

**PETITION TO WAIVER FROM THE REPORTING REQUIREMENTS, AUDITED FINANCIALS FOR YEARS PRIOR TO 2004, AND REQUEST TO REPLACE THE GENERAL PARTNER.**

1. Petitioner: BCCC Inc.  
One Boston Place  
Boston, MA 02108
2. Respondent: Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1239  
Telephone: (850) 488-4197  
Facsimile: (850) 488-9809
3. Qualified Representatives: Lovey T. Clayton  
General Partner/ Managing Agent  
1615 NW 1<sup>st</sup> Avenue  
Florida City, FL 33034  
Telephone: (786) 295-0044  
Facsimile: (305) 246-5821
- Wendy Lobos  
Managing Agent  
1615 NW 1<sup>st</sup> Avenue  
Florida City, FL 33034  
Telephone: (786) 236-9376  
Facsimile: (305) 246-5821
- Karen Calhoun  
Boston Capital/ Senior Asset Manager  
One Boston Place  
Boston, MA 02108-4406  
Telephone: (617) 624-8855  
Facsimile: (617) 624-8999
4. Statute Implemented by the Rule: Section 420.5087 Florida Statute
5. Action Requested: Petitioner requests waiver from Rule 67-48.006(6), Rule 67-48.006(7), Rule 67-48.010(6)(a), Rule 67-48.002(3), and 67-48.004(14).
6. Statement of Facts Justifying Request for Waivers:
- Carib Management produced financial records and reports for Park Green Ltd, as agreed in the 1998 Management Agreement for fiscal years 1999 and 2000. As of January 1, 2001, the General Partners, Julio Berrones and Rene Morales were under the understanding that Carib Management would complete the compliance reports, financial statements, and audits as required by contract.
  - Carib Management ended their contract with Park Green Ltd. on March 1, 2001.
  - The General Partners were not involved in the management of the property and knew very little about compliance and reporting requirements.
  - In May of 2001, the General Partners contacted Lovey T. Clayton, Guarantor for Park Green Ltd and General Partner of Howard Park Ltd, asking for referrals for a new management company.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

m. J. [Signature] DATE: 4/20/04

- Howard Park Ltd. at the time, was in the process of interviewing several Management Companies, none of which agreed to manage the property. Therefore, no referral could be made to Park Green Ltd.
- In December of 2001, Howard Park Ltd contacted Park Green Ltd to offer management services. By that time Howard Park Ltd. had become a certified self-management property.
- Ms. Wendy Lobos, of Howard Park Ltd., began the process of collecting information from tenants to submit all outstanding reports to Florida Housing. She also contacted Averett, Thomas, Durkee (CPA) to complete the outstanding audits.
- Averett, Thomas, Durkee requested a \$3,000 retainer check in order to conduct the outstanding audits. Park Green Ltd. was unable to pay this amount and the CPA ended communication with Ms. Wendy Lobos.
- In December 2001, Mr. Julio Berrones stopped communication with Ms. Wendy Lobos. After that point she was unable to access any information necessary to complete the reporting requirements.
- Boston Capital, Florida Housing, First Housing, Mr. Lovey Clayton, and Ms. Wendy Lobos made unsuccessful attempts to contact Mr. Julio Berrones throughout 2002 and 2003.
- In November of 2003, Mr. Julio Berrones contacted Ms. Wendy Lobos in an attempt to re-establish a working relationship.
- Ms. Wendy Lobos agreed to work with Park Green Ltd. under the condition that Mr. Julio Berrones become more involved with the property in an effort to bring resolution to all non-compliance issues.
- The main focus was to pay all outstanding debts that the development owed to First Housing. Mr. Julio Berrones was in danger of losing the property which had already been taken out of the Tax Credit Program due to the issuance of IRS form 8823.
- In December 2003, Mr. Julio Berrones promises to pay the debt in full before December 31, 2003. The payment was never made.
- Mr. Julio Berrones then makes a second promise to pay by second week in January 2004, that deadline was also missed.
- In February of 2004, BCCC, Inc., the Special Limited Partner, stepped in as the co-General Partner and removed Mr. Julio Berrones as General Partner and management agent, effective immediately. BCCC, Inc., assigned management responsibilities to Mr. Lovey Clayton and Ms. Wendy Lobos, pending approval from Florida Housing.
- Mr. Lovey Clayton has tried several times throughout the past three years to help Mr. Julio Berrones get Park Green out of non-compliance status. Mr. Berrones would accept the help but then he would not disclose vital information to Mr. Clayton or Ms. Lobos. In order to successfully bring the property out of compliance, financial and tenant information plus other property documentation was needed. Ms. Lobos had to rely on Mr. Berrones disclosing that information to her in order to complete her assignments, which never happened. Mr. Berrones would promise full cooperation and never follow through. Mr. Clayton did not know the severity of the non-compliance because he was never copied on any correspondence between Mr. Berrones and Boston Capital and Florida Housing.
- Mr. Lovey Clayton cannot recover past tenant information, financial records, or property documentation to be able to satisfy any outstanding reports on the property. There have not been any records prepared for the property since Carib Management left Park Green

