

PETITION FOR WAIVER FROM RULES 67-48.010(15), 67-48.0105(5), 67-48.0105(6) and 67-48.0075(5) FLORIDA ADMINISTRATIVE CODE.

Petitioner, Woodcreek Apartments, Ltd, by and through its General Partner Woodcreek Apartments, Inc. and represented by Thomas Tompkins, President of the General Partner hereby petitions the Florida Housing Finance Corporation ("FHFC") for waivers from Rules 67-48.010(15), 67-48.0105(5), 67-48-0105(6) and 67-48.0075(5) Florida Administrative Code. This Petition is filed pursuant to Chapter 28-104, Florida Administrative Code and Section 120.542, Florida Statutes.

THE PETITIONER

1. The name, address, e-mail address, telephone number and facsimile number of the Petitioner:

Mr. Thomas Tompkins, President
 Woodcreek Apartments, Inc. General Partner for
 Woodcreek Apartments, LTD., a Florida Limited Partnership
 1627 E. Vine Street
 Suite 200
 Kissimmee, Florida 34744
Tnt6125@aol.com
 407-847-9889
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 FLORIDA HOUSING
 FINANCE CORPORATION

2. Petitioner was granted a SAIL loan from FHFC under SAIL

1999/077S/Housing Credits 2000-503C for the complex now known as Park Springs Apartments which is a 200 unit family apartment complex located in Plant City, Florida. The existing first mortgage loan was financed from

proceeds of the sale of Multifamily Revenue Bonds issued by the Housing Finance Authority of Hillsborough County. It is now the Petitioner's desire to replace the first mortgage with new financing with First Housing Development Corporation through the U.S. Department of Housing and Urban Development ("HUD"). Petitioner must obtain FHFC's approval for extension of the SAIL term which will be extended to the maturity date of the new first mortgage, approval of subordination of both the SAIL loan and the Extended Low Income Housing Agreement ("ELIHA") to the new first mortgage maturity date and an extension of the Land Use Restriction Agreement ("LURA"). The Petitioner has received a copy of the Recommendation for Approval Letter sent to FHFC from FHFC's credit underwriter, Seltzer Management Group, Inc. which is attached hereto as exhibit A. The Seltzer letter on Page 4 concludes that conditions for refinancing approval as set forth in Rule 67-48.010(15)F.A.C. have been met, subject to certain conditions. Petitioner hereby seeks waivers of certain fees set forth in the conditions enumerated in the Seltzer letter.

THE RULES FOR WHICH WAIVER OR VARIANCE IS SOUGHT

3. Petitioner requests a waiver or variance from Rules 67-48.010(15) F.A.C., 67-48.0105(5) F.A.C., 67-48.0105(6) and 67-48.0075(5) F.A.C. as referenced by the Seltzer letter.

67-48.0105(5) F.A.C. states: The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

4. The FHFC's Credit Underwriter, Seltzer Management Group, Inc., has recommended approval of the requested refinancing subject to the certain conditions set forth in their letter dated June 5, 2013. Said letter references Rules 67-48.010(15), 67-48.0105(5), 67-48.0105(6) and 67-48.0075(5) F.A.C.
5. Petitioner hereby requests a waiver under 67-48.010(15) F.A.C. as it applies to the Credit Underwriter's recommendation which states: "Repayment of the required proportionate amount of the Sail, if any." Page 4, Seltzer Management Group letter. The Credit Underwriter's calculations on Page 4 of their letter indicate that no SAIL pay down will be required based on the information provided which conflicts with the calculation shown on Exhibit A of the Seltzer letter which reflects a Sail Pay Down of \$170,439.

Petitioner requests a waiver of said fee, if any.
6. Petitioner hereby requests waiver of Credit Underwriter's recommendation which states: "A non-refundable renegotiation fee of ½ of 1 percent of the

outstanding principal balance of the SAIL.” Page 5, Seltzer Management Group letter.

