

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

BROOK HAVEN, LTD.,
a Florida limited partnership,

Petitioner,

vs.

FHFC CASE NO. 2006-018VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR VARIANCE OF
RULE 67-21.008(1)(b), FLORIDA ADMINISTRATIVE CODE (2005)**

BROOK HAVEN, LTD., a Florida limited partnership (“Petitioner”), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code (“F.A.C.”), hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a variance of Rules 67-21.008(1)(b), Florida Administrative Code (2005), which imposes certain conditions on mortgage loans issued by the Corporation under its Multi-Family Mortgage Revenue Bond (“MMRB”) Program. In support, Petitioner states the following:

THE PETITIONER

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

**Brook Haven, Ltd.
c/o JDF, LLC
340 Pemberwick Road
Greenwich, CT 06831**

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Maureen McCarthy Daughton
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THE RULE FROM WHICH VARIANCE IS SOUGHT

3. Petitioner requests waiver of Rule 67-21.008(1)(b), F.A.C. (2005), which mandates that each recipient of a mortgage loan shall provide for a fully amortized payment of the loan beginning on the earlier of 36 months after closing, or stabilized occupancy or conversion to permanent financing pursuant to the loan documents.

**STATUTES IMPLEMENTED
BY RULE 67-21.008(1)(b), F.A.C.**

4. Rule 67-21.008(1)(b), F.A.C. (2005), implements Sections 420.507 and 420.508, Florida Statutes. Section 420.507, Florida Statutes, authorizes the Corporation to, among other things, issue bonds for the provision of affordable housing; impose conditions respecting the granting of mortgage loans and make rules to carry out the purposes of and exercise any power granted by the Florida Housing Finance Corporation Act, Part V, of Chapter 420, Florida Statutes.¹ Section 420.508, Florida Statutes, authorizes the Corporation to, among other things, make and participate in the making of mortgage loans for permanent or construction financing of development costs of projects subject to specified conditions, and to establish terms of mortgage loans funded pursuant to Part V of Chapter 420, Florida Statutes. Pursuant to these provisions, the Corporation has adopted Rule 67-21.008, F.A.C. (2005), entitled "Terms and Conditions of MMRB Loans." Rule 67-21.008(1)(b), F.A.C. (2005), provides:

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

(1) Each Mortgage Loan for a Development made by the Corporation shall:

(b) Provide for a fully amortized payment of the Mortgage Loan in full beginning on the earlier of 36 months after closing, or stabilized occupancy, or conversion to permanent financing under the loan documents and ending no later than the expiration of the useful life of the property, and in any event, no later than 45 years from the date of the Mortgage Loan.

* * *

**JUSTIFICATION FOR GRANTING
VARIANCE OF RULE 67-21.008(1)(b), F.A.C.**

5. Petitioner applied for MMRB and State Apartment Incentive Loan (“SAIL”) financing in the 2005 Universal Application Cycle (Application Number 2005-027BS), and was awarded an allocation of MMRB and SAIL funds for the acquisition, construction and development of a 160-unit multifamily apartment complex located in Brooksville, Hernando County, Florida (the “Development”). Petitioner entered into credit underwriting and submitted a firm commitment for permanent financing through American Property Financing, Inc. (“APF”), as the delegated underwriting and servicing lender for Fannie Mae (the “APF Commitment”). The APF Commitment set forth the terms on which permanent financing would be made available to Petitioner, including a 5-year interest only period following conversion to permanent financing. However, because the Rule requires amortization to commence 36 months after closing, APF revised the APF Commitment to meet the requirements of the Rule, and the Credit Underwriting Report reflects the revised terms of the APF Commitment with respect to the commencement of amortization following the 36-month construction/stabilization period. At the April 21, 2006 meeting of the Corporation Board, the Corporation approved the Final Credit Underwriting Report (the “Underwriting Report”) for the Development. Petitioner seeks a variance from Rule 67-21.008(1)(b), F.A.C. (2005) to delay the start of the fully amortized

payment of the mortgage loan to the Corporation for a period of up to an additional 72 months beyond the 36 months after closing of the MMRB financing that is currently allowed under the Rule.

6. The Corporation is authorized by Section 120.54(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant variances to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Variances shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principles of fairness²; and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes. The application of this rule will have a material adverse effect on the viability of the Development.

7. In this case, strict application of Rule 67-21.008(1)(b), F.A.C. (2005) will create a substantial hardship for Petitioner. Petitioner has negotiated loan terms with its lender to allow sufficient time for rents to stabilize in today's market prior to servicing the principal on the debt. By stabilizing rents over a longer period of time, Petitioner is ensuring the economic viability of the Development and the ability of the Development to generate sufficient revenue to service the principal, interest, taxes and insurance for MMRB loan. Further, the variance will serve the underlying purpose of the statutes because the variance will ensure the viability of this affordable housing development by allowing Petitioner to proceed with a viable financing structure in a timely manner to acquire and construct the Development and thus continue the Corporation's purpose to provide decent, safe and affordable housing in Florida.

² "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to Rule 120.542(2), Florida Statutes.

TYPE OF VARIANCE

8. The Variance being sought is permanent in nature.

9. Should the Corporation have any questions or require additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

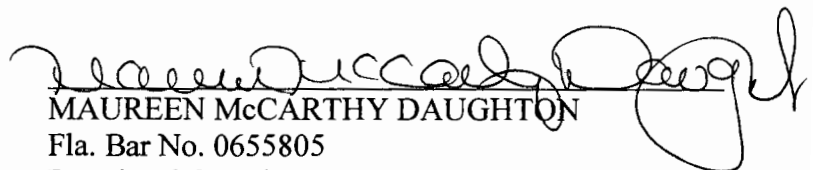
ACTION REQUESTED

10. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested variance of Rule 67-21.008(1)(b), F.A.C. (2005), to allow a delay of the start of payment of the fully amortized mortgage payments for a period of up to an additional 72 months beyond the 36 months after closing of the MMRB financing that is currently allowed under the Rule.

11. The Variance be permanent as to Petitioner.

12. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, as required by Section 120.542(5), Florida Statutes.

Respectfully submitted this 10 day of May, 2006.



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