

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2006-322HR (2006 RRLP)

GOLDEN ACRES REDEVELOPMENT PHASE II, LTD.,

Petitioner,
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF PART II.A.2.c.(1) OF THE 2006 RENTAL RECOVERY
LOAN PROGRAM APPLICATION INSTRUCTIONS TO CHANGE
PETITIONER'S OWNERSHIP STRUCTURE**

Petitioner Golden Acres Redevelopment Phase II, Ltd., a Florida limited partnership ("Golden Acres II"), petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of the restriction on changing an Applicant's ownership structure after submission of its Applications under the 2006 Rental Recovery Loan Program ("RRLP"). *See* Part II.A.2.c.(1) of the 2006 Rental Recovery Loan Program Application Instructions ("RRLP Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Golden Acres II requests a waiver of the RRLP Rule to replace co-general partner Housing Authority of Pompano Beach Affordable Housing Corporation (the "Authority") with its wholly-owned subsidiary HAPB-Golden Villas Corp. ("HAPB-Golden Villas"), a Florida for-profit corporation.¹

¹No change is requested in the structure of co-general partner PHG-Golden Acres Phase II, LLC.

A. THE PETITIONER

2. The name, address, and telephone and facsimile numbers for Golden Acres II and its qualified representative are:

Golden Acres Redevelopment Phase II, Ltd.
c/o PHG-Golden Acres Phase II, 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 addresses of Golden Acres II's attorneys, for purposes of this Petition, are:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
E-mail: bmcdonough@swmwas.com

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

4. During the 2006 RRLP Application Cycle, Golden Acres II was awarded a total commitment of up to \$12,070,000 in RRLP financing towards construction costs of Golden Villas, a new 120-unit apartment development (the "Development") intended to serve very-low and low-income families in Pompano Beach, Broward County, Florida.

5. Golden Acres II received the 2006 RRLP loan commitment because Broward County was designated as one of the Florida counties impacted by the 2004 and 2005 hurricane seasons, and 2006 RRLP financing was made available to assist affordable housing developments in their hurricane recovery efforts.

6. If the requested Rule waiver is granted, the beneficial ownership of Golden Acres II's general partners would not change.

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 Golden Acres II; (b) could deprive Broward County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2006).

8. The waiver being sought is permanent in nature.

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

9. Golden Acres II requests a waiver of the RRLP Rule that restricts an Applicant's ability to change its ownership structure.² The RRLP Rule provides as follows:

...The Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. 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 funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

RRLP Application Instructions at Part II. A.2.c.(1).

10. The RRLP Rule is implementing, among other things, Section 31, Chapter 2006-69, L.O.F., by establishing procedures under which Florida Housing shall:

Administer the Application process, determine loan amounts, make and service mortgage loans for the construction or Rehabilitation/Substantial Rehabilitation of affordable rental units utilizing [RRLP] funds.

67ER06-25(1), F.A.C. (2006).

²Rule 67ER06-27(1)(a), F.A.C. (2006), adopts the "RRLP Application Package" and its contents, including, without limitation, the RRLP Application Instructions.

11. The RRLP Rule is further implementing the enactment of Florida's response to housing disasters resulting from the 2004 and 2005 hurricane seasons. Section 420.55, Fla. Stat. (2006).

12. Specifically, "[t]he Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005." Florida Housing adopted emergency rules pursuant to Section 120.54, Fla. Stat. (2006), and the Legislature found "that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4)." In addition, the Legislature determined that:

such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005.

§ 420.55, Fla. Stat. (2006).

C. Justification for Golden Acres II's Requested Change of Co-General Partner

13. In Golden Acres II's RRLP Application, its co-general partners are identified as (a) the Authority, a non-profit corporation, and (b) PHG-Golden Acres Phase II, LLC. See RRLP Application at Exhibit 9, a copy of which is attached as Exhibit A.

14. Subsequent to the filing of its RRLP Application, Golden Acres II's limited partner investor, MMA Financial, Inc. (the "Investor"), requested that the Authority's ownership interest in Golden Acres II be transferred to a wholly-owned, for-profit subsidiary. The reason for such request was that the Authority's general partnership interest in Golden Acres II would cause negative tax consequences to the Investor and adversely affect the Development because the Investor would reduce the equity contribution contemplated to be made to Golden Acres II. To avoid this adverse consequence, a waiver of the RRLP Rule is necessary to change the co-

general partner of Golden Acres II from the Authority to its wholly-owned, for-profit subsidiary HAPB-Golden Villas.

15. The requested waiver would not have provided Golden Acres II with an unfair advantage in the scoring of its RRLP Application, and will not prejudice the Development or the affordable housing market to be served by the Development.

D. Conclusion

16. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 120 affordable housing units will be available in Broward County, Florida.

17. 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.

18. 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.

19. Should Florida Housing require additional information, Golden Acres II is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part II.A.2.c.(1) of the 2006 Rental Recovery Loan Program Application Instructions to Change Petitioner's Ownership Structure.

WHEREFORE, Petitioner Golden Acres Redevelopment Phase II, Ltd., respectfully requests that Florida Housing Finance Corporation grant the Petition and provide the following relief:

A. Waive Part II.A.2.c.(1) of the 2006 RRLP Instructions that restricts changes to the Applicant's ownership structure, and allow the change of Golden Acres II's ownership structure by permitting the Housing Authority of Pompano Beach Affordable Housing Corporation to be replaced as co-general partner of Golden Acres II by its wholly-owned, for-profit subsidiary HAPB-Golden Villas Corp.; and

B. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER ALHADEFF
& SITTERSON, P.A.

Counsel for Golden Acres Redevelopment Phase II, 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

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 17th day of August, 2007.

By: 
Mimi L. Sall

I:\W-LIT\35360 (Pinnacle)\124 (Golden Acres)\Golden Villas\Petition.doc

Exhibit 9

**OFFICERS, MANAGERS, MEMBERS AND GENERAL & LIMITED PARTNERS FOR
THE APPLICANT AND DEVELOPER ENTITIES**

Ownership %

Applicant: **Golden Acres Redevelopment Phase II, Ltd.**

Co-General Partners: **PHG-Golden Acres Phase II, LLC** **.0033%**

Officers/Managers/Members:

Louis Wolfson III	Chairman
Michael D. Wohl	President
David O. Deutch	Vice President/Secretary/Treasurer
Mitchell M. Friedman	Vice President
PHG GP Holdings, LLC	Sole Manager/Sole Member

Housing Authority of Pompano Beach Affordable Housing Corporation* **.0067%**

Officers/Directors:

Woodrow Portier, Chairman/Director
Jimmie Glenn, Vice Chairman/Director
A.L. Stein, Director
Adriaan Holt, Director
Willie R. Heath, Director

*there are no shareholders, this is a Florida non-profit corporation

Initial Retiring Limited Partner: **Michael D. Wohl** **99.99%**

Total: **100.00%**

Co-Developers:
Pinnacle Housing Group, LLC (PHG)

Officers/Managers/Members:

Louis Wolfson III	Chairman/Manager/Member
Michael D. Wohl	President/Manager/Member
David O. Deutch	Vice President/Secretary/Treasurer/Manager/Member
Mitchell M. Friedman	Vice President/Manager/Member

Housing Authority of Pompano Beach*

Officers/Directors:

Woodrow Portier, Chairman/Director
Jimmie Glenn, Vice Chairman/Director
Willie R. Heath, Director
Gladys Sutton, Director
Carolyn Rhone, Director

* there are no shareholders