7. Petitioner hereby requests waiver of Credit Underwriter’s recommendation which states: “Payment of any outstanding arrearages to the Corporation, its legal counsel, Servicer or any agent or assignee of the Corporation for past due issues applicable to the development team (Applicant or Developer or Principal, Affiliate or Financial Beneficiary, as described in 67-48.0075(5) F.A.C., of any Applicant or a Developer)
8. The above waivers are requested based on the financial circumstances of this apartment complex. The Credit Underwriter’s letter contains the Sources and Uses of the Proposed Refinancing on page 4 thereof. As shown therein, there simply are no funds available for any additional fees or payments. The Credit Underwriter’s Letter indicates on Page 1 that some of the funds will be applied to repay deferred developer fees. This payment was part of the original plan. However, that request was later deleted and no such funds will be paid out of the proposed loan. The general partner has loaned the partnership in excess of \$350,000.00 and there remains a large developer fee unpaid. None of the new loan proceeds will be used to pay either of those fees. The complex is in great need of repair and maintenance. The proposed HUD loan provides for \$560,000 to be expended for deferred maintenance

items. This is an amount required by HUD and cannot be reduced. Also, repair and replacement reserves will be increased, as required by HUD, by 8 times the current amount. This will meet the goal of providing a better maintained affordable family apartment complex to the Plant City community for years into the future. Additionally, this project has always struggled with cash flow problems so the lower interest rate will provide the complex with additional cash flow to meet the financial needs of the complex so that it may survive and continue serving the low income level residents that SAIL was established to help. The public purpose is well served by this refinancing.

STATUTES IMPLEMENTED BY THE RULE

9. Rules 67-48.010(15), 67-48.0105(5), 67.0105(6), 67-48.0075(5), F.A.C., set forth above, implement section 420.5087, Florida Statutes.
10. FHFC has the express authority pursuant to section 120.542(1), Florida Statutes, to grant variances or waivers to its rules under certain circumstances. Specifically, FHFC may grant variances and waivers 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 the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship”

means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance. Section 120.542(2), Florida Statutes.

11. Section 420.5087(6)(h) states: The sale, transfer, or refinancing of the loan shall be consistent with fiscal program goals and the preservation or advancement of affordable housing for the state.

12. Petitioner has worked hard to save this project. However, the financial demands have placed the project in danger. Approval of the requested waivers will allow the refinancing to go forward and the complex to stay open as an affordable family apartment complex which meets the public purpose of serving low income families in Hillsborough County, Florida. There are no available funds to pay the fees recommended by the Credit Underwriter. Petitioner will be unable to go forward with the refinancing and the badly needed repairs will once again be delayed. Therefore, the substantial economic hardship referred to in Florida Statute 120.542(2) will occur.

Additionally, waiver of the fees will allow the preservation of this affordable housing complex in our state meeting the goals of Section 420.5087, Florida Statutes.

REQUEST FOR PERMANENT RELIEF

13. Petitioner requests the following Permanent Waivers :

- a. Petitioner requests a waiver of “Repayment of the required proportionate amount of the Sail, if any.” As recommended in letter from Seltzer Management Group, Inc. dated June 5, 2013, referencing Rules 67-48.010(15), 67-48.0105(5), 67-48.0105(6) F.A.C.
- b. Petitioner requests a waiver of “Payment of a non-refundable renegotiation fee of ½ of 1% percent of the outstanding principal balance of the SAIL.” As recommended in letter from Seltzer Management Group, Inc. dated June 5, 2013, referencing Rules 67-48.010(15), 67-48.0105(5), 67-48.01105(6) F.A.C.
- c. Petitioner requests such other relief as the Board deems appropriate.

