	56,796	57,427	58,041	58,639	59,220	59,786												
82	47,898	48,779	49,636	50,469	51,281	52,070	52,838	53,585	54,312	55,019	55,707	56,376	57,028	57,662	58,278	58,878	59,462	60,030												
83	48,093	48,977	49,838	50,675	51,489	52,282	53,052	53,803	54,532	55,243	55,933	56,606	57,260	57,896	58,515	59,118	59,704	60,274												
84	48,288	49,175	50,040	50,880	51,698	52,493	53,267	54,021	54,753	55,466	56,160	56,835	57,492	58,131	58,752	59,357	59,946	60,518												
85	48,483	49,374	50,241	51,085	51,906	52,705	53,482	54,238	54,974	55,690	56,387	57,064	57,724	58,365	58,989	59,597	60,188	60,762												
86	48,678	49,573	50,443	51,290	52,115	52,917	53,697	54,456	55,195	55,914	56,613	57,294	57,956	58,600	59,226	59,836	60,429	61,007												
87	48,872	49,771	50,645	51,496	52,323	53,129	53,912	54,674	55,416	56,138	56,840	57,523	58,187	58,834	59,463	60,076	60,671	61,251												
88	49,067	49,969	50,847	51,701	52,532	53,340	54,127	54,892	55,637	56,361	57,066	57,752	58,419	59,069	59,700	60,315	60,913	61,495												
89	49,262	50,168	51,049	51,906	52,740	53,552	54,342	55,110	55,858	56,585	57,293	57,981	58,651	59,303	59,937	60,554	61,155	61,739												
90	49,457	50,366	51,251	52,111	52,949	53,764	54,557	55,328	56,079	56,809	57,519	58,211	58,883	59,538	60,174	60,794	61,397	61,983												

SERVICING
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
RURAL ECONOMIC AND COMMUNITY DEVELOPMENT IN FLORIDA
AND THE
FLORIDA HOUSING FINANCE AGENCY

INTRODUCTION

The Rural Economic and Community Development in Florida, an agency of the United State Department of Agriculture, hereinafter referred to as "RECD," and Florida Housing Finance Agency, hereinafter referred to as "State Agency," wish to enter into the following Memorandum of Understanding ("MOU") regarding the monitoring of low-income housing tax credit compliance. For the purposes of this MOU, the term "State Agency" may also collectively apply to any private contractors, "authorized delegates," or other State agencies to whom the State Agency named above has delegated compliance monitoring functions as set forth in Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").

RECD administers a loan program authorized by Section 515 of the Housing Act of 1949, which provides financing for housing for very low- and low-income tenants in rural areas. Developers participating in this program are also eligible to receive low-income housing credits which are administered through state or local housing credit agencies, as provided under the Code.

BACKGROUND

The Internal Revenue Service ("IRS") published regulations on September 2, 1992 (the "Regulations"), to guide State Agencies in monitoring compliance with the low-income housing tax credit requirements by owners of low-income housing projects. These Regulations allow the State Agency to implement review requirements that grant exceptions to owners of projects financed under Section 515 of the Housing Act of 1949 to the requirements to review tenant certifications, supporting documentation, and rent records of such buildings. These requirements are set forth in Section 42 of the Code. However, for the State Agency to grant review exceptions on buildings financed by RECD, the State Agency must enter into an agreement with RECD whereby RECD will agree to provide the State Agency with information concerning the income and rent of the tenants in the building. The Regulations provide that the State Agency may assume accuracy of the information provided by RECD without verification.

SCOPE OF THE AGREEMENT

Under this Agreement, RECD and the State Agency agree to engage in cooperative efforts to enable the State Agency to effectively monitor compliance with tax credit requirements of RECD borrowers, as provided in Section 42 of the Code.

EXHIBIT
'B'

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PURPOSE

The purpose of this document is to establish the conditions under which RECD and the State Agency agree to operate.

A. The State Agency will provide to RECD an initial list of Section 515 projects which have received low-income housing credits. At least annually thereafter, the State Agency will provide RECD with an updated list of such projects.

B. RECD agrees to assist in providing the State Agency with data concerning tenant income and rent levels on affected Section 515 projects if the borrower fails to provide such information when requested.

C. Parties to this agreement understand that RECD does not certify tenant tax credit income eligibility, nor does RECD certify to the owner's compliance with requirements of Section 42 of the Code, only that tenant income is based upon a tenant certification/recertification which is updated annually, and that the certification/recertification requires a third-party verification. The State Agency understands that the owner certifies to RECD monthly as to continued occupancy and tenant eligibility. RECD also carries out periodic supervisory actions to verify compliance by the owner with RECD tenant requirements.

D. RECD agrees to provide a copy of the initial post occupancy visit and the triennial supervisory visit conducted on each project. The visit will be recorded on Exhibits F and G of RECD Instruction 1930-C and will have a copy of HUD Form 9822, "Report of Physical Condition Estimate of Repair Costs."

