

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2005-046 VW

HATTON HOUSE SENIOR HOUSING PARTNERS, LTD,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

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**HATTON HOUSE'S PETITION FOR MODIFICATION OF ITS OWNERSHIP  
STRUCTURE AND FOR WAIVER OF COMBINED DEBT SERVICE COVERAGE  
REQUIREMENTS UNDER RULES 67-48-012(2)(g) AND 67-48.002(31)**

Petitioner Hatton House Senior Housing Partners, Ltd. ("Hatton House") petitions Respondent Florida Housing Finance Corporation ("Corporation") for a waiver of minimum combined debt service coverage ("DSC") requirements, and for a modification of its ownership structure. In support of its Petition, Hatton House states:

**A. FACTS COMMON TO REQUEST FOR MODIFICATION OF  
OWNERSHIP STRUCTURE AND WAIVER OF DSC  
REQUIREMENTS**

1. The name, address, telephone and facsimile numbers of Petitioner and Petitioner's Qualified Representative are:

Hatton House Senior Housing Partners, Ltd.  
c/o The Partnership, Inc., General Partner  
Attention: John Corbett, President and CEO  
2001 West Blue Heron Boulevard  
Riviera Beach, Florida 33404  
Telephone: 561-841-3500, ext. 1065  
Facsimile: 561-841-3555

2. Hatton House is the owner of a 76-unit multi-family rental apartment complex known as The Hatton House (the "Hatton Development"). The Hatton Development serves the elderly population in Sneads, Jackson County, Florida, and surrounding areas.

3. The waivers being sought are permanent in nature.

4. Should the Corporation have questions or require any additional information, Hatton House is available to provide any additional information necessary for consideration of this Petition.

**B. WAIVER OF DSC REQUIREMENTS**

5. Hatton House realleges and incorporates Paragraphs 1 through 4 as though fully set forth herein.

6. As a result of cost overruns and extraordinary and unanticipated expenditures for the development and operation of the Hatton Development, Hatton House timely applied for a loan from the State Apartment Incentive Loan ("SAIL") program through the 2002 Universal Application Cycle (the "Universal Cycle"). See Application Number 2602-1645 (the "Application").

7. In anticipation of the Corporation's approval of its SAIL Application, Hatton House and its limited partner Alliant Tax Credit Fund VIII, Ltd. ("Alliant") advanced in excess of \$2.5 million and continue to provide substantial operating funds for the Hatton Development. These funds were critical for the continued viability of the Hatton Development and the increasing affordable housing needs of elderly residents of Jackson County.

8. Although Hatton House was ranked as a successful SAIL loan applicant, revenues generated by the Hatton Development do not yet meet the Rule's 1.10 DSC requirements. Consequently, Hatton House's successful Application remains in credit underwriting and has not been approved.

9. Pursuant to Section 120.542, Fla. Stat. and Rules 28-104.001 through 28-104.006, F.A.C., Hatton House requests that the Corporation waive the Rule's DSC requirements and issue its final approval for the \$1 million loan requested in the Application.

10. Hatton House proposes that the SAIL loan be secured by a first mortgage on the Hatton Development.

11. The requested waiver will not adversely effect the Hatton Development, but a denial of the requested relief will result in a substantial economic hardship to Hatton House.

12. Hatton House seeks a variance from and waiver of the following Rules:

- a. Rule 67-8.002(111) that adopts the Universal Application Package by reference;
- b. Rule 67-48.004(14)(1) that prohibits a change to Applicants' funding requests;
- c. Rule 67-48.012(2)(g) that requires that "the minimum debt service coverage shall be 1.10 for the SAIL loan;" and
- d. Universal Application Instruction Part II.A.2.b.'s restriction against an Applicant changing its ownership structure before loan closing.

13. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the statute that created the SAIL Program. *See* § 420.5087, Fla Stat. (2005). The express purpose of the SAIL Program is to encourage the development of low income housing and the availability of housing affordable to very-low-income persons, including Florida's elderly population. § 420.5087, Fla. Stat. (2003).

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<sup>1</sup>The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the "Act"). *See also* Rule 67-40.020(1), F.A.C.

