

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SALT CREEK APARTMENTS, LTD.,	:	
a Florida limited partnership :		
	:	
Petitioner,	:	Case No. _____
	:	SAIL APPLICATION NO: 98S-006
vs.	:	
	:	
FLORIDA HOUSING FINANCE	:	
CORPORATION,	:	
	:	
Respondent	:	
_____ /	:	

PETITION REQUESTING VARIANCE
FROM RULES F.A.C 67-48.010 (4) or (5)

SALT CREEK APARTMENTS, LTD., a Florida limited partnership, (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a variance from Rule 67-48.010(4) or (5) as appropriate, Florida Administrative Code in conjunction with its obligations under the First Amended and Restated Promissory Note dated on or about May 2003.

PETITIONER

1. The name, address, telephone and fax numbers of the Petitioner are:

Salt Creek Apartments, Ltd., a Florida limited partnership
C/O Boley Centers
445 31st Street N.
St. Petersburg, FL 33713
(727) 821-4819
(727) 822-6240 (fax)

2. The name, address, telephone and fax numbers of Petitioner’s counsel are:

Heidi Horak

23 Sixth Street North
St. Petersburg, FL 33701
(727) 827-9392
(727) 896-5103 (fax)

3. The Name and Address of the Agency Affected is:

Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329 (the "Corporation")

4. Petitioner successfully applied for financing from the State Apartment Incentive loan program ("SAIL") in the 1997 Universal Application Cycle. The Petitioner's application number is as stated above, and Petitioner applied for \$245,583.00 in SAIL funds to finance a portion of the cost to purchase and construct a multifamily rental apartment complex in St. Petersburg, Pinellas County Florida. The application was approved and a Promissory Note was executed March 1, 1999 in favor of the Corporation.

RULE FOR WHICH VARIANCE IS SOUGHT

5. Petitioner requests a variance from Rules 67-48.010(4) or 67-48.010(5), as appropriate (the "Rule"), which provide the order of priority of payments from Development Cash Flow (F.A.C. 67.48.002(34)) for the project. The Rule provides in subsection 4 for the priority of payments as:
- a. First mortgage fees and base interest payment on SAIL loan balance.
 - b. Development Expenses on the SAIL loan

STATUTES IMPLEMENTED BY THE RULE

6. The Rule is implementing parts of the Florida Housing Finance Corporation Act (the "Act") (Section 420.501 et. seq, Florida Statutes) and the implementing statute for the

SAIL program (Section 420.5087, Florida Statutes).

A VARIANCE WILL SERVE

THE UNDERLYING PURPOSE OF THE STATUTE AND THE ACT

7. Petitioner believes that a variance of this Rule will serve the purposes of the Statute implemented by the Rule in that Petitioner will be able to continue to provide affordable housing to very low income persons. Petitioner has, to date, accomplished this goal in maintaining this low income housing facility since 1999. In addition, the sponsor of the project Boley Centers has contributed substantial funds to the project to keep it solvent and operating. The Act was intended to encourage this kind of public/private investment in persons of very low income.

FACTS DEMONSTRATING FINANCIAL HARDSHIP

AND VIOLATION OF THE PRINCIPLES OF FAIRNESS

8. The operative documents and Rules are:
 - a. Promissory Note Dated March 1, 1999 by Salt Creek Apartments, Ltd., in favor of the Corporation (the "Original Note") (Attached hereto as Exhibit A)
 - b. First Amended and Restated Promissory Note (Salt Creek Apartments/SAIL) dated on or about May 2003 (the "Amended Note"). (Attached hereto as Exhibit B)
 - c. F.A.C. Chapter 67-48.010 (the "Regulation")
9. The Original Note (paragraph 4) clearly states the priority of payments (Paragraph 4) as 1) SAIL loan base interest payment, and 2) Development Expenses.
10. Petitioner paid interest on this loan, as required until May 2, 2002 when Petitioner was

informed by the Corporation that Petitioner qualified for conversion of Petitioner's loan from "mandatory 3% to cash flow." (See Exhibit C, attached hereto).

