

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: PINES AT WARRINGTON
LIMITED PARTNERSHIP

Case No. 2006-038VW

**ORDER GRANTING AMENDED PETITION FOR WAIVER
OF RULE 67-50.004(1)(a), and 67-48.004(14) and (15),
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on July 28, 2006, pursuant to an Amended Petition for Waiver From Rules 67-48.004(1)(a) and 67-48.004(14) and (15), (the "Amended Petition"), filed by Royal Palms Senior Apartments, Limited Partnership, ("Petitioner") on July 12, 2006. Petitioner filed its Petition for Waiver from Rules 67-48.004(1)(a), 67-48.004(14) and (15) on June 28, 2006 ("Petition")¹. Notice of the Petition was published in Volume 32, Number 27, of the Florida Administrative Weekly. Florida Housing received one comment regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. During the 2005 Universal Application Cycle Petitioner was awarded an allocation of Housing Credits in the amount of \$1,364,924 for the construction of Pines at Warrington Apartments, a 160-unit apartment development intended to serve the Family demographic to be located in Escambia County, Florida (the "Development").

¹ The Amended Petition is substantially the same as the Petition and requests the same relief.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

A. Green

/DATE: 7-31-06

3. Petitioner is a Florida Limited Partnership whose General Partner is Beneficial Pines at Warrington Apartments, LLC, and whose sole member of the General Partner is RLI Beneficial Holdings 2005, LLC.

4. Subsequent to filing its application and prior to its closing on the acquisition of the project, Petitioner learned that its tax credit investor would not proceed with its investment unless Petitioner's ownership structure was modified to substitute a related party for one of the current minority owners of the sole member of Petitioner's General Partner, RLI Beneficial Holdings 2005, LLC and unless Petitioner's Developer entity was modified. To reflect the structural changes required by its tax credit investor, Petitioner seeks to modify the ownership interest and the Developer entity.

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

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

6. Rule 67-48.004(1)(a), Florida Administrative Code (2005), adopts and incorporates by reference the Universal Application Instructions (the "Application Instructions"). The Application Instructions include the instructions discussed below (the "Applicable Instructions").

Part II.A.2.a(1) of the Application Instructions provides as follows:

"If applying for HC, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity shall be the recipient of the Housing Credits and cannot be changed until after a Final Housing Credit Allocation has been issued. Replacement of the Applicant or a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving an allocation and shall be

deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification.”

Part II.B.1. of the Application Instructions provides that:

“1. Developer or principal of Developer (Threshold)

The identity of the Developer(s) listed in this Application may not change until construction or Rehabilitation/Substantial Rehabilitation of the Development is complete.”

7. Rule 67-48.004(14)(a), Fla. Admin. Code (2005), provides:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of Applicant;

(b) Identity of each Developer, including all co-Developers...

8. Rule 67-48.004(15), Fla. Admin. Code (2005), provides:

A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the Board determines that the Applicant’s Development or Development Team is no longer the Development or Development Team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

9. Petitioner requests a waiver of Rules 67-48.004(1)(a), 67-48.004(14) and (15), Fla. Admin. Code, and Part II. A. 2(a)(1) and Part II. B.1., of the Universal Application Instructions, to the extent that the Rule and Instructions prohibit changing the Applicant’s General Partner, and its Developer and to allow Petitioner to a) modify the ownership interest of RLI Beneficial Holdings 2005, LLC by removing Lomas Holding Corp. (1%), and AHG, Inc. (46.5%), and replacing these entities with Hope Shiverick Lomas, LLC (47.5%); and b) change

the structure of the Developer by removing Lomas Holding Corp. (1%), and AHG, Inc. (46.5%), and replacing these entities with Hope Shiverick Lomas, LLC (47.5%).

10. The granting of this request for waiver will serve the purpose of the underlying statute. Petitioner demonstrated that changing the ownership structure and Developer will not impact the Development. Petitioner also demonstrated that the Developer has the required experience to develop and complete the Development. Further, the requested changes to the Developer entity and the Petitioner's ownership structure will enhance the likelihood that the Development will be timely and successfully completed and, in turn, will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. The granting of this request for waiver will serve the purpose of the underlying statute by ensuring the maximum use of available credits in order to encourage development of low-income housing in the state.

11. Moreover, not granting this waiver will result in a substantial hardship to Petitioner. Strict application of Rule 67-48.004(14) and (15) and the Applicable Instructions incorporated by Rule 67-48.004(1)(a), will result in unnecessary delay and expense and make it impossible to complete the Development on time and within budget.

IT IS THEREFORE ORDERED:

The Petition for Waiver of Rule 67-48.004(4)(1)(a), 67-48.004(14) and (15), Florida Administrative Code, and Part II.A.2.(a)(2) and Part II.B.1. of the Universal Application Instructions, is hereby GRANTED to the extent necessary to allow Petitioner to a) modify the ownership interest of RLI Beneficial Holdings 2005, LLC by removing Lomas Holding Corp. (1%), and AHG, Inc. (46.5%), and replacing these entities with Hope Shiverick Lomas, LLC (47.5%); and b) change the structure of the Developer by removing Lomas Holding Corp. (1%),


and AHG, Inc. (46.5%), and replacing these entities with Hope Shiverick Lomas, LLC (47.5%).

All other relief requested in the Petition, if any, is hereby denied.

DONE and ORDERED this 28th day of July, 2006.

Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN L. KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.