

Memorandum

Housing Finance Authority

2605 Enterprise Rd. E., Ste. 230

Clearwater, FL 33759

Phone: 727.223.6418



TO: The Honorable Chair and Members of the Board of County Commissioners,
in your Capacity as the Housing Finance Authority of Pinellas County

FROM: Kathryn Driver, Executive Director, Housing Finance Authority of Pinellas County *kd*

SUBJECT: Adoption of a resolution approving the intent of the Housing Finance Authority of Pinellas County (HFA) to proceed with the financing of a Multifamily Residential Rental Housing Project through the issuance of its Multifamily Housing Revenue Bonds, in a principal amount not to exceed \$5,000,000.

DATE: May 6, 2014

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD), IN YOUR CAPACITY AS THE HFA OF PINELLAS COUNTY, ADOPT THE RESOLUTION OF THE HFA TO ISSUE MULTIFAMILY HOUSING REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000 FOR THE BENEFIT OF SP CLEARWATER APARTMENTS LLC, A FLORIDA LIMITED LIABILITY COMPANY, OR IT'S AFFILIATE.

Summary Explanation/Background:

The Property was originally constructed in 1984 and consists of 14 residential buildings and an office building configured on two scattered sites located approximately two miles apart. The primary site is located at 1000 North Keene Road in Clearwater and contains nine buildings comprising 56 units as well as the office. The second site is located at 2657 State Road 590 in Clearwater and contains six buildings consisting of 34 units. The Property currently receives rental assistance from HUD in the form of a Housing Assistance Payment contract authorized under Section 8 of the Housing Act. The HAP Contract covers 89 of the 90 units with the unsubsidized unit reserved for on-site staff. The current HAP renewal runs until 2024, however the term will be extended to 2034 prior to closing.

The Property has been well maintained by the current owner and is mostly in need of interior upgrades to modernize the units and also to increase the overall energy efficiency of the Property, both of which will contribute to reduced operating expenses going forward and to ensure they are preserved as affordable units for the long term.

Fiscal Impact/Cost/Revenue Summary:

No County General Funds are required. All lendable funds are generated from the sale of tax-exempt housing bonds.

Exhibits/Attachments Attached:

Proposed Resolution

Resolution 2014-02 of the HFA

RESOLUTION NO. R-2014-___

A RESOLUTION APPROVING THE ISSUANCE BY THE HOUSING FINANCE AUTHORITY OF PINELLAS COUNTY OF ITS MULTIFAMILY HOUSING REVENUE BONDS (CLEARWATER APARTMENTS), SERIES 2014 IN THE AGGREGATE AMOUNT NOT TO EXCEED \$5,000,000 TO PROVIDE FUNDS TO FINANCE A MULTIFAMILY RESIDENTIAL RENTAL HOUSING PROJECT FOR THE BENEFIT OF SP CLEARWATER APARTMENTS LLC, A FLORIDA LIMITED LIABILITY COMPANY, OR ITS AFFILIATE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Housing Finance Authority of Pinellas County, Florida (the "Authority") has authorized the initiation of official action to issue its Multifamily Housing Revenue Bonds (Clearwater Apartments), Series 2014 (the "Bonds") on behalf of SP Clearwater Apartments LLC, a Florida limited liability company, to provide financing or refinancing for the acquisition and rehabilitation of an existing residential rental facility known as Clearwater Apartments, consisting of 90 units on 2 non-contiguous sites located approximately 2 miles apart, with 8 buildings consisting of 56 units and an office being located at 1000 North Keene Road, Clearwater, Pinellas County, Florida 33755, and 6 buildings consisting of 34 2-bedroom units being located at 2657 State Road 590, Clearwater, Pinellas County, Florida 33759; and

WHEREAS, the Authority conducted a public hearing on March 12, 2014, notice of which hearing was published on February 21, 2014, in the *Business Observer* (a copy of which notice is attached hereto as Exhibit "A" and incorporated herein), for the purpose of considering the issuance of the Bonds by the authority in the aggregate principal amount not to exceed \$5,000,000, in conformance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended. Said public hearing disclosed no reason why the Bonds should not be issued.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA:

Section 1. The Board, pursuant to and in accordance with the requirements set forth in Section 147(f) of the Internal Revenue Code of 1986, as amended, hereby approves the issuance by the Authority of its not to exceed \$5,000,000 Multifamily Housing Revenue Bonds (Clearwater Apartments), Series 2014.