REQUEST FOR TEMPORARY RELIEF

14. Petitioner requests the following Temporary Waivers:

- a. Petitioner requests a temporary waiver of “Payment of any outstanding arrearages to the Corporation, its legal counsel, Servicer or any agent or assignee of the Corporation for past due issues applicable to the development team (Applicant or Developer or Principal, Affiliate or Financial Beneficiary, as described in 67-48.0075(5)F.A.C., of any Applicant or a Developer)”. As recommended in letter from Seltzer

Management Group, Inc. dated June 5, 2013 referencing Rules 67-48.010(15), 67-48.0105(5), 67-48.0105(6) and 67-48.0076(5)F.A.C.

b. Time Period for Delay: The Relief sought is that the Payments set forth in 15(a) above, if any, shall continue to be treated as a deferred accrual and not be accelerated for payment and made a requirement for refinancing of the first mortgage.

15.A copy of this Petition has been provided by Federal Express Delivery to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400.

Respectively submitted this 9th day of July, 2013.

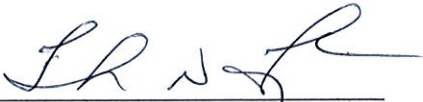
Woodcreek Apartments, LTD.



Thomas Tompkins, President
Woodcreek Apartments, Inc.,
General Partner
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1627 E. Vine Street
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CERTIFICATE OF SERVICE

I hereby certify that this Petition was sent by Federal Express next day Delivery for filing to the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 with a copy being provided by Federal Express next day delivery to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 on this 9th day of July, 2013.



Thomas Tompkins

Exhibit

"A"

SELTZER MANAGEMENT GROUP, INC.

17633 ASHLEY DRIVE
PANAMA CITY BEACH, FL 32413
TEL: (850) 233-3616
FAX: (850) 233-1429

June 5, 2013

VIA EMAIL

Mr. Todd Fowler
Florida Housing Finance Corporation
227 North Bronough Street
Tallahassee, Florida 32301

Re: Parks Springs Apartments (formerly known as Lakeside Apartments)
SAIL 1999-077S / Housing Credits 2000-503C
First Mortgage Refinancing / Subordination of SAIL, SAIL LURA & ELIHA / SAIL Loan Extension /
SAIL LURA Extension

Dear Mr. Fowler:

On your behalf, Seltzer Management Group, Inc. ("SMG" or "Seltzer") has reviewed a request from Woodcreek Apartments, Ltd. ("Borrower") for the Florida Housing Finance Corporation ("FHFC" or "Florida Housing") to approve the refinancing of the existing first mortgage loan, the subordination of the existing State Apartment Incentive Loan ("SAIL"), and the use of loan proceeds to accomplish deferred maintenance and partially repay deferred developer fees.

The existing first mortgage loan was financed from proceeds of the sale of Multifamily Revenue Bonds ("MMRB") issued by the Housing Finance Authority of Hillsborough County. The refinancing of the first mortgage by First Housing Development Corporation ("First Housing") through the U.S. Department of Housing and Urban Development ("HUD") will require an extension of the SAIL term which will be co-terminus with the new first mortgage and execution of Subordination Agreements for SAIL and the Extended Low Income Housing Agreement ("ELIHA"), both of which require Board approval. The SAIL Land Use Restriction Agreement ("LURA") Compliance Period will be extended to 50 years from the date of closing.

For the purposes of this analysis, SMG has reviewed the following:

1. Correspondence dated October 18, 2012 from the Borrower requesting Florida Housing's consent to refinance the outstanding debt with a FHA-insured conventional financing.
2. Multifamily Housing Revenue Bonds Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement, and Land Use Restriction Agreement dated June 1, 1999
3. State Apartment Incentive Loan ("SAIL") Credit Underwriting Report dated October 15, 1999
4. SAIL Mortgage and Security Agreement, Amended Promissory Note, and Construction Loan Agreement, all dated March 13, 2000
5. SAIL Land Use Restriction Agreement dated March 13, 2000
6. Extended Low Income Housing Agreement dated October 27, 2000
7. 2010, 2011, and 2012 Audited Financial Statements and 2010, 2011, and 2012 U.S. [Tax] Returns of Partnership Income for Woodcreek Apartments, Ltd.
8. Rule 67-48.010(15), F.A.C. and 67-48.0105(5)-(6), F.A.C.