11. Petitioner requested the conversion and it was granted. The Amended Note (Exhibit B) was delivered to Petitioner with a letter from the Corporation. (See Exhibit D, attached hereto).
12. Paragraphs (4) and (6) of the Original Note were effectively replaced by paragraphs (4) and (5).
13. Paragraph (4) of the Amended Note establishes the priority of payments from Development Cash Flow as:
 - a. First Mortgage fees and debt service
(Note: there is no First Mortgage on this project)
 - b. Eligible Development Expenses
 - c. Base Interest payment on the outstanding principal balance of this Note
14. Paragraph (5) of the Amended Note stating that if Development Cash Flow is insufficient to make interest payments due under the Amended Note (the "Amended Note Payments") in the priority schedule of paragraph (4), payments shall be deferred.
15. Under F.A.C. 67-48.010 (the "Regulation") this project falls under paragraph (5) because there is no first mortgage loan, and the SAIL is in the first position.
16. The Regulation says 1) SAIL Base Payment , then 2) Development Expenses, but it subjects this priority to paragraph (6) in the first sentence of (5), which tracks the deferral language in the Amended Note, Paragraph (5). (See paragraph 14, above).
17. Petitioner received correspondence from the Corporation (Exhibits C and D) where the

Corporation that the Amended Note “reflects the change of interest payments to be based upon available cash flow” and it is a conversion from “Mandatory 3% to cash flow.”

18. Petitioner received no interest billings for the years 2001 - 2004. Petitioner had submitted Cash Flow Project Analysis on a yearly basis showing negative cash flows. The Sponsor, Boley Centers funded the deficit each year.
19. In 2006, Petitioner received an invoice for 2005 interest. Petitioner requested deferrals, and the mistake of no billing for 2001-2004 was discovered. Petitioner was surprised to learn that they would now have to start paying interest, *and* pay the 2001- 2004 interest.
20. Petitioner, Petitioner’s counsel, and Diane Carr, Tim Kennedy and Hugh Brown have all worked diligently at coming to agreement regarding Petitioner’s obligation to pay as requested, and have not come to complete agreement. Those parties suggested we file a Petition for a Variance regarding this matter.

PETITIONER’S CONCLUSION

Petitioner is struggling to maintain a project that has had problems in the areas of vacancies, neighborhood security issues, soaring repair, maintenance and insurance costs. When Petitioner’s loan documents were revised, and thereafter Petitioner, upon submitting negative Cash Flow Project Analysis each year, would not receive a bill for interest for almost five years, they understandably relied on that course of action by the Corporation. This course of action confirmed Petitioner’s understanding that *only if* there was available cash flow after expenses would the interest have to be paid. Petitioner made decisions regarding the continued support and viability of the project, and invested staff and resources to addressing the persistent problems

of this project based on this understanding.¹ Upon review of the obligation documents and the Rule, even if an alternative interpretation is made by the Corporation, it was reasonable for Petitioner to rely on the clear language of the Note. The Corporation's communications to the Petitioner support this justifiable reliance.

TYPE OF VARIANCE SOUGHT

21. The variance being sought is temporary in nature.
22. The variance sought is for deferral of accrued and unpaid interest for the years 2001 - 2004 (\$29,458.77) to be paid at the maturity of the loan.

REQUESTED RELIEF

23. Petitioner is requesting that the Corporation grant the relief specified above, and any further relief the Corporation finds just or appropriate under the circumstances.
24. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

Respectfully submitted,



Heidi Horak, Esq.
Attorney for Petitioner Salt Creek Apartments, Ltd.
Florida Bar No. 0870153
23 Sixth Street North
St. Petersburg, FL 33701
(813) 827-9392

¹ The sponsor, Boley Centers had made efforts through the police department, the neighborhood association, and by additional property purchases to improve the neighborhood and diminish the problems causing the project to have negative cash flow.

EXHIBIT A

PROMISSORY NOTE
(Salt Creek Apartments)