Section 2. Nothing contained in this consent and approval shall be deemed to create any obligation or obligations of Pinellas County or the Board of County Commissioners.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this ____ day of _____, 2014.

BOARD OF COUNTY COMMISSIONERS
OF PINELLAS COUNTY, FLORIDA

(SEAL)

By: _____
Chairman

ATTEST:

[Deputy] Clerk

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY
By: _____
Attorney

RESOLUTION NO. 2014 - 02

RESOLUTION EXPRESSING THE INTENT OF THE HOUSING FINANCE AUTHORITY OF PINELLAS COUNTY, FLORIDA TO PROCEED WITH THE FINANCING OF A MULTIFAMILY RESIDENTIAL RENTAL HOUSING PROJECT THROUGH THE ISSUANCE OF ITS MULTIFAMILY HOUSING REVENUE BONDS, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000 FOR THE BENEFIT OF SP CLEARWATER APARTMENTS LLC., A FLORIDA LIMITED LIABILITY COMPANY, OR ITS AFFILIATE; RATIFYING THE SCHEDULING OF A PUBLIC HEARING ON THE FINANCING; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Housing Finance Authority of Pinellas County, Florida (the "Authority") has determined that there exists a shortage of safe and sanitary housing for persons and families of low to moderate income, within Pinellas County, State of Florida; and

WHEREAS, such shortage will be partially alleviated by the rehabilitation by a private owner of an existing low to moderate income housing project known as Clearwater Apartments, consisting of 90 units located on two non-contiguous properties in Clearwater, Pinellas County, Florida (the "Project), to be owned and operated by SP Clearwater Apartments LLC, a Florida limited liability company, or its affiliate (the "Owner"); and

WHEREAS, in order to finance the cost of the acquisition and rehabilitation of the Project, the Authority intends to issue its Multifamily Housing Revenue Bonds in an amount currently estimated not to exceed \$5,000,000, for the benefit of the Owner in one or more series (collectively, the "Bonds") and to enter into a Loan or Financing Agreement, a Trust Indenture,

a Land Use Restriction Agreement, an Arbitrage Rebate Agreement and other necessary documents with respect to the Project, and

WHEREAS, in order to issue the Bonds it will be necessary to conduct a public hearing and obtain approval by the Board of County Commissioners of Pinellas County, Florida, in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, in order to set forth the agreement between the Authority and the Owner regarding the issuance of the Bonds by the Authority, the Authority desires to approve and to thereafter execute and deliver a Memorandum of Agreement with the Owner.

NOW, THEREFORE, BE IT RESOLVED by the members of the Housing Finance Authority of Pinellas County, Florida, a lawful quorum of which is duly assembled, as follows:

SECTION 1. Declaration of Official Intent. The Authority hereby expresses its interest in approving at a later date, by appropriate resolution, the financing of the Project through the issuance of its Bonds and the execution of the necessary documents, including a Trust Indenture, Loan or Financing Agreement, Land Use Restriction Agreement and Arbitrage Rebate Agreement. The Owner is hereby authorized to incur expenditures on the costs of the Project, which expenditures may be reimbursed to the Owner from the proceeds of the Bonds upon their issuance. This Resolution shall constitute a declaration of "official intent" by the Authority toward the issuance of the Bonds, within the meaning of Treasury Regulation Section 1.150-2.