9. HUD Form 92013
10. HUD Financing Plan and Sources and Uses of Funds
11. FHFC Occupancy Reports
12. Annual Compliance Management Review
13. FHFC Past Due Report dated May 20, 2013
14. FHFC Non-Compliance Report dated March 26, 2013

In addition, SMG has had various conversations with FHFC staff and the Borrower's representative concerning the proposed refinancing.

Our findings are as follows:

Background

- Park Springs Apartments is a family development located at 300 Park Springs Circle in Plant City, Hillsborough County, Florida, consisting of 200 two- and three-bedroom rental apartment units located in 25 two-story garden style residential buildings.
- Woodcreek Apartments, Ltd. was formed in September 1998. Woodcreek Apartments, Inc., the 0.09% General Partner, was an entity owned by A. Wayne Rich. The development was underwritten as Lakeside Apartments; however, after construction completion the name was changed to Park Springs Apartments.
- The 99.90% equity Investment Limited Partner was Columbia Housing/PNC Institutional Fund II Limited Partnership at the time of the investment. The 0.01% Special Limited Partner was Columbia Housing SLP Corporation at the time of the investment. In March 2006, the Amended and Restated Agreement of Limited Partnership dated June 1, 1999 was amended to modify the allocation of appreciation, management expenses, and income and expense. Per the 2012 tax return profits and losses are allocated 0.01% to the general partner and 99.99% to the limited partner. The SLP does not share in profits or losses, only capital.
- The subject transaction was primarily funded through the proceeds of tax-exempt mortgage revenue bonds issued by the Housing Finance Authority of Hillsborough County, equity derived from the sale of accompanying "in-kind" 4% HC, and a SAIL Loan.
- In June 1999, the development received a first mortgage financed loan in the amount of \$9,300,000 from the sale of the Housing Finance Authority of Hillsborough County tax exempt bonds-Series 1999. Terms of the loan include a 40 year term, a 38 year amortization period, and a fixed interest rate of 6.5%. Current principal and interest payments total \$661,812.50; however, after the July 1, 2013 principal payment this will adjust to \$663,075 per the amortization schedule. The balance of the existing first mortgage loan at Year End 2012 was \$8,385,000 and will be \$8,265,000 after the July 2013 payment. The lender anticipates a closing date of the new first mortgage in late September 2013 and projects the payoff balance to be \$8,430,662 at the time of refinancing.
- The SAIL in the amount of \$2,375,578 closed on March 13, 2000 with a maturity date of July 1, 2039. The SAIL is non-amortizing and bears an accrual interest rate of 9% simple interest. The accrual rate consists of a 3% base interest rate plus 6% additional interest. In addition and to the extent that development cash flow is available, interest payments at the 3% base rate plus the 6% additional interest payments are required. Any unpaid additional interest will be deferred until cash flow is available. However, at the maturity of the SAIL loan, all principal and unpaid interest will be due. Annual payments are required based on all applicable fees. At the time of the original SAIL underwriting, the combined (first mortgage and SAIL) market rent/market financing loan to value ratio was 82.6%. The restricted rent/favorable financing loan to value ratio was 100%.
- Operation of the subject is restricted by terms and conditions detailed in various loan documents, including but not limited to the Land Use Restriction Agreement(s) and Extended Use Agreement.

Set asides for County bonds are 100% of units for residents earning 60% or less of the area median income ("AMI"). Set asides for SAIL are as follows: 99% of the units for Family Households earning 60% or less of the AMI. Additionally, Borrower agreed to target at least 10% of the residential units to the Homeless population. The set aside term is 50 years. The HC set asides are 100% of units for residents earning 60% or less of AMI for a set aside term of 30 years.