Ltd. Mr. Berrones could not produce any of the reports mentioned because of lack of information. Mr. Clayton cannot account for tenant occupancy or rent revenue, which is needed to complete most monitoring reports.

- Mr. Lovey Clayton did not have access to Park Green's bank account or files. Mr. Clayton was never listed as an authorized representative of Park Green and therefore had no authority to have bank statements, financial records, or tenant information disclosed to him without first having permission from Mr. Berrones. All of the information for Park Green was kept at Mr. Berrones' office which was also his place of residency.
- The cost of research to complete all information being required by Florida Housing for years prior to 2004 would create a substantial financial hardship for the new General Partner (pending approval). The cost of completing 3 years worth of audits alone was estimated to be \$29,000, which would include any financial records that would need to be reproduced with legal counsel. The personnel cost would exceed what is appropriated by budgets established by Boston Capital. Park Green has monthly revenue of \$4,000 which is now being used to cover current year expenses. The audit alone would drain the financial resources and would put Park Green further into debt from which it could not recover.
- Boston Capital requests to replace Mr. Julio Berrones (GP) due to lack of non-compliance for all the actions aforementioned.
- Boston Capital requests that Mr. Lovey Clayton be the new General Partner for Park Green Ltd.
- All outstanding debt with Florida Housing has been satisfied.

7. Purpose Justification: Waiving all outstanding reports would allow Mr. Lovey Clayton to effectively begin to manage Park Green Ltd. It is an impossible task to account for all past activities at Park Green Ltd.

8. Type of Waiver: One-time waiver

Dated this 16th day of April 2004.

Petitioner:

BCCC, INC.

By: 

Marc M. Teal, Senior Vice President

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING  
FINANCE CORPORATION

SHA ASSOCIATES, LTD., a Florida  
limited partnership,

Petitioner,

vs.

APPLICATION NO. 2002-135BS

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR VARIANCE  
FROM RULE 67-48.010(4), F.A.C.**

SHA Associates, Ltd. ("Petitioner") hereby petitions the Florida Housing Finance Corporation ("Corporation") for a variance from Rule 67-48.010(4)(a), Florida Administrative Code. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104.002, Florida Administrative Code.