SECTION 2. Good Faith Deposit. As a condition to proceeding with the issuance of the Bonds, the Owner shall make a non-refundable deposit with the Authority in the amount of

\$5,000, being one-tenth of one percent (0.1%) of the principal amount of the Bonds to be issued and shall deposit with the Authority's bond counsel, financial advisor and general counsel any retainer fees required by the Authority's Multifamily Rental Housing Development guidelines. The Owner will be responsible for all costs of issuance associated with the issuance of the Bonds.

SECTION 3. Memorandum of Agreement. In order to assure the location of and to induce the Owner to acquire and rehabilitate the Project in the boundaries of the County, with the resulting public benefits which flow therefrom, and to more effectively serve the purposes of the Act, the proposed Memorandum of Agreement is made between the Authority and the Owner, in the form attached hereto as Exhibit A. The Chairman or the Vice Chairman of the Authority is hereby authorized and directed to execute the Memorandum of Agreement in the name of and on behalf of the Authority, and the Secretary or an Assistant Secretary of the Authority is hereby authorized and directed to attest the same and to affix thereto the official seal of the Authority, and the Chairman or Vice Chairman is hereby authorized to deliver the Memorandum of Agreement to the Owner. Such officers and all other officers of the Authority are hereby authorized to execute and deliver such further agreements, instruments and documents and to take such further action as may be necessary and desirable to effectuate and carry out the intent and purposes of the Memorandum of Agreement, when executed and delivered by the Authority and Owner.

SECTION 4. Public Hearing Authorized. The scheduling and advertisement of the public hearing regarding the issuance of the Bonds as required by Section 147(f) of the Code on March 12, 2014 is hereby ratified and approved, and the Director is hereby authorized and

directed to make a report to the Board of County Commissioners of Pinellas County of the public hearing.

SECTION 5. Scope of Approval. It is expressly stated and agreed that the adoption of this Resolution is not a guaranty, express or implied, that the Authority shall approve the closing and issue the Bonds for the Project. The Owner shall hold the Authority and its past, present and future members, officers, staff, attorneys, financial advisors and employees harmless from any liability or claim based upon the failure of the Authority to close the transaction and issue the Bonds or any other cause of action arising from the adoption of this Resolution, the processing of the financing for the Project, or the issuance of the Bonds.

SECTION 6. Repealing Clause. All resolutions and orders or parts thereof, of the Authority, in conflict herewith are, to the extent of such conflict, hereby modified to the extent of such conflict.

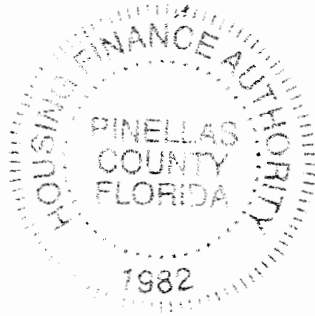
SECTION 7. Compliance with Open Meeting Laws. It is found and determined that all formal actions of this Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of the members of this Authority and that all deliberations of the members of this Authority and of its committees, if any, which resulted in such formal action were taken in meetings open to the public, in full compliance with all legal requirements.

SECTION 8. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED this 5th day of March, 2014.

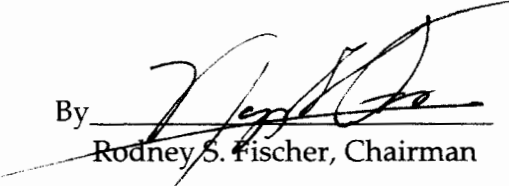
(SEAL)

ATTEST:



HOUSING FINANCE AUTHORITY
OF PINELLAS COUNTY, FLORIDA

By


Rodney S. Fischer, Chairman



Secretary/Treasurer

EXHIBIT A
MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT, dated as of the 5th day of March, 2014, between the HOUSING FINANCE AUTHORITY OF PINELLAS COUNTY, FLORIDA (the "Authority") and SP CLEARWATER APARTMENTS LLC, a Florida limited liability company, duly organized and existing under the laws of the State of Florida (the "Owner").

SECTION 1. The matters of mutual inducement and reliance which resulted in the execution of this Memorandum of Agreement are as follows:

(a) The Authority is authorized and empowered by Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), to provide for the issuance of and to issue and sell its revenue bonds for the purpose of paying all or any part of the cost of any "affordable housing project" as defined in the Act.