- Construction was completed in between August 2000 and March 2001. After lease up, occupancy levels remained above 90% (and as high as 98%) through 2007, experienced rates in the mid-80's from late 2008 through mid-2011, and has generally remained above 90% throughout 2010 and 2011. As of the December 2012 FHFC occupancy report, the development was 92% occupied; however, management reported occupancy of 94% as of January 2013 and 98% as of April 2013.
- The most recent Annual Compliance Management Review for Park Springs Apartments was performed by the Servicer, First Housing, on January 31, 2013 and the property was found to be in non-compliance. Some items were corrected the day of the review and others corrected later. The Servicer issued a review close-out letter dated March 29, 2013.
- Borrower's Audited Financial Statements for the year ended December 31, 2012, did not reflect any going concerns or pending litigation; however, it is noted that the development generated sufficient income to meet operating expenses but after the deduction of amortization, depreciation and interest expense a net loss of \$590,481 results. Assets are less than liabilities resulting in a partners' deficit of approximately \$4.6 million. The general partner has advanced \$326,690 under the operating deficit guarantee and advanced an additional \$30,000 in 2012.
- FHFC Past Due Report dated May 20, 2013 lists the subject, Park Springs, as past due for the 2009, 2010, 2011, and 2012 SAIL Servicer Fees and late fees as well as the 2011 SAIL Interest payment and late fees. It also reports Pasco Woods as past due for the 2008 SAIL interest payment and late fees and Servicer Fees.
- FHFC Non-Compliance Report dated March 26, 2013 lists no non-compliance items for the development team or for the current management company.

Refinancing Overview

The refinancing of the existing first mortgage loan is permitted under the underlying SAIL documents. However, Rule 67-48.010(15) F.A.C. requires that the refinancing of any loan superior to the SAIL loan be approved by Florida Housing's Board of Directors, the criteria in Subsection 67-48.0105(5) F.A.C. is met, the original combined loan to value ratio for the superior mortgage and the SAIL mortgage is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding SAIL balance. Rule 67-48.0105(5) F.A.C. states that the "Board shall approve requests for mortgage loan refinancing only if development cash flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation." Further Rule 67-48.0105(6) F.A.C. states "The Board shall deny requests for mortgage loan refinancing which require extension of the SAIL term . . . unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population . . ."

SMG has received and reviewed a HUD Application for First Housing first mortgage financing with insurance through HUD's 223(f) program. In summary, the Borrower applied and has been approved through First Housing, a HUD-approved Multifamily Accelerated Processing Lender, for first mortgage financing in the amount of \$9,268,200. Loan terms include monthly principal and interest payments based on a fixed interest rate and a 35-year amortization period. The interest will be fixed and is currently estimated at 5.629% inclusive of the monthly mortgage insurance payment ("MIP"). The term of the loan will be 35 years.

HUD conditions will require that FHFC execute a Subordination Agreement of the existing SAIL Loan and extend the existing SAIL Loan term to be co-terminus with the new first mortgage. HUD will also require certain subordinate loan document amendments to conform to HUD standards including limitation of SAIL interest payments to 75% of available cash flow. The ELIHA must also be subordinated, as applicable, to certain HUD documents.

Annual debt service for the refinanced first mortgage loan is currently estimated to be \$521,327 which is \$140,485 less than the current debt service. Cash flow will be improved and the subject's economic viability will be maintained. The refinanced first mortgage loan will be in the current estimated amount of \$9,268,200. Based on the "As-Is Market" value in an Appraisal dated November 2012 prepared by Integra Realty Resources, the combined loan to value ratio for the new superior mortgage and the SAIL mortgage is 82.2% which is slightly less than the original combined loan to value. The SAIL is currently in second lien position behind a \$9,300,000 first mortgage loan. Florida Housing's overall security position will not be adversely affected. The new first mortgage along with certain existing reserves will pay off the existing first mortgage loan balance in the estimated amount of \$8,430,662 and fund related costs. Based on the information provided, no SAIL pay down will be required. (See Exhibit A.)