OLD
NOTE

\$245,583.00

Maturity Date: September 1, 2014

Tallahassee, Florida

March 1, 1999

FOR VALUE RECEIVED the undersigned, SALT CREEK APARTMENTS, LTD., a Florida limited partnership ("Maker"), promises to pay to the order of the FLORIDA HOUSING FINANCE CORPORATION, a public corporation and public body corporate and politic, existing under the laws of the State of Florida, together with any other holder hereof ("Holder"), at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, or such other place as Holder may from time to time designate in writing, the principal sum of Two Hundred Forty Five Thousand Five Hundred Eighty Three and No/100 Dollars (\$245,583.00) or so much as may be advanced from time to time pursuant to the Construction Loan Agreement of even date herewith, plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) This Note shall bear interest computed at the rate of nine percent (9%) per annum (the "Applicable Interest Rate") on the outstanding principal balance. Payment of interest at the rate of three percent (3%) per annum (the "Base Interest Rate") shall be made annually on the outstanding principal balance on the Annual Payment Date (as that term is herein below defined).
- 2) Except for the annual Base Interest Rate payment, repayment hereunder shall be based upon the actual cash flow of the Project (as defined as the "Project Cash Flow" under the Holder's Rules) which shall be determined annually on a calendar year basis prior to the annual payment due date (as hereinafter defined). The first payment of SAIL base interest on 9% loans will be due no later than June 30, following the calendar year within which the first unit is occupied. The first payment of base interest shall include all base interest for the period which begins accruing on the date of the first draw and ends on December 31 of the calendar year during which the first unit is occupied. Subsequent annual payments shall be due on the 30th day of June (the "Annual Payment Date") for each preceding calendar year thereafter through September 1, 2014 (the "Maturity Date"), at which time all outstanding principal indebtedness together with all accrued and unpaid interest thereon shall be due and payable, unless acceleration is made by Holder pursuant to the provisions hereof. Any payment not paid when due taking into account applicable grace periods shall bear interest at the Default Interest Rate from the due date until paid. Unless the Holder has accelerated the SAIL Loan, the Maker shall pay the Holder a late charge of five percent (5%) of any required payment which is not received by the Holder within 15 days of the due date.
- 3) The Maker agrees to provide annually to the Holder and its servicer a certification detailing the information needed to determine the annual interest payment due

Exhibit A

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hereunder. The certification shall be provided by April 15 of each year during the term of this Note, however, this certification requirement will be waived until April 15, following the calendar year within which the first unit is occupied. The certification shall require submission of audited financial statements and other documents that may be required by the Holder and its servicer. The financial statements are to be prepared in accordance with generally accepted accounting principals and shall include: (i) comparative balance sheet with prior year and current year balances; (ii) Statement of revenue and expenses which compares budgeted amounts to actual performance; (iii) Statement of change in fund balances or equity; (iv) Statement of cash flow; and (v) Notes. The statement should also be accompanied by a certification of the borrower as to the accuracy of such financial statements. A late fee of \$500.00 will be assessed for failure to submit the required financial certification by April 15 of each year of the SAIL Loan term. Failure to submit the required certification by April 15 of each year of the SAIL loan term shall constitute an event of default of the SAIL loan.

- 4) Each year payments from Project income as determined by Holder shall be applied to pay the following items in order of the following priority:
 - (a) Annual Base Interest Rate payment on SAIL loan balance;
 - (b) Eligible Development Expenses, including the compliance monitoring fee, replacement reserves, servicing fee, and debt service reserves;
 - (c) Twelve percent (12%) per annum Return on Equity to Maker;
 - (d) Any other unpaid SAIL interest hereunder deferred from the current and previous years; and
 - (e) Any unpaid Return on Equity deferred from previous years; and
 - (f) Remaining monies generated from the Project are to be equally divided between Maker and Holder with Holder receiving no more than the stated interest rate on the SAIL Loan. After all accrued and unpaid interest due hereunder has been paid in full, Maker shall retain all remaining monies generated from the Project.
- (5) For the purpose of determining SAIL loan interest payments, the Equity contributed by the Sponsor or Developer, as defined by Chapter 67-48.002(90), F.A.C. at the time of the SAIL loan closing is \$ 35,100.00 *
- (6) Except for the annual Base Interest Rate payment, any payments of current or deferred interest due annually hereunder shall be deferred until the next annual due date to the extent that Project cash flow is insufficient to make said payments pursuant to the payment priority schedule in Subparagraph 4 above and as * An additional \$170,907.35 is also considered equity and shall entitle the Maker to 12% per annum Return on Equity with the same priority set

determined by Holder. If the Holder and its servicer determine that project cash flow is sufficient to pay any current or deferred interest due hereunder, the Maker shall remit the interest due to the servicer no later than June 30 of each year during the term of this Note.

- (7) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance of this Note.
- (8) After maturity or acceleration, this Note shall bear interest at the Default Interest Rate (as hereinafter defined) until paid in full or until Note is otherwise reinstated.
- (9) All terms hereunder shall be as construed and defined in Chapter 67-48, Florida Administrative Code (herein the "Holder's Rules") and the Loan Documents as defined herein.
- (10) The Maker shall provide to the Agency and its servicer a certified annual budget of income and expenses for the Project no later than thirty (30) days prior to the beginning of the Project's fiscal year.