14. The following facts demonstrate the economic hardship and other circumstances which justify a waiver of the Rule's minimum DSC:

- a. The Hatton Development was initially developed by Tax Credit Senior Properties, LLC. (the "Developer"). As part of the acquisition and development process, the Developer obtained housing tax credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program"). § 420.5099, Fla. Stat. (2001), and deferred its Developer Fee for up to 10 years.
- b. In May, 2001, the Hatton Development began accepting residents from the Jackson County area.
- c. Hatton House applied for a SAIL loan to meet certain development shortfalls, received a successful ranking, accepted the Corporation's preliminary commitment and submitted to the Credit Underwriting and Loan Procedures. *See* Rule 67-48.0072, F.A.C.
- d. When Hatton House submitted its Application, it did so in the good faith belief that the Hatton Development would be a financially viable multi-residential unit affordable housing development.
- e. To save the Hatton Development from certain foreclosure, extraordinary measures were essential. These extraordinary efforts by Hatton House and its Limited Partner Alliant included, but were not limited to the following:
  - (i) Payment of \$1,258,000 by Alliant to purchase the promissory note secured by a first mortgage on the Hatton Development. Although the note was not satisfied, the mortgage loan was not foreclosed, and by avoiding a foreclosure sale, the Hatton Development remains a source of affordable housing;
  - (ii) Payment of \$410,000 to resolve issues with the contractor under the construction contract; and
  - (iii) An advance of more than \$1,000,000 for expenses such as interest payments, taxes, insurance and landscaping as well as other operational shortfalls for services essential for maintaining and operating the Hatton Development in accordance with the Corporation's guidelines.

- f. During the past three years, Hatton House and its Limited Partner Alliant have demonstrated their commitment to the Hatton Development through an almost \$3 million infusion of cash to save the Hatton Development and protect its affordable housing status.
- g. Hatton House has carefully managed its financial affairs and aggressively marketed the Hatton Development in the Jackson County area. Despite these efforts, revenues generated by the Hatton Development have not yet achieved the required 1.10 DSC. Consequently, Hatton House's Application remains in Credit Underwriting.
- h. At this juncture, however, without a waiver of the Rule's DSC requirements and without additional funds for operational shortfalls and to reimburse a portion of the unanticipated financial contributions by Hatton House and Alliant, it may no longer be financially feasible to continue operating the Hatton Development as an affordable housing development.
- i. Hatton House is committed to the Hatton Development and firmly believes that with the SAIL loan, it will continue as a successful affordable housing development and can achieve the 1.10 DSC. Consequently, Hatton House is ready, willing and able to secure the requested SAIL loan by a first mortgage on the Hatton Development and to obtain a subordination of the existing mortgage held by Alliant.
- j. By waiving the Rule's DSC requirement, Hatton House will receive funding necessary to insure that affordable residential housing is available for the low-income elderly residents in the Jackson County area.

15. As demonstrated above, the requested Rule Waiver serves the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to very-low-income elderly persons.

16. Hatton House and Alliant "stepped up to the plate," with an almost \$3 million cash infusion to save the Hatton Development from foreclosure and to maintain and operate the Hatton Development. By granting the requested Rule Waiver, the Corporation would recognize principles

of fundamental fairness and the economic realities of developing, operating and maintaining affordable rental housing. This recognition would promote participation by owners, such as Hatton House, in meeting the Act's purpose of providing affordable housing in an economical and efficient manner. Owners, such as Hatton House, would not be placed in the untenable and unavoidable position of undertaking extraordinary and unanticipated financial obligations, during the initial operations of a development, without a corresponding source of funds.

17. The requested waiver of the Rule's 1.10 DSC requirement will not adversely impact the Hatton Development or the Corporation.

**C. MODIFICATION OF HATTON HOUSE'S OWNERSHIP STRUCTURE**

18. Hatton House realleges and incorporates Paragraphs 1 through 4 as though fully set forth herein.

19. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Hatton House requests a waiver of Rule 67-48.002(111), F.A.C., as applied to Part II.A.2.b. of the Universal Application Instructions ("Instruction A.2.").

20. Rule 67-48.002(111) sets forth the applicable rule which is the subject of this Petition:

"Universal Application Package"... means the forms and instructions, obtained from the Corporation ... which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). The Universal Application Package is adopted and incorporated herein by reference...