**The Petitioner**

1. The address, telephone number and facsimile number of the Petitioner are:

SHA Associates, Ltd.  
c/o JDF, LLC  
599 West Putnam Avenue  
Greenwich, CT 06830  
(203) 413-0330

2. The address, telephone number and facsimile number of the Petitioner's representative are:

Maureen Daughton, Esq.  
Broad and Cassel  
215 South Monroe Street, Suite 400  
Tallahassee, Florida 32301  
(850) 681-6810

3. Petitioner successfully applied for Multifamily Mortgage Revenue Bonds (“MMRB”) and State Apartment Incentive Loan (“SAIL”) financing during the 2002 Universal Application Cycle - Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentives Loan (SAIL) Program; and Housing Credit (HC) Program. The MMRB and SAIL financing was obtained to finance a portion of the costs of the acquisition, construction and equipping of a multifamily residential rental apartment complex to be known as Spring Haven Apartments (the “Development” or the “Project”). The financing structure for the Development consists of a first mortgage loan from the Corporation for tax-exempt MMRB proceeds, a second mortgage loan from SunTrust Bank for a taxable loan, and a third mortgage loan from the Corporation for the SAIL proceeds. This financing structure was detailed in the Final Review Report dated April 30, 2003, as approved by the Corporation’s Board on May 2, 2003, and in the Revised Final Report dated May 28, 2003, as approved by the Corporation’s Board on June 20, 2003, both prepared by Seltzer Management Group, Inc. With this financing structure, credit enhancement for the tax-exempt MMRB is provided via a direct pay credit enhancement instrument from Fannie Mae, with Fannie Mae relying on a letter of credit from SunTrust Bank during the construction period. The taxable loan being provided by SunTrust Bank will be assigned to Fannie Mae at conversion to permanent financing. The taxable loan allows the Petitioner to lock in an interest rate on an otherwise variable rate loan. Accordingly, the credit enhancer of the Bonds, while having the ability to enhance both tax-exempt and taxable variable rate debt, is only enhancing the variable rate tax-exempt MMRB and providing the taxable portion via a second mortgage loan

rather than enhancing taxable bonds. The MMRB, SunTrust Bank and SAIL loan closings for this Development occurred on March 30, 2004.

**The Rule From Which Variance Is Sought and Action Requested**

4. Petitioner requests a variance from a portion of Rule 67-48, Part II (§§ 48.009-48.013), Florida Administrative Code (the "SAIL Rule"). More specifically, Petitioner is seeking a variance from what is designated as Terms and Conditions of SAIL Loans, subsection (4)(a) of Rule 67-48.010 (2002), F.A.C. That section of the Rule provides:

(4) The loans described in Rule 67-48.010(3)(a), and (b), and (c), F.A.C., above shall be repaid from all Development Cash Flow, and if the SAIL loan is not a first mortgage loan, each year, subject to the provisions of paragraph (6) below, Development Cash Flow shall be applied to pay the following items in order of priority:

(a) First mortgage fees and debt service;

\* \* \*

**Statute Implemented By The Rule**

5. The statute that the Rule is implementing is Section 420.507, Florida Statutes.

**Petitioner Requests A Variance Of The Rule Set Forth Above For The Following Reasons**

6. (a) Prior to 2002, the SAIL Rule provided that the SAIL loan had to be in a first or second lien position. See Rule 67-48.010(2) (2001). For purposes of the 2001 SAIL Rule, two prior mortgages that secured the same indebtedness and credit enhancement fees were considered to be in a single, prior position. See Rule 67-48.010(2) (2001). The SAIL loan payment provision of the 2001 SAIL Rule allowed for repayment of debt service on a first mortgage loan prior to repayment of SAIL loan debt

service. See Rule 67-48.010(4)(a) (2001). Thus, under the 2001 SAIL Rule, the SAIL mortgage was required to be in a second lien position, and payment of first mortgage debt service prior to SAIL debt service was consistent with the Rule's mortgage lien priority requirement.

(b) The SAIL Rule adopted for the 2002 application cycle provided that the SAIL loan was approved to be in a first, second or other subordinated lien position (emphasis supplied), Rule 67-48.010(2), F.A.C. (2002). However, the payment provision of the 2002 SAIL Rule was not likewise modified to reflect repayment of debt service on a first or second mortgage prior to payment of a SAIL loan in a subordinate lien position. With the change to the 2002 SAIL Rule to allow the SAIL loan to be in a subordinate position beyond a second lien position, the 2002 SAIL Rule became inconsistent in that the payment structure did not change to allow the subordinate SAIL loan debt service payments to fall subsequent to prior mortgage debt service payments.