The difference between the Applicable Interest Rate and the Base Interest Rate shall be deferred and shall accrue without interest thereon until paid as provided herein.

This Note is secured by a Mortgage and Security Agreement (the "Mortgage") encumbering certain real property located in Pinellas County, Florida (the "Premises"), and by a Collateral Assignment of Leases, Rents and Contract Rights, all of even date herewith. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents".

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Maker shall have no obligation to pay interest or payments in the nature of interest in excess of the maximum rate of interest allowed to be contracted for by law, as changed from time to time, applicable to this Note (the "Maximum Rate"). Any interest in excess of the Maximum Rate paid by Maker ("excess sum") shall be credited as a payment of principal, or, if Maker so requests in writing, returned to Maker, or, if the indebtedness and other obligations evidenced by this Note have been paid in full, returned to Maker together with interest at the same rate as was paid by Maker during such period. Any excess sum credited to principal shall be credited as of the date paid to Holder. The Maximum Rate varies from time to time and from time to time there may be no specific maximum rate. Holder may, without such action constituting a breach of any obligations to Maker, seek judicial determination of the Maximum Rate of interest, and its obligation to pay or credit any proposed excess sum to Maker.

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The "Default Interest Rate" and, in the event no specific Maximum Rate is applicable, the Maximum Rate shall be eighteen percent (18%) per annum.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due, taking into account applicable grace periods, and rights to cure set forth in the Loan Documents, any payment of principal or interest or other amount due hereunder; or upon the occurrence of an event of default pursuant to any other Loan Documents now or hereafter evidencing, securing or guarantying payment of this Note. Exercise of this right shall be without notice to Maker or to any other person liable for payment hereof, notice of such exercise being hereby expressly waived.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise) taking into account applicable grace periods shall bear interest at the Default Interest Rate from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay Holder a late charge of five percent (5%) of any required payment which is not received by Holder within 15 days of the due date of said payment. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Maker agrees to pay all costs of collection, including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors' proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words of similar effect shall not affect the duty of Maker to pay all obligations due hereunder, and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall arise. No action or omission of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto, in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

The term "other person liable for payment hereof" shall include any endorser, guarantor, surety or other person now or hereafter primarily or secondarily liable for the payment of this Note, whether by signing this or another instrument.

The Maker shall not have any personal liability for the payment of any portion of the indebtedness evidenced by this Note. In the event of a default by the Maker under this Note, the Holder's sole remedy hereunder shall be limited to exercising its rights under the Loan Documents, including foreclosure and the exercise of the other rights granted thereunder, but shall not include a right to proceed directly against the Maker, or the right to obtain a deficiency judgment after foreclosure against the Maker.

The Holder expressly agrees that the liability of the Maker and the partner in the Maker shall be strictly and absolutely limited to the property encumbered by the Mortgage and other security documents, and the leases, rents, profits and issues thereof and any other collateral securing the Loan. If an event of default shall occur, the Holder shall not and may not seek any judgment for a deficiency against the Maker or any partners of the Maker (in their capacity as partners) in any action to foreclose, to exercise a power of sale, to confirm any foreclosure or sale under power of sale, or to exercise any other rights or power under or by reason of the Mortgage or any other security documents evidencing or securing the obligations of the Borrower. In the event any suit is brought under this Note, any judgment obtained in such suit shall constitute a lien on and will be and can be enforced only against, the property encumbered by the Mortgage and other security documents, and the leases, rents, profits and issues thereof and not against any other asset of the Maker or the partners of Maker, and the terms of such judgment shall expressly so provide.