(b) In order to improve the availability of affordable housing in Pinellas County, Florida (the "County"), it is desirable that the Authority issue and sell its Multifamily Housing Revenue Bonds, in the aggregate principal amount of not to exceed \$5,000,000, in one or more series at one or more times, a portion of which may be issued as taxable bonds (the "Bonds").

(c) The Authority intends to use the proceeds thereof, to the extent of such proceeds, as follows: (i) to pay all or any part of the cost of issuance of the Bonds, (ii) to pay all or any part of the cost of the acquisition and rehabilitation of the multifamily residential rental facilities and facilities directly related or ancillary thereto to be known as Clearwater Apartments (the "Project") on behalf of the Owner, and (iii) to pay any other "cost" (as defined in the Act) of the Project.

(d) The Authority intends to finance the Project for the Owner from proceeds of the sale of its Bonds, such loan to be payable by the Owner in installments sufficient to pay the principal of, premium (if any), interest and costs due on the Bonds when and as the same become due.

(e) The Owner has requested that the Authority enter into this Memorandum of Agreement for the purpose of declaring the Authority's intention to provide financing to pay a portion of the cost of the Project.

(f) The Authority, by resolution duly passed and adopted, has made certain findings and determinations and has approved and authorized the execution and delivery of this Memorandum of Agreement.

(g) The Owner represents that Bond proceeds will not be used to finance any costs for the Project incurred prior to the date that is 60 days prior to the date on which the Authority first declared its "official intent" to issue its revenue bonds to finance the Project as described in Treasury Regulation Section 1.150-2, except to the extent allowed by federal tax law.

SECTION 2. The Authority will cooperate with the Owner and its agents in the Owner's efforts to find one or more purchasers for the Bonds, and if purchase arrangements satisfactory to the Authority and the Owner can be made by the Owner and its agents, the Authority will authorize the issuance and sale of the Bonds, and will issue and sell the Bonds to such purchaser or purchasers of the Bonds as may be designated by the Owner, all upon such terms and conditions as shall be approved by the Owner and the Authority and authorized by law; provided, however, that in the event and during the time in which the Bonds are not rated in one of the two highest rating categories by at least one nationally recognized credit rating agency, the Authority will approve the sale of the Bonds solely as a single bond in a denomination equal to the principal amount thereof (or of each series thereof) and solely to a single accredited investor which will at no time cause the Bonds to be offered for sale to the general public (unless the Bonds are then rated in one of the two highest rating categories by a nationally recognized rating agency). The Bonds will be payable solely from the revenues and proceeds derived by the Authority from payments by the Owner derived from the operation, leasing or sale of the Project, and will not constitute a debt, liability or obligation of the Authority, or of the State or of any other political subdivision thereof. The Authority shall not be obligated to pay the same nor interest, premium (if any) or costs thereon except from the revenues and proceeds pledged therefor, and neither the faith and credit nor the taxing power of the Authority or of the State or of any other political subdivision thereof will be pledged to the payment of the principal of, premium (if any), interest or costs due pursuant to or under such Bonds.

From the date hereof, until the sale of the Bonds, the Owner will, within ten (10) days after its occurrence, notify the Authority of any material change, whether or not adverse, in the business, operations or financial condition of the Owner. In the event the Authority shall, at any time prior to sale of the Bonds, determine in its sole discretion that there has been a material adverse change in the business, operations or financial condition of the Owner based upon financial statements or notices provided by the Owner in accordance herewith, the obligation of the Authority to issue and sell the Bonds shall, at the option of the Authority, be terminated.

SECTION 3. The Authority will, at the proper time, and subject in all respects to the prior advice, consent and approval of the Owner, submit applications, adopt such proceedings and authorize the execution of such documents as may be necessary and advisable for the authorization, sale and issuance of the Bonds and the acquisition and rehabilitation of the Project, all as shall be authorized by law and mutually satisfactory to the Authority and the Owner.