(c) The financing structure of the Development, which reflects the SAIL loan in a subordinate lien position to the first and second mortgage, was approved by the Corporation's Board of Directors on May 2, 2003, and again on June 20, 2003. With that approval, Petitioner proceeded with the transaction as structured, and scheduled a March 29-30, 2004, closing in Tallahassee, Florida. SunTrust Bank, upon discovering that although it was in a second lien position, it would not receive payment of its second mortgage loan debt service prior to payment of debt service on the subordinate SAIL loan, agreed to close the transaction upon the condition that Petitioner petition the Corporation for a Rule variance to permit payment of debt service on the second mortgage prior to payment of debt service on the subordinate SAIL loan. Additionally,

Fannie Mae, through its servicer, GMAC Commercial Mortgage Corporation, the ultimate holder of the second mortgage loan upon conversion of the Development to permanent financing, requires as a condition to conversion that the SAIL loan be subordinated, in form satisfactory to Fannie Mae, to the second mortgage loan. The approved form of subordination requires that the SAIL loan lien priority, as well as the payment priority, be subordinated. Without that subordination, Fannie Mae will not permit the loan to convert to permanent financing on the documentation currently in place.

(d) The repayment language contained in the 2002 SAIL Rule creates a substantial hardship in that the financing structure ensuring payment of the first and second mortgages prior to payment of debt service on the SAIL loan has already been approved. Petitioner proceeded to close the financing for the Development based on the Corporation's approval of the financing structure. In the event Petitioner's petition is not granted to allow the payment of debt service as approved by the Corporation, Petitioner will be required to repay the second mortgage loan in order to convert the deal to permanent financing, which will result in Petitioner having to repay all outstanding principal and interest on the second mortgage loan (including the payment of a prepayment penalty premium) in order to convert to permanent financing for the Development, causing substantial hardship to Petitioner and risking the financial viability of the Development.

**Variance Will Serve the Underlying Purpose Of The Statute**

7. Petitioner believes that a variance of the Rule will serve the purposes of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation



Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in housing for persons of low income. The creation of the SAIL program was to provide first, second or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, non-profit and public entities, to provide housing affordable to very low income persons. (Section 420.508, Florida Statutes). The use of the term “other subordinated mortgage loans” demonstrates that it was, at a minimum, contemplated that debt service on first or second mortgages would have repayment priority. Petitioner structured its financing for the Development to ensure the economic viability of the Development. To prevent Petitioner from implementing the financing structure approved by the Board would serve to deter the economic viability of the Development by diverting financial resources from the operation and maintenance of the Development to repay debt obligations that were intended to be serviced over a 30-year period. Petitioner’s ability to develop the Development hinged on certain financial sources being available to Petitioner to complete the acquisition, construction, development and equipping of the Development. To deny Petitioner’s request for a Rule variance will result in substantial hardship to Petitioner, as one of the funding sources upon which the Petitioner relied to complete the Development will be no longer available to the Petitioner to cover its costs in developing the Development.

8. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rule if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the Rule variance is granted, the Petitioner will be subjected to a substantial hardship, which

will have a negative and unintended effect on the viability of an otherwise economically reasonable project.

**Type of Variance**

9. The Petitioner requests a permanent variance of the Rule as set forth above.

10. A copy of this Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Dated this 13 day of April, 2004.

**PETITIONER**

**SHA ASSOCIATES, LTD.**, a Florida limited partnership

By: SHA Housing, L.L.C., a Florida limited liability company, its general partner

By: TRG GP LLC, a Florida limited liability company, its managing member

By:   
Kristin M. Miller, President