Notwithstanding the paragraph above or anything to the contrary in this Note, the Maker and its general partners shall be personally liable for, and Holder shall have the right to seek a judgment for money damages (including a deficiency judgment) to enforce payment of:

- (1) liability under any guaranty of completion, payment or performance entered into with the Lender;
- (2) misapplication of Project leases, rents, profits and issues following any payment default (without regard to the expiration of any cure period, if any);
- (3) liability for intentional waste, destruction or damage to the Project or any part thereof;
- (4) tenant security deposits or prepaid rent;
- (5) liability and indemnification for removal or cleanup of environmental hazards on the Project premises.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, and diligence in collection; (b) consent that Holder may, from time

Exhibit A

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to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

BY EXECUTING THIS NOTE, MAKER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHTS OR THE RIGHTS OF ITS HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSS CLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HEREWITH OR WITH THE INDEBTEDNESS EVIDENCED HEREBY OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER'S EXTENDING CREDIT TO A MAKER AND NO WAIVER OR LIMITATION OF HOLDER'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

Maker acknowledges that the above paragraph has been expressly bargained for by Holder as part of the transaction with Maker and that, but for Maker's agreement thereto, Holder would not have extended the Indebtedness for the terms and at the interest rates provided herein.

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

SALT CREEK APARTMENTS, LTD.,
a Florida limited partnership

By: PINELLAS AFFORDABLE LIVING, INC.,
a Florida not for profit corporation, its General
Partner

By: Gary MacMath
Gary MacMath, Vice President

NOTES AND MORTGAGES OWNED BY THE FLORIDA HOUSING FINANCE CORPORATION, A PUBLIC CORPORATION AND PUBLIC BODY CORPORATE AND POLITICAL, EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA ARE EXEMPT FROM DOCUMENTARY STAMP TAX AND INTANGIBLE TAX.

Exhibit A

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Exhibit B

FIRST AMENDED AND RESTATED PROMISSORY NOTE
(SALT CREEK APARTMENTS/SAIL)

\$245,583.00

Maturity Date: September 1, 2014

Tallahassee, Florida

_____, 200__

This First Amended and Restated Promissory Note (this "Note") amends, restates and renews that certain Promissory Note from the Borrower (as defined herein), dated March 1, 1999, in the original principal amount of \$245,583.00, attached hereto as Exhibit "A".

FOR VALUE RECEIVED the undersigned **SALT CREEK APARTMENTS, LTD.**, a Florida limited partnership ("Borrower") promises to pay to the order of Florida **HOUSING FINANCE CORPORATION**, ("Florida Housing"), a public corporation, and a public body corporate and politic duly created and existing under the laws of the State of Florida at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, or such other place as Florida Housing may from time to time designate in writing, together with any other holder thereof ("Holder"), the principal sum of TWO HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED EIGHTY-THREE AND NO/100 DOLLARS (\$245,583.00) or so much as may be advanced from time to time pursuant to the Construction Loan Agreement of even date herewith, plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- (1) This Note shall bear interest computed at the rate of nine percent (9%) per annum (the "Applicable Interest Rate") on the outstanding principal balance.
- (2) Payment hereunder shall be based upon the actual Development Cash Flow, as defined under Chapter 67-48, Fla. Admin. Code, in effect as of February 22, 2001 (the "Rule"), as may be amended from time to time only as it relates to procedural matters governing the terms and conditions of this Note, which shall be determined annually by Florida Housing on a calendar year basis prior to the Annual Payment Date (as hereinafter defined). The first payment of interest at the Note Rate will be due no later than June 30, following the calendar year within which the first unit within the Development is occupied. For purposes of calculating the amount of interest due on the first Annual Payment Date, accrued interest shall include interest from the date of the first draw until December 31 of the calendar year during which the first unit within the Development is occupied. Subsequent annual payments (as hereinafter defined) shall be due on the 31st day of August (the "Annual Payment Date") for each preceding calendar year thereafter through September 1, 2014, (the "Maturity Date") at which time all outstanding principal indebtedness together with all accrued and unpaid interest thereon shall be due and payable, unless acceleration is made by Florida Housing pursuant to the provisions hereof. Any payment not paid when due taking into account applicable grace periods shall bear interest at the Default Interest Rate from the due date thereof until paid. Unless Florida Housing has accelerated the Loan, the Borrower shall

Exhibit B

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pay Florida Housing a late charge of five percent (5%) of any required payment, which is not received by Florida Housing within fifteen (15) days of the due date.