SECTION 4. The Bonds issued shall be in such aggregate principal amount, shall bear interest at such rate or rates, shall be payable at such times and places, shall be in such forms and denominations, shall be sold in such manner and at such time or times, shall have such provisions for redemption, shall be executed, and shall be secured, all as shall be authorized by the Act and all on terms mutually satisfactory to the Authority and the Owner.

SECTION 5. The Authority will use and apply the proceeds of the issuance and sale of the Bonds, or cause such proceeds to be used and applied, to the extent of such proceeds, to pay the cost of the Project, and will loan such Bond proceeds to the Owner for the Project pursuant to a financing agreement requiring the Owner to make payment for the account of the Authority in installments sufficient to pay all of the interest, principal, redemption premiums (if any) and other costs due under and pursuant to the Bonds when and as the same become due and payable, to operate, repair and maintain the Project at the Owner's own expense, to pay all other costs incurred by the Authority in connection with the financing of the acquisition, rehabilitation, expansion, equipping and administration of the Project which are not paid out of the Bond proceeds or otherwise for so long as any of the Bonds remain outstanding, and for the conveyance to the Owner of all rights, title and interest of the Authority in and to the Project when all of the obligations of the Owner under the financing agreement have been performed and satisfied.

SECTION 6. The Owner hereby acknowledges and accepts that it shall be solely responsible for the acquisition, construction, equipping, rehabilitation or refinancing of the Project, it being understood and agreed that the Owner shall provide all services incident to the construction and equipping of the Project (including, without limitation, the preparation of plans, specifications and contract documents, the award of contracts, the inspection and supervision of work performed, the employment of engineers, architects, building and other contractors) and that the Owner shall pay all costs of the Project, subject to reimbursement by the Authority upon the issuance and sale of the Bonds as permitted by applicable State law and federal tax law, and the use and application of the proceeds thereof as provided above. The Authority shall have no responsibility for the provision of the aforesaid services. The Owner agrees that to the extent that the proceeds derived from the sale of the Bonds are not sufficient to complete the Project, the Owner, as the owner of the Project, will be responsible for supplying all additional funds which are necessary for the completion of the Project. So long as this Memorandum of Agreement is in effect all risk of loss to the Project will be borne by the Owner.

SECTION 7. At or prior to the time of issuance and sale of the Bonds, the Authority will enter into a trust indenture with a corporate trustee (the "Trustee") to secure the Bonds, whereby the Authority's interest in the Project, the financing agreement with the Owner, and all fees, rents, charges, proceeds from the operation of the Project, and other funds and revenues in respect of the Project, will be pledged and assigned to the Trustee, and held by the Trustee in trust, for the benefit of the holders, from time to time, of the Bonds.

SECTION 8. At or prior to the time of issuance and sale of the Bonds, the following conditions precedent shall have been satisfied:

(a) The Owner shall have satisfactorily completed all procedures established by the Authority for the review and approval of multifamily housing revenue bond issues, and provided for the payment of all costs of issuance associated with the issuance of the Bonds, including, but not limited to, the fees and expenses of the Authority, its counsel, bond counsel (in accordance with the Authority's fee schedule), fees and expenses of the trustee, credit enhancement fees, rating fees, printing costs and any underwriting fees and expenses.

(b) The Authority shall have duly passed and adopted resolutions making all findings required by law and authorizing the issuance and sale of the Bonds and the execution and delivery of the financing agreement, the trust indenture and such other agreements, instruments and documents as may be required to be specifically authorized. It is an express condition of this Memorandum of Agreement that the Bonds be sold only in the manner approved by the Authority.

(c) The Owner shall have authorized the execution, delivery and performance of the financing agreement, and approved the trust indenture and the issuance and sale of the Bonds, and authorized or approved such other agreements, instruments and documents for which specific authorization or approval may be required.