PERIOD OF AGREEMENT

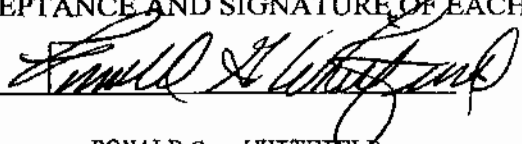
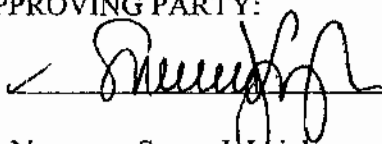
The initial term of the Agreement shall be for a period of one (1) year, commencing on September 1, 1995. This Agreement shall automatically be renewed for successive one-year periods unless terminated by either party upon written notice to the other given at least ninety (90) days prior to the expiration of then current term.

MODIFICATION OR CANCELLATION PROVISION

This Agreement may be modified or amended only by written agreement of RECD and the State Agency. Requests for amendments to the Agreement may be initiated by either of the two parties through written notification.

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ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY:

	
Name: <u>RONALD G. WHITFIELD</u>	Name: <u>Susan J. Leigh</u>
ACTING	
Title: <u>State Director</u>	Title: <u>Executive Director</u>
Date: <u>9-29-95</u>	Date: <u>9-20-95</u>

PROCESSING
MEMORANDUM OF UNDERSTANDING
Between the
Rural Economic and Community Development, Florida
and
Florida Housing Finance Agency

I. INTRODUCTION

- A. The Rural Economic and Community Development (RECD), Florida, an Agency of the U.S. Department of Agriculture and Florida Housing Finance Agency, hereinafter referred to as "State Agency," wish to enter into the following Memorandum of Understanding (MOU) regarding the ALLOCATION of low-income housing tax credits.
- B. RECD administers a loan program authorized by Section 515 of the Housing Act of 1949, which provides financing for housing for very low- and low-income tenants in rural areas. As an incentive for developers to participate in the program, the Internal Revenue Service (IRS), in Section 42 of the Internal Revenue Code, provides tax credits, which are administered through State or local housing credit agencies.

II. SCOPE OF THE AGREEMENT

Under this agreement, the RECD State Director and the State Agency agree to engage in cooperative efforts to enable the State Agency to effectively evaluate tax credit requests of RECD applicants, as provided in Section 42 of the IRS Code.

III. PURPOSE

The purpose of this document is to establish the conditions under which the RECD State Director and State Agency agree to operate.

- A. RECD in Florida agrees to annually provide the State Agency, on Section 515 projects being considered and receiving 515 funding decisions, with data as follows:
1. When the construction is complete, the ACTUAL Form 1924-13 will be provided, including any cost analysis prepared by RECD.
 2. On an annual basis a copy of the data in the Rural Rental Housing Section 515 Program CONSTRUCTION COST ANALYSIS for the current year should be provided to the State Agency.

FmHA Instruction 1944-E
Exhibit A-10
Attachment A
Page 2

- B. The State Agency agrees to provide annually to RECD:
1. Within thirty (30) days after the application cycle closes (typically in the spring), a list of tax credits applications received, which indicates which of those projects are seeking financing from RECD.
 2. Within thirty (30) days after Agency's Board of Directors approves the post-appeal scores (typically in the summer), a copy of the final scoring and ranking sheet.
 3. For all projects seeking financing from RECD which are to receive a tax credit allocation:
 - A. Copies of Carryover Agreements, for those projects which do not receive a Final Allocation Certificate the same calendar year within which the Preliminary Allocation was issued, to be provided by March 15 following the calendar year within which the documents were executed.
 - C. Copies of Final Allocation Certificates, issued after the projects have been placed in service and the IRS Form 8609's have been submitted to IRS, to be provided by March 15 following the calendar year within which the documents were executed.
- C. Parties to this agreement understand that RECD does not certify accuracy of the tax credit applicant's eligibility, nor does RECD certify to the applicant's compliance with requirements of Section 42 of the Internal Revenue Code. The State Agency is to understand that the owner certifies the information to RECD as being true and correct representations, and that RECD carries out periodic reviews and analysis of the data to verify compliance with RECD requirements.

FmHA Instruction 1944-E
Exhibit A-10
Attachment A
Page 3

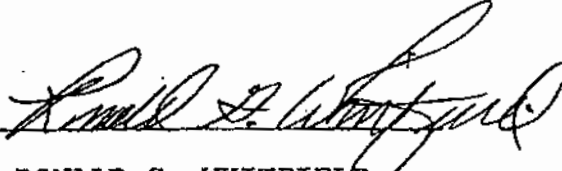
IV. PERIOD OF AGREEMENT

This agreement will remain in effect until terminated by written notification of either party.

V. MODIFICATION OR AMENDMENT PROVISION

This agreement may be modified or amended by written agreement of the RECD and the State Agency. Requests for amendments to the agreement may be initiated by either of the two parties through written notification.

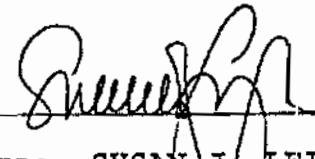
VI. ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY



Name: RONALD G. WHITFIELD

Title: Acting State Director

Date: 1-24-96



Name: SUSAN J. LEIGH

Title: Executive Director

Date: 1/22/96