

OAKCREST APARTMENTS RRH II, L.L.L.P.

POST OFFICE BOX 10293
CLEARWATER, FLORIDA 33757

**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:** Oakcrest Apartments RRH II, L.L.L.P.
P. O. Box 10293
Clearwater, Florida 33757
Telephone: 727-443-3251 ext. 25
Facsimile: 727-447-2252
2. **Subject Project:** Oakcrest Apartments – Phase II
Project No. FL-2002-014C
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:** Pamela K. Borton, General Partner
Oakcrest Apartments RRH II, L.L.L.P.
P. O. Box 10293
Clearwater, Florida 33757
Telephone: 727-443-3251 ext. 25
Facsimile: 727-447-2252
5. **Applicable Rule:** 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 Oakcrest Apartments – Phase II project so that the total of such fees charged for this project will be calculated on an Annual Base of \$300.00, 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 development and construction of new garden apartment complex with 5 buildings containing 20 units.
- The Housing Credit compliance monitoring fees for the 2002 Application Cycle were adopted as rules pursuant to 67-48.002(116), Florida Administrative Code (2002) and 67-48.007, Florida Administrative Code (2002).
- 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.
- Oakcrest Apartments Phase II is financed through the Section 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 an agreement, or memorandum of understanding to, in part, monitor compliance with the LIHTC program requirements of RD borrowers. (A copy is attached hereto as Exhibit A) This agreement or memorandum of understanding is applicable only to those RD financed properties which have housing credits allocated by the FHFC and is not applicable to RD financed properties with other FHFC financing programs. Oakcrest Apartments Phase II's financing sources consisted of only the RD Section 515 loan and housing credit equity; making it subject to the monitoring agreement between the Florida USDA RD and the FHFC.
- 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 \$350 per development over the compliance monitoring term, which is 50 years for Oakcrest Apartments Phase II, and the payment would be discounted at 2.75%.

- 8. Purpose Justification:** The requested waiver is fair and in accord with the prior rule and the attached agreement between FHFC and USDA/RD, which was still in force during the 2002 Application Cycle and which agreement relieves FHFC from some of its monitoring responsibilities. The assessment of additional fees (not an increase in fees) over prior years, without any increase in monitoring responsibilities violates the principles of fairness. The granting of the waiver would 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: *Pamela K. Borton*
Pamela K. Borton, General Partner
Oakcrest Apartments RRH II, L.L.L.P.

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 States 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.

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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

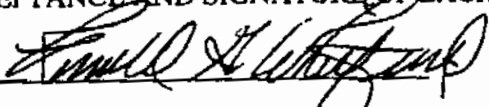
The initial term of the Agreement shall be for a period of one (1) year, commencing on September 1, 1995. This Agreement shall automatically be renewed for successive one-year periods unless terminated by either party upon written notice to the other given at least ninety (90) days prior to the expiration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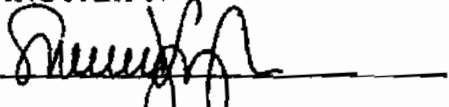
ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY:



Name: RONALD G. WHITFIELD

ACTING
Title: State Director

Date: 9-29-95



Name: Susan J. Leigh

Title: Executive Director

Date: 9-20-95

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
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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