21. Instruction A.2. of the Universal Application Package provides that:

If applying for MMRB, SAIL or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

22. The following facts demonstrate the economic hardship and other circumstances which justify Hatton House's request for a waiver of Instruction A.2's restriction against a material change in its ownership structure:

- a. In its Application, Hatton House's general partner is identified as RHT Hatton House Partners, Ltd. ("RHT Hatton"). See Application at Exhibit 9.
- b. Hatton House discovered that its general partner RHT Hatton failed to perform its duties with respect to the Hatton Development. Consequently, it became necessary to remove RHT Hatton as general partner of Hatton House.
- c. At all times material, and as early as June 20, 2002, Hatton House informed the Corporation of its situation with RHT Hatton, and of a change of its management company to The Partnership, Inc. In several instances, the Corporation communicated and dealt directly with The Partnership, Inc., through its president John Corbett.
- d. By letter dated November 14, 2002, Hatton House formally requested that the Corporation consent to change its general partner from RHT Hatton House Partners, Limited Partnership, to H House, Inc, and to change the management company at Hatton House to the Partnership, Inc. See November 14, 2002 correspondence to Kerey Carpenter, Esq. and Ed Busansky, which is attached hereto as Exhibit A.
- e. Hatton House has been unable to locate documentation from the Corporation authorizing the change in general partner and in management. Consequently, in an abundance of caution, Hatton House herein expressly requests the Corporation's consent to

substitute The Partnership, Inc., as its general partner, in place of RHT Hatton House Partners, Ltd.

- f. The modification of the ownership structure is requested solely to reflect the replacement of an ineffective general partner with the interim partner who has the expertise and experience to proceeding with the Hatton Development.
- g. The requested Rule waiver will not adversely impact completion of the Hatton Development. However, a denial of the requested waiver would result in substantial economic hardship to Hatton House.

**D. CONCLUSION**

WHEREFORE, Petitioner Hatton House Senior Housing Partners, Ltd. respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive Rule 67-48.012(2)(g)'s 1.10 Debt Service Coverage requirements such that no specific debt service coverage is required for the SAIL loan to the Hatton Development;
- C. Waive Universal Application Instruction Part II.A.2.b.'s restriction against changing its ownership structure before loan closing by allowing Hatton House to remove RHT Housing Partners, Ltd., the general partner identified in the Application, and substitute The Partnership, Inc., as the general partner for Hatton House; and
- D. Grant such further relief as may be deemed appropriate.

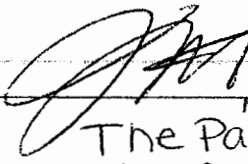


Respectfully submitted,

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Qualified Representative for  
Hatton House Senior Housing Partners, Ltd.

By:

 President & CEO  
The Partnership, Inc.,  
its General Partner

**CERTIFICATE OF SERVICE**

The Original Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this \_\_\_ day of November, 2005.

**SHUTTS  
&  
BOWEN  
LLP**

ATTORNEYS AND COUNSELLORS AT LAW

Gary J. Cohen  
Direct Phone (305) 347-7308  
Direct Fax (305) 347-7808  
E-Mail Address: goohen@shutts-law.com

November 14, 2002

Kerey Carpenter, Esq.  
Florida Housing Finance Corporation  
227 North Bronough Street  
Suite 5000  
Tallahassee, Florida 32301

Mr. Ed Busansky  
First Housing Development Corporation  
The Westshore Center  
1715 N. Westshore Boulevard  
Suite 375  
Tampa, Florida 33607

RE: Hatton House (1999-069C/2002-164S) and Crane Creek (1999-070C/2000-002C)

Dear Ms. Carpenter and Mr. Busansky:

I hope all is well with both of you.

I write as counsel for both of the above-referenced partnerships. Both Hatton House and Crane Creek received 1999 preliminary allocations of housing tax credits (Crane Creek also received a binding commitment for 2000 housing credits since it was not fully funded in 1999). Hatton House was recently awarded a preliminary SAIL allocation of \$1,000,000, and a \$10,000 check payable to First Housing Development Corporation was recently sent to the credit underwriter. The purpose of this letter is to advise as to a change in the identity of the general partner and a change of the identity of the management agent for both transactions, as more fully explained below.