(3) The Borrower agrees to provide annually to Florida Housing and to its Servicer, (the "Servicer") a certification detailing the information needed to determine the annual interest payment due hereunder. The certification shall be provided by May 31 of each year during the term of this Note; however, this certification requirement will be waived until April 15th following the calendar year within which the first unit within the Development is occupied. The certification shall be in form and content acceptable to Florida Housing and shall require submission of audited financial statements and other documents that may be required by Florida Housing and the Servicer. The financial statements are to be prepared in accordance with generally accepted accounting principles and shall include: (i) comparative balance sheet with prior year and current year balances; (ii) statement of revenue and expenses, which compares budgeted amounts to actual performance; (iii) statement of change in fund balances or equity; (iv) statement of cash flows; and (v) notes. The statements should also be accompanied by a certification of the Borrower as to the accuracy of such financial statements. A late fee of \$500.00 will be assessed for failure to submit the required financial certification by May 31 of each year of the term of the Loan. Failure to submit the required certification by May 31 of each year of the term of the Loan shall constitute an event of default of the Loan.

(4) Each year payments from Development Cash Flow as determined by Florida Housing shall be applied to pay the following items in order of the following priority:

- (a) First Mortgage fees and debt service;
- (b) Eligible Development Expenses, including the compliance monitoring fee, the financial monitoring fee, replacement reserves, servicing fee, and debt service reserves;
- (c) Base Interest payment on the outstanding principal balance of this Note at the "Base Interest Rate" which shall be equal to: (i) one percent (1%) per annum on developments that maintain an eighty percent (80%) occupancy of residents qualifying as Commercial Fishing Workers or Farmworkers (as those terms are defined in the Rule), or (ii) three percent (3%) per annum for all other developments and any late charges, costs or fees due hereunder or under the Loan Documents (as hereinafter defined) over the life of the SAIL Loan;
- (d) Payment of interest at the Base interest Rate deferred from previous years;
- (e) Mandatory payments on subordinate mortgages;
- (f) Twelve percent (12%) per annum Return on Equity to Borrower;

Exhibit B

- (g) Any unpaid SAIL interest hereunder deferred from the current and previous years;
- (h) Any unpaid Return on Equity deferred from previous years; and
- (i) Remaining monies generated from the Development are to be equally divided between Borrower and Florida Housing with Florida Housing receiving no more than the Note Rate on the Loan. After all accrued and unpaid interest due hereunder has been paid in full, Borrower shall retain all remaining monies generated from the Development, unless the Borrower elects to prepay a portion of the Loan balance.

For the purpose of determining the interest payments due hereunder, the SAIL Equity contributed by the Borrower at the time of the closing of the Loan is \$35,100.00.

- (5) Notwithstanding anything to the contrary herein, any payments of current or deferred interest due annually hereunder shall be deferred without default hereunder to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule in Subparagraph 4 above and as determined by Florida Housing. Any unpaid interest that is deferred shall accrue without interest thereon until paid as provided herein. If Florida Housing and the Servicer determine that Development Cash Flow is sufficient to pay any current or deferred interest hereunder, the Borrower shall remit such interest due to the Servicer no later than August 31 of each year during the term of this Note.
- (6) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance of this Note.
- (7) After maturity or acceleration, this Note shall bear interest at the Default Interest Rate until paid in full or until this Note is otherwise reinstated.
- (8) All terms hereunder shall be as construed and defined in Chapter 67-48, Florida Administrative Code (herein "Florida Housing's Rule") or the Construction Loan Agreement, as the context may require.
- (9) The Borrower shall provide to Florida Housing and the Servicer a certified annual budget of income and expenses for the Development no later than thirty (30) days prior to the beginning of the Borrower's fiscal year.

The difference between the Applicable Interest Rate and the Base Interest Rate shall be deferred and shall accrue without interest thereon until paid as provided herein.

This Note is secured by a Mortgage and Security Agreement (the "Mortgage") encumbering certain real property located in Pinellas County, Florida (the "Premises"), and by a Collateral Assignment of Leases, Rents and Contract Rights, all dated March 1,

1999. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents".

This Note has been executed and delivered in, and is to be governed by and construed under the Laws of, the State of Florida, as amended, and "Florida Housing's Rules", except as modified by the laws and regulations of the United States of America.

Borrower shall have no obligation to pay interest or payments in the nature of interest in excess of the maximum rate of interest allowed to be contracted for by law, as changed from time to time, applicable to this Note (the "Maximum Rate"). Any interest in excess of the Maximum Rate paid by Borrower ("Excess Sum") shall be credited as a payment of principal, or, if Borrower so requests in writing, returned to Borrower, or, if the indebtedness and other obligations evidenced by this Note have been paid in full, returned to Borrower together with interest at the same rate as was paid by Borrower during such period. Any Excess Sum credited to principal shall be credited as of the date paid to Florida Housing. The Maximum Rate varies from time to time and from time to time, there may be no specific Maximum Rate. Florida Housing may, without such action constituting a breach of any obligations to Borrower, seek judicial determination of the Maximum Rate of interest, and its obligation to pay or credit any proposed Excess Sum to Borrower.