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											
1	32,120	32,710	33,285	33,844	34,386	34,917	35,432	35,933	36,420	36,895	37,356	37,805	38,242	38,667	39,080	39,483	39,874	40,255											
2	32,315	32,909	33,487	34,049	34,596	35,129	35,647	36,151	36,641	37,118	37,583	38,034	38,474	38,901	39,317	39,722	40,116	40,499											
3	32,509	33,107	33,689	34,254	34,805	35,341	35,862	36,369	36,862	37,342	37,809	38,264	38,706	39,136	39,554	39,962	40,358	40,743											
4	32,704	33,306	33,891	34,460	35,014	35,552	36,077	36,587	37,083	37,566	38,036	38,493	38,938	39,370	39,791	40,201	40,600	40,988											
5	32,899	33,504	34,092	34,665	35,222	35,764	36,292	36,805	37,304	37,780	38,262	38,722	39,170	39,605	40,028	40,441	40,842	41,232											
6	33,094	33,702	34,294	34,870	35,431	35,976	36,508	37,023	37,525	38,013	38,489	38,951	39,402	39,839	40,265	40,680	41,083	41,476											
7	33,289	33,901	34,496	35,075	35,639	36,188	36,721	37,240	37,746	38,237	38,715	39,181	39,633	40,074	40,502	40,919	41,325	41,720											
8	33,483	34,099	34,698	35,281	35,848	36,399	36,936	37,458	37,967	38,461	38,942	39,410	39,865	40,308	40,740	41,159	41,567	41,964											
9	33,678	34,297	34,900	35,486	36,056	36,611	37,151	37,676	38,187	38,685	39,169	39,639	40,097	40,543	40,977	41,398	41,809	42,208											
10	33,873	34,498	35,102	35,691	36,265	36,823	37,366	37,894	38,408	38,908	39,395	39,869	40,329	40,777	41,214	41,638	42,051	42,452											
11	34,068	34,694	35,304	35,896	36,473	37,035	37,581	38,112	38,629	39,132	39,622	40,098	40,561	41,012	41,451	41,877	42,293	42,696											
12	34,263	34,893	35,505	36,102	36,682	37,246	37,796	38,330	38,850	39,356	39,848	40,327	40,793	41,246	41,688	42,117	42,534	42,941											
13	34,457	35,091	35,707	36,307	36,890	37,458	38,011	38,548	39,071	39,580	40,075	40,556	41,025	41,481	41,925	42,356	42,776	43,185											
14	34,652	35,289	35,909	36,512	37,099	37,670	38,225	38,766	39,292	39,803	40,301	40,786	41,257	41,715	42,162	42,596	43,018	43,429											
15	34,847	35,488	36,111	36,718	37,308	37,882	38,440	38,984	39,513	40,027	40,528	41,015	41,489	41,950	42,399	42,835	43,260	43,673											
16	35,042	35,686	36,313	36,923	37,516	38,094	38,655	39,202	39,734	40,251	40,754	41,244	41,721	42,184	42,636	43,075	43,502	43,917											
17	35,237	35,884	36,515	37,128	37,725	38,305	38,870	39,420	39,954	40,475	40,981	41,473	41,953	42,419	42,873	43,314	43,743	44,161											
18	35,431	36,083	36,717	37,333	37,933	38,517	39,085	39,638	40,175	40,698	41,208	41,703	42,185	42,653	43,110	43,553	43,985	44,405											
19	35,626	36,281	36,918	37,539	38,142	38,729	39,300	39,856	40,396	40,922	41,434	41,932	42,417	42,888	43,347	43,793	44,227	44,650											
20	35,821	36,480	37,120	37,744	38,350	38,941	39,515	40,073	40,617	41,146	41,661	42,161	42,648	43,122	43,584	44,032	44,469	44,894											
21	36,016	36,678	37,322	37,949	38,559	39,152	39,730	40,291	40,838	41,370	41,887	42,391	42,880	43,357	43,821	44,272	44,711	45,138											
22	36,211	36,876	37,524	38,154	38,767	39,364	39,945	40,509	41,059	41,594	42,114	42,620	43,112	43,591	44,058	44,511	44,953	45,382											
23	36,405	37,075	37,726	38,360	38,976	39,576	40,159	40,727	41,280	41,817	42,340	42,849	43,344	43,826	44,295	44,751	45,194	45,626											
24	36,600	37,273	37,928	38,565	39,185	39,788	40,374	40,945	41,501	42,041	42,567	43,078	43,576	44,060	44,532	44,990	45,436	45,870											
25	36,795	37,471	38,130	38,770	39,393	39,999	40,589	41,163	41,721	42,265	42,793	43,308	43,808	44,295	44,769	45,230	45,678	46,114											
26	36,990	37,670	38,332	38,975	39,602	40,211	40,804	41,381	41,942	42,489	43,020	43,537	44,040	44,529	45,006	45,469	45,920	46,359											
27	37,185	37,868	38,533	39,181	39,810	40,423	41,018	41,599	42,163	42,712	43,246	43,766	44,272	44,764	45,243	45,709	46,162	46,603											
28	37,379	38,067	38,735	39,386	40,019	40,635	41,234	41,817	42,384	42,936	43,473	43,996	44,504	44,998	45,480	45,948	46,404	46,847											
29	37,574	38,265	38,937	39,591	40,227	40,846	41,449	42,035	42,605	43,160	43,700	44,225	44,736	45,233	45,717	46,187	46,645	47,091											