

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Brookestone I, LP
(Brookestone I Apartments)

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FHFC Case No. 2016-033VW

**PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)
TO EXTEND THE CLOSING DEADLINE FOR A SAIL LOAN**

Petitioner Brookestone I, LP, pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, petitions the Florida Housing Finance Corporation (“the Corporation”) for a waiver of Rule 67-48.0072(4)(c), Florida Administrative Code, to extend the closing deadline of a SAIL loan, from August 14, 2016, to December 31, 2016. In support of this Petition, Petitioner states:

Identification of the Petitioner

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

c/o Southport Development, Inc.
5403 West Gray Street
Tampa, FL 33609
Attn: Scott Seckinger
Telephone: (727) 669-3660
Email: sseckinger@sphome.com

2. The address, telephone number, facsimile number and e-mail address of Petitioner's counsel are:

Lawrence E. Sellers, Jr.
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, FL 32301
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The Brookestone I Apartments Development

3. Petitioner timely submitted its application under RFA 2014-103-- Financing of Affordable Multifamily Housing Developments with SAIL Funding to be Used in Connection with Tax-Exempt Bond Financing and Non-Competitive Housing Credits-- for the Brookestone I Apartments (Application No. 2014-310S). The Application was approved, and on August 14, 2014, Petitioner was extended an invitation to enter credit underwriting. The letter of invitation includes a preliminary commitment for a SAIL loan in an amount up to \$3,050,000 and an ELI Gap loan in an amount \$750,000 (the "Loan").

4. The Loan is a critical part of the financing for the construction of the Brookestone I Apartments Development, to be comprised of 108 units, which is intended to serve low-income residents living in Leon County. There is an immediate need for this affordable housing, and Petitioner plans to commence construction on the Development shortly after closing.

5. On July 10, 2015, Petitioner requested a 12-month extension of the loan closing deadline of August 14, 2015, and the request was granted by the Board at its meeting on August 7, 2015. The current loan closing deadline is August 14, 2016.

6. Petitioner fully intended to close the Loan prior to this date; however, a change in the law¹ effectively prevented closing for some six months, until after July 1, 2016, leaving only a very small "window" for closing prior to the current loan closing deadline of August 14, 2016.

¹ The financial feasibility of the Development depends on the availability of the 30-percent "basis boost" for property located in a Qualified Census Tract. The Development is located in an area that initially qualified for this basis boost; however, due to a change in the law, the area was not eligible for the basis boost during the first half of 2016, i.e., until July 1, 2016, when it became a Small Area Difficult Development Area.

7. The loan is currently set to close on August 4, 2016, prior to the August 14 deadline, but a few matters remain outstanding (including local building approvals) that could briefly delay the closing beyond the current deadline. Accordingly, a short extension of the loan closing deadline may be required.

The Rule For Which The Waiver Is Sought

8. Petitioners request a waiver of Rule 67-48.0072(4)(c), Florida Administrative Code (the "Rule"). Specifically, Petitioners are requesting a waiver of the requirement that the Loan must close within two (2) years, to extend the loan closing deadline by an additional few months, to December 31, 2016.

9. The Rule provides, in relevant part, as follows:

**67-48.0072 Credit Underwriting and Loan Procedures
Revenue Bonds.**

(4) If the invitation to credit underwriting is accepted:

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months. ***. In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

Statutes Implemented By The Rule

10. The Rule implements Sections 420.5087, 420.5089 and 420.5099, Florida Statutes, which are all part of the Florida Housing Corporation Act, Sections 420.501-.55, Florida Statutes. The purposes of this Act include providing mortgage loans to sponsors to provide housing affordable to very low income persons, pursuant to the State Apartment Incentive Loan (SAIL) Program. See Section 420.5087, Florida Statutes.

The Specific Facts That Demonstrate A Substantial Hardship

11. A waiver shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate the principles of fairness. A "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. "Principles of fairness" are violated when the literal application of the rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

12. Here, Petitioner will suffer a substantial economic hardship if the waiver is not granted. To date, Petitioner has expended over \$1.3 million toward the Development. This will be lost if, as the Rule requires, the loan commitment is deemed void and the funds are de-obligated, as Petitioner is not able to go forward with the proposed Development without these funds.

13. As explained above, Petitioner intended to close the Loan prior to the current loan closing deadline (and indeed may yet do so); however, a change in the law resulted in a six-month delay in closing. Granting the requested waiver will not provide Petitioners with an unfair advantage over other applicants, as the scoring of the Application was not affected by the closing date.

The Requested Waiver Will Serve The Underlying Purpose of The Statute

14. A waiver of the Rule-- to allow additional time to close the loan--will serve the purpose of the statute that is implemented by the Rule. The stated purpose of the SAIL Program is to provide affordable housing to very-low income persons. See Section 420.5087, Florida Statutes. Likewise, the Florida Housing Finance Corporation Act, Section 420.501-.55,

Florida Statutes, was enacted in order to encourage private and public investment in facilities for persons of low-income. The granting of the requested waiver would serve this purpose of increasing the supply of affordable housing by facilitating the development of much needed affordable housing in Leon County.

Petitioner Requests A Permanent Waiver

15. Petitioner requests a permanent waiver.

Action Requested

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant the Petition and all relief requested herein;
- B. Grant a waiver of Rule 67-48.0072(4)(c), Florida Administrative Code, to extend the closing deadline for a SAIL loan, from August 14, 2016, to December 31, 2016.
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 14th day of July, 2016.



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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Petition for Waiver of Rule 67-48.0072(4)(c) the Closing Deadline for a SAIL Loan was filed by electronic mail with Kate Fleming, Agency Clerk, e-mail: kate.flemming@floridahousing.org; that a true and correct copy was provided by electronic mail to Hugh Brown, General Counsel, e-mail: hugh.brown@floridahousing.org Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, all on this 14th day of July, 2016.



Lawrence E. Sellers, Jr.