(d) The Owner shall have provided a satisfactory opinion of its counsel with respect to the due authorization, execution and delivery of the financing agreement, and related agreements, instruments and documents, their legality, validity, binding effect and enforceability in accordance with their respective terms, and the absence of any violation of law, rule, regulation, judgment, decree or order of any court or other agency of government and agreements, indentures or other instruments to which the Owner is a party or by which it or any of its property, is or may be bound and to such other matters as may be reasonably requested.

(e) The Owner and the Authority shall have executed and delivered such non-arbitrage certificates and representations, as may be required to comply with Section 148 of the Internal Revenue Code of 1986, as amended or any similar successor provisions and the regulations, rulings and interpretative court decisions thereunder.

(f) Bryant Miller Olive P.A., as bond counsel, shall have delivered its opinion with respect to the validity of the Bonds, and to the income tax status of the interest on the Bonds.

(g) The Owner shall have provided such other or additional representations, warranties, covenants, agreements, certificates, financial statements, and other proofs as may be required by the Authority or by Bryant Miller Olive P.A., as bond counsel.

(h) There shall have been obtained confirmation of an allocation from the Division of Bond Finance of the State of Florida or any successor thereto for issuance of the Bonds to finance the Project.

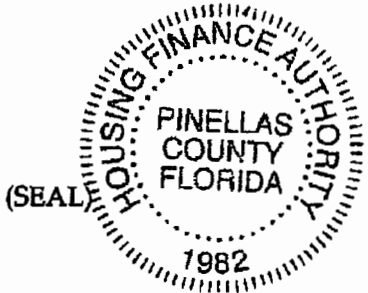
SECTION 9. In the event that the Bonds are not issued and sold and the transactions contemplated hereby are not closed within the time limit permitted by the confirmation of an allocation (referred to in 8(h) above) for any reason whatsoever and whether or not as a result of any failure to find one or more purchasers for the Bonds, any default or failure of performance by the Authority, the inability of the Authority to issue and sell the Bonds or the failure or inability of the Authority and the Owner to agree to the terms and conditions of the agreements, instruments and other documents provided for herein or contemplated hereby, the Owner agrees unless waived in the sole discretion of the Authority that:

(a) The Owner will (i) pay all its costs and expenses, including any fees due any attorneys, financial agents or others employed by the Owner, (ii) pay the reasonable fees and expenses of bond counsel, and (iii) reimburse the Authority for all reasonable out-of-pocket costs and expenses, including reasonable fees and expenses of the Authority's counsel and bond counsel, which the Authority may have incurred in connection with or contemplated by this Memorandum of Agreement.

(b) The Owner will indemnify and hold the Authority, and the Authority's members, officers, employees and agents, harmless against any liabilities, allegations or claims of loss or damage (including attorneys' fees and expenses) pertaining to the Project, the Bonds, or any transaction contemplated hereunder, or arising out of or predicated upon this Memorandum of Agreement, any action or non-action taken or omitted in reliance upon this Memorandum of Agreement, or any default or failure of performance hereunder.

SECTION 10. No covenant or agreement contained in this Memorandum of Agreement or the Bonds, the trust indenture, the financing agreement, or in any other instrument relating to the Bonds or the Project, shall be deemed to be a covenant or agreement or any member, officer, employee or agent of the Authority in an individual capacity, and neither the members or any other officer of the Authority executing the Bonds or any such agreements or instruments shall be liable personally thereon or be subject to any personal liability or accountability by reason thereof.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement and affixed their respective seals, as of the date first written above.



HOUSING FINANCE AUTHORITY OF PINELLAS
COUNTY, FLORIDA

By: 
Rodney S. Fischer, Chairman

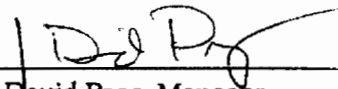
ATTEST:


[Assistant] Secretary

SP CLEARWATER APARTMENTS LLC, a Florida
limited liability company,

By SP CLEARWATER APARTMENTS
MANAGER, LLC, Florida limited liability
company, as its manager

By SP AND MS, LLC, a Florida limited liability
company, the sole member of the manager,

By: 
J. David Page, Manager