Overall Sources and Uses of Funds

First Housing has provided SMG with an estimate of the overall sources and uses of funds:

| | |
|--|--------------|
| New 1 st Mortgage Loan | \$ 9,268,200 |
| Existing Debt Service Reserves (as of 3/31/13) | \$ 666,762 |
| Existing Replacement Reserves (as of 3/31/13) | \$ 70,917 |
| Owner Cash | \$ 112,438 |
| Total Sources | \$10,118,317 |
| | |
| Bond Redemption | \$ 8,430,662 |
| Financing / Closing Costs | \$ 339,655 |
| Legal / Third Party Reports | \$ 108,900 |
| Deferred Maintenance | \$ 561,750 |
| Owner Repair Contingency | \$ 112,350 |
| Transition Reserve Deposit | \$ 50,000 |
| Initial Deposit to Replacement Reserves | \$ 515,000 |
| Total Uses | \$10,118,317 |

These costs are based on estimates provided by First Housing which appear reasonable at this time.

Summary and Recommendation

Seltzer concludes that conditions for refinancing approval as set forth in Rule 67-48.010(15) F.A.C. have been met, subject to the conditions below.

Therefore, SMG recommends that FHFC approve the refinancing of the existing first mortgage loan, the subordination of the SAIL, SAIL LURA, and ELIHA to the new first mortgage loan, and the extension of the SAIL term to meet the requirements of the new first mortgage, and extension of the SAIL LURA, subject to the following:

- Repayment of outstanding Housing Finance Authority of Hillsborough County Tax Exempt Revenue Bonds Series 1999 and satisfaction of the underlying first mortgage
- Review of final first mortgage loan terms and confirmation that all requirements set forth in F.A.C. Rule 67-48.010(15) F.A.C. for approval have been met
- Repayment of the required proportionate amount of the SAIL, if any

Mr. Todd Fowler
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June 5, 2013
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- Extension of the SAIL LURA Compliance Period to 50 years from the date of closing
- Review and approval of all loan documents by Florida Housing and its legal counsel
- The current Servicer, First Housing, will be replaced with SMG due to First Housing becoming the first mortgage lender. Therefore, SMG will receive new current contract rates for servicing and compliance monitoring fees.
- Confirmation of final loan terms with respect to cash flow
- A non-refundable renegotiation fee of ½ of one percent of the outstanding principal balance of the SAIL
- Payment of any outstanding arrearages to the Corporation, its legal counsel, Servicer or any agent or assignee of the Corporation for past due issues applicable to the development team (Applicant or Developer or Principal, Affiliate or Financial Beneficiary, as described in 67-48.0075 (5) F.A.C., of an Applicant or a Developer)
- Consent of the HC equity provider to the proposed refinancing, as applicable
- Satisfactory resolution of any non-compliance or past due items
- Any other requirement of FHFC, its legal counsel and Servicer

I hope this correspondence has been helpful and please do not hesitate to contact me if I can be of further assistance.

Sincerely,

SELTZER MANAGEMENT GROUP, INC.



Cindy Highsmith
Credit Underwriting Manager

Exhibit A
Park Springs Apartments
SAIL Loan Pay-down Calculation

| | |
|--------------------------------|---------------------|
| Original First Mortgage Amount | \$ 9,300,000 |
| Plus SAIL Loan | <u>\$ 2,375,578</u> |
| Total | \$11,675,578 |

Original SAIL loan divided by Total Original 1st mortgage & SAIL loan = .2035

| | |
|---|---------------------|
| New 1 st mortgage amount | \$ 9,268,200 |
| Current 1 st mortgage estimated payoff | <u>\$ 8,430,662</u> |
| Increased Loan Amount | \$ 837,538 |

| | |
|----------------------------------|--|
| Net Increase multiplied by .2035 | \$ 170,439 |
| Total SAIL Pay Down Required | \$ 170,439 before deducting eligible refinancing costs |