The "Default Interest Rate" and, in the event no specific Maximum Rate is applicable, the Maximum Rate shall be eighteen percent (18%) per annum.

Florida Housing shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of Borrower to pay when due, taking into account any applicable grace periods, any payment of principal or interest or other amount due hereunder; or upon the occurrence of an event of default not cured within any applicable grace period pursuant to any other Loan Documents now or hereafter evidencing, securing or guarantying payment of this Note. Exercise of this right shall be without notice to Borrower or to any other person liable for payment hereof, notice of such exercise being hereby expressly waived.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise) taking into account any applicable grace periods, shall bear interest at the Default Interest Rate from the due date thereof until paid.

Provided Florida Housing has not accelerated this Note, Borrower shall pay Florida Housing a late charge of five percent (5%) of any required payment, which is not received by Florida Housing within 15 days of the due date of said payment. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Borrower agrees to pay all costs of collection, including reasonable attorneys' fees, whether or not suit is brought, and

Exhibit B

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whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors' proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words of similar effect shall not affect the duty of Borrower to pay all obligations due hereunder, and shall not affect the right of Florida Housing to pursue all remedies available to it under any Loan Documents.

The remedies of Florida Housing shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Florida Housing, and may be exercised as often as occasion therefore shall arise. No action or omission of Florida Housing, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Florida Housing and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto, in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

The term "other person liable for payment hereof" shall include any endorser, guarantor, surety or other person now or hereafter primarily or secondarily liable for the payment of this Note, whether by signing this or another instrument.

The Borrower shall not have any personal liability for the payment of any portion of the indebtedness evidenced by this Note. In the event of a default by the Borrower or any of its partners under this Note, Florida Housing's sole remedy hereunder shall be limited to exercising its rights under the Loan Documents, including foreclosure and the exercise of the other rights granted thereunder, but shall not include a right to proceed directly against the Borrower or any of its partners, or the right to obtain a deficiency judgment after foreclosure against the Borrower.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

Florida Housing expressly agrees that the liability of the Borrower and the partner in the Borrower shall be strictly and absolutely limited to the property encumbered by the Mortgage and other security documents, and the leases rents, profits and issues thereof and any other collateral securing the Loan. If an event of default shall occur, Florida Housing shall not and may not seek any judgment for a deficiency against the Borrower or any partners of the Borrower (in their capacity as partners) in any action to foreclose, to exercise a power of sale, to confirm any foreclosure or sale under power of sale, or to

exercise any other rights or power under or by reason of the Mortgage or any other security documents evidencing or securing the obligations of the Borrower. In the event any suit is brought under this Note, any judgment obtained in such suit shall constitute a lien on and will be and can be enforced only against, the property encumbered by the Mortgage and other security documents, and the leases, rents, profits and issues thereof and not against any other asset of the Borrower or the partners of Borrower, and the terms of such judgment shall expressly so provide.

Notwithstanding the paragraph above or anything to the contrary in this Note, the Borrower and its general partners shall be personally liable for, and Florida Housing shall have the right to seek a judgment for money damages (including a deficiency judgment) to enforce payment of:

- (a) liability under any guaranty of completion, payment or performance entered into with the Lender;
- (b) misapplication of Project leases, rents, profits and issues following any payment default (without regard to the expiration of any cure period, if any the return to Florida Housing of any unearned advance rentals and security deposits paid to Borrower by tenants of the Project and not refunded to such tenants; and
- (c) liability of intentional waste, destruction, or damage to the Project or any part hereof; and
- (d) tenant security deposits or prepaid rent;
- (e) liability and indemnification for removal or cleanup of environmental hazards on the Project premises.

Borrower and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, and diligence in collection; (b) consent that Florida Housing may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Borrower (or any co-borrower) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Florida Housing, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Borrower (or any co-borrower) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

BY EXECUTING THIS NOTE, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHTS OR THE RIGHTS OF ITS HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON,

ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HEREWITH OR WITH THE INDEBTEDNESS EVIDENCED HEREBY OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FLORIDA HOUSING'S EXTENDING CREDIT TO BORROWER AND NO WAIVER OR LIMITATION OF FLORIDA HOUSING'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON FLORIDA HOUSING'S BEHALF.