With respect to the Crane Creek transaction, the former general partner (RHT Crane Creek Partners, Ltd.) has withdrawn and a new general partner (C Creek, Inc.) has been admitted. C Creek, Inc. is an affiliate of the investor limited partner. The former general partner (RHT Crane Creek Partners, Ltd.) has willingly withdrawn from its general partner position, as is indicated in the attached documentation (Second Amendment to Amended and Restated Agreement of Limited Partnership of Crane Creek Senior Housing Partners, Ltd.; and Certificate of Amendment to Certificate of Limited

**EXHIBIT**

"A"

Kerey Carpenter, Esq.  
Mr. Ed Busansky  
November 14, 2002  
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Partnership of Crane Creek Senior Housing Partners, Ltd. filed with Florida Secretary of State). As was indicated in prior correspondence submitted to FHFC, the management company has been changed to The Partnership, Inc. (see attached correspondence forwarded to FHFC on June 20, 2002).

With respect to Crane Creek, the purpose of this letter is to request formal consent of FHFC to the change in general partner and the change in management company. My understanding of the Rule and application in effect for 1999 transactions is that the general partner cannot be changed until after the earlier to occur of receipt of preliminary or final credit allocation. Since preliminary allocation was received in 1999, this change in general partner should be permitted without further FHFC Board action. I understand approval of a change in management company occurs at FHFC staff level.

Similarly, with respect to the Hatton House transaction, the identity of the general partner has changed from RHT Hatton House Partners, Limited Partnership to H House, Inc. H House, Inc. is an affiliate of the investor limited partner. The former general partner of Hatton House has willingly withdrawn from its general partner position as is indicated in the attached documentation (Certificate of Amendment to Certificate of Limited Partnership of Hatton House Senior Housing Partners, Ltd. filed with the Secretary of State, and the Second Amendment to Amended and Restated Agreement of Limited Partnership of Hatton House Senior Housing Partners, Ltd.) of Hatton House. Similarly, Hatton House previously notified FHFC of the change in management company at Hatton House to The Partnership, Inc. on June 20, 2002 (letter enclosed).

By this letter, Hatton House formally requests FHFC consent to the change in general partner and the change in the management company. As was the case with Crane Creek, we do not believe that formal FHFC Board approval is necessary for these changes.

The initial invitation to credit underwriting for the Hatton House SAIL loan was forwarded to Mr. Cliff Singleton, a minority shareholder of the former general partner which has now withdrawn from the partnership. Please forward all future correspondence pertaining to both Crane Creek and Hatton House transactions to Mr. Warren Harrison, Alliant Asset Management Company, LLC, 21550 Oxnard Street, Suite 1020, Woodland Hills, CA 91367, telephone 818-668-6800, facsimile 818-6682828, with a copy to Gary J. Cohen, Esq., Shutts & Bowen LLP, 1500 Miami Center, 201 South Biscayne Boulevard, Miami, FL 33131, telephone 305-347-7308, facsimile 305-347-7808.

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SHUTTS & BOWEN LLP / 1500 MIAMI CENTER / 201 SOUTH BISCAYNE BOULEVARD / MIAMI FLORIDA 33131 / (305) 358-6300

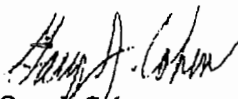
Kerey Carpenter, Esq.  
Mr. Ed Busansky  
November 14, 2002  
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Both Hatton House and Crane Creek are finalizing their final tax credit cost certifications. In order to submit the cost certifications, certain documentation previously forwarded to Mr. Cliff Singleton needs to be sent to the current general partners (Creek, Inc. and H House, Inc.) care of Warren Harrison at the address set forth above. In particular, the Extended Low-income Housing Agreements for both transactions and the cover letters sent to Mr. Singleton for both transactions setting forth the amount of the compliance monitoring fee needs to be re-sent to Mr. Warren Harrison at the address referenced above, so that both partnerships may shortly submit their final cost certification.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions.

Sincerely,

SHUTTS & BOWEN LLP



Gary J. Cohen

GJC:kad  
Enclosures

cc: Warren Harrison

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