

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Salt Creek Apartments, Ltd.

Case No. 2007-050VW

ORDER GRANTING PETITION FOR VARIANCE FROM RULE 67-48.010(5), FLORIDA ADMINISTRATIVE CODE (2001)

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on October 26, 2007, pursuant to a "Petition Requesting Variance from Rules F.A.C. 67-48.010(4) or (5) [2001]"¹ (the "Petition"), filed by Salt Creek Apartments, Ltd. ("Petitioner") on September 24, 2007. Notice of the Petition was published in Volume 33, Number 40, of the Florida Administrative Weekly. Florida Housing received no comments 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 1997 Universal Cycle, Salt Creek Apartments, Ltd. ("Petitioner") applied for and was awarded a State Apartment Incentive Loan ("SAIL") to

¹ Petitioner requests a variance of Rule 67-48.010(4) and (5). However, Subsection (4) applies only to SAIL loans which are subordinate to a first mortgage. Petitioner's SAIL loan is in first mortgage position, therefore only Subsection (5) applies to Petitioner.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

D. Green

/DATE: 10-29-07

finance the construction of Salt Creek Apartments (the “Development”) located in Pinellas County, Florida.

3. Rule 67-48.010(5), Florida Administrative Code (2001) provides in pertinent part:

(5) If the SAIL loan is secured by a first mortgage lien, each year, subject to the provisions of paragraph (6) below, Development Case Flow shall be applied to pay the following items in order of priority:

- (a) First mortgage fees and base interest payment on SAIL loan balance equal to 1% on the 3% loan as stated in (3)(a) above and equal to 3% on the 9% loan as stated in (3)(b) above over the life of the SAIL loan;
- (b) Development Expenses on the SAIL loan;
- (c) Any other unpaid SAIL interest deferred from current and previous years;
- (d) Mandatory payment on subordinate mortgages;
- (e) 12% Return on Equity to Applicant;
- (f) Any unpaid Return on Equity deferred from previous years; and
- (g) Remaining monies to be equally divided between the Applicant and the Corporation with the Corporation receiving no more than the stated interest rate on the SAIL loan. After the full SAIL loan interest has been paid, the Applicant shall retain all remaining monies, unless the Applicant chooses to prepay a portion of the loan balance.

4. Petitioner has requested waiver of the above Rule to allow the deferral of the accrued and unpaid interest for the years 2001 through 2004 (\$29,458.77) to be paid at the maturity of the loan.

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. The Board finds that strict application of Rule 67-48.010(5) under these circumstances, where the Servicer did not bill Petitioner during the period in which the interest accrued would cause substantial hardship and violate the principals of fairness. Furthermore, allowing Petitioner to defer payment of this interest until the maturity of the loan would also serve the underlying purpose of the statute.

IT IS THEREFORE ORDERED:

The "Petition Requesting Variance From Rules F.A.C. 67-48.010(4) or (5)[2001]" is hereby **GRANTED** to permit Petitioner to defer accrued an unpaid interest from the years 2001 through 2004 until the maturity of the SAIL loan. All other relief requested in the Petition, if any, is denied.

DONE and ORDERED this 26th day of October, 2007.

Florida Housing Finance Corporation



By:

Lynn M. Stultz
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 ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.