Borrower acknowledges that the above paragraph has been expressly bargained for by Florida Housing as part of the transaction with Borrower and that, but for Borrower's agreement hereto, Florida Housing would not have extended the Indebtedness for the terms and at the interest rates provided herein.

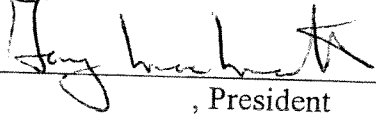
The loan evidenced by this Note shall be serviced by Florida Housing or by a lending institution selected by Florida Housing.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, Borrower has executed this Note on the day and year first above written.

SALE CREEK APARTMENTS, LTD.,
A Florida limited partnership,

By: PINELLAS AFFORDABLE LIVING, INC.
A Florida not for profit corporation,
its general partner

By: , President

NOTES AND MORTGAGES OWNED BY FLORIDA HOUSING FINANCE CORPORATION, A PUBLIC CORPORATION AND PUBLIC BODY CORPORATE AND POLITIC, EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA ARE EXEMPT FROM DOCUMENTARY STAMP TAX AND INTANGIBLE TAX.

Exhibit B

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Exhibit C

**FLORIDA
HOUSING
FINANCE
CORPORATION**

May 2, 2002

Gary McMath
Boley Centers for Behavioral Health Care
1236 Dr Martin Luther King Street, North
St. Petersburg, Florida 33705

JEB BUSH
Governor

ROBERT JAY TAYLOR
Chairman

ORLANDO J. CABRERA
Vice Chairman

BOARD OF DIRECTORS

CESAR CALVET
WILLIAM G. EVANS
JACK MAXWELL
TERRY SANTINI
SANDRA TERRY

STEVEN SEIBERT
Ex Officio

MARK KAPLAN
Executive Director

Re: Salt Creek 98S-006

Dear Mr. McMath:

At the March 2001 meeting of the Florida Housing Finance Corporation Board of Directors, a motion was made, seconded and approved that any borrower from Cycle IX, X (a), and X (b), upon request, may convert their loan from a mandatory 3% base interest payment to a base interest payment based on actual Project Cash Flow. If you are receiving this letter, your property qualifies for this conversion.

The calculation of actual Project Cash Flow available to pay SAIL loan interest will use the same priority of payments as specified in the 2001 rule, enclosed, with a modification to include Developer Fee immediately prior to mandatory payment on Subordinate mortgages. The payment of Developer Fees will be subordinate to the payment of the 3% base interest.

The effective date for this change will be the interest accrual period beginning January 1, 2001. Any interest accrued prior to that date is calculated on a mandatory 3% base and due and payable immediately.

Conversions from a mandatory 3% base to cash flow will be granted only upon written request.

Exhibit C

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If you have any questions, please contact, (Cindy Pons, First Housing, at 813/289-9410.)

Sincerely,



Diane M. Carr

Loan Servicing Administrator

enclosure

cc: Cindy Pons

Exhibit C

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**FLORIDA
HOUSING
FINANCE
CORPORATION**

Exhibit D

May 6, 2003

JEB BUSH
Governor

CESAR E. CALVET
Chairman

TERRY SANTINI
Vice Chairman

BOARD OF DIRECTORS

WILLIAM G. EVANS
JACK MAXWELL
ZULLY RUIZ
ROBERT JAY TAYLOR
SANDRA TERRY

COLLEEN CASTILLE
Ex Officio

ORLANDO CABRERA
Executive Director

Mr. Reynald Latortue
445 31st Street North
St. Petersburg, FL 33713

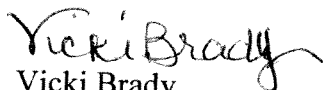
RE: Salt Creek (98S-006)

Dear Mr. Latortue:

Enclosed you will find an Amended and Restated Promissory Note for the above referenced SAIL Loan which reflect the change of interests payments to be based upon available cash flow as approved by the Board in March 2001. Please review, have this document executed and return to me at your earliest convenience.

Should you have any questions, please don't hesitate to contact me.

Sincerely,



Vicki Brady
Multifamily Loans Manager
SAIL Program

Exhibit D
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