

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

DOCKSIDE AT SUGARLOAF KEY, LLC

Petitioner,

FHFC Case No.: 2020-042VW

v.

APPLICATION NO. 2019-008CS

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.0072(21)(B)**

Petitioner, Dockside at Sugarloaf Key, LLC, a Florida limited liability company (the "Petitioner") submits its Petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-48.0072(21)(b), F.A.C. (the "Rule") in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2018-115 (the "RFA"), to allow Petitioner to extend the Firm Loan Commitment deadline for the State Apartment Incentive Loan ("SAIL") funding allocated to Petitioner pursuant to the RFA. In support of this Petition for Rule Waiver of Rule 67-48.0072(21)(b), F.A.C. (the "Petition"), Petitioner states as follows:

**A. Petitioner and the Development.**

1. The name, address, telephone, and facsimile numbers for Petitioner and its qualified representative are:

Dockside at Sugarloaf Key, LLC  
c/o Rural Neighborhoods, Inc.  
19308 SW 380<sup>th</sup> Street  
Florida City, FL 33034  
(305) 242-2142  
[SteveKirk@ruralneighborhoods.org](mailto:SteveKirk@ruralneighborhoods.org)

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Ste. 4100  
Miami, FL 33131  
Telephone: (305) 347-7308  
Facsimile: (305) 347-7808  
Email: [gcohen@shutts.com](mailto:gcohen@shutts.com)

2. Pursuant to the RFA, Petitioner timely submitted its application for low-income housing tax credits (“Credits”) and SAIL funding. See Application Number 2019-008CS. Petitioner was preliminarily awarded \$1,366,400.00 in SAIL funding under the RFA (the “SAIL Award”). The SAIL Award Firm Loan Commitment issuance deadline was January 2, 2020, which was twelve (12) months from the invitation to enter credit underwriting.

3. At the meeting of the Board of Directors of the Corporation (the “Board”) on December 13, 2019, the Board granted Petitioner’s request to extend the loan commitment issuance deadline to July 1, 2020.

4. The SAIL Award is a critical part of the financing for the new construction of 28 units of affordable family/workforce housing to be known as Dockside at Sugarloaf Key, serving income qualifying persons (the “Development”). The development is located in Monroe County.

5. The SAIL Award Firm Loan Commitment will not be issued by the July 1, 2020 deadline. Due to the impact of the COVID-19 pandemic (detailed more fully below), Petitioner is requesting an extension of the loan commitment issuance deadline until January 31, 2021.

**B. Rule from Which the Waiver is Sought.**

6. The relevant portion of the Rule in effect at the time the SAIL funds were awarded for which this waiver is sought, provides as follows:

“(21) Information required by the Credit Underwriter shall be provided as follows:

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(b) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within twelve (12) months

of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial twelve (12) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn." Rule 67-48.0072(21)(b), F.A.C. (2018).

**C. Statute Implemented.**

7. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that created the SAIL program. See §§ 420.5087, Florida Statutes (2018).

8. Pursuant to Chapter 120.542(1), Florida Statutes, "[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation." Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

"Variances and waivers 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 a rule would create a substantial hardship or would violate principles of fairness. For purposes

of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the 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 the rule.” Section 120.542(2), Florida Statutes.

9. In this instance, Petitioner meets the standards for a waiver.

**D. Justification for Petitioner’s Requested Waiver**

10. Petitioner was previously granted a six (6)-month extension to secure a firm loan commitment of the SAIL Award, extending such deadline to July 1, 2020. A further extension of the deadline to secure a firm loan commitment may not be granted without a waiver of the Rule.

11. Petitioner is requesting an extension of the deadline to secure a loan commitment from July 1, 2020 to January 31, 2021, to have additional time to complete permitting and credit underwriting for the Development. The reasons for this request are as set forth below.

12. The Florida Department of Health issued a Declaration of Public Health Emergency on March 1, 2020 followed by an Executive Order 20-52 by Governor DeSantis. President Donald Trump issued a major disaster declaration for the pandemic retroactive to January 20, 2020. The Development has suffered several substantive impacts attributable to the COVID-19 pandemic in 2020 which remain ongoing:

- (a) The Development has received criticism from nearby homeowners and HOAs in and around Sugarloaf Key. Accordingly, the Developer altered standard timeframes in seeking FHFC credit underwriting approval in order to mitigate these homeowner concerns at the outset to move the project forward. First, the Developer chose to hold two large public meetings inviting more than 600 residents and resulting in an estimated 100 and 80 attendees. There it presented its project concept and conceptual building types, and polled neighborhood reactions to various project elements including building size, outparcel use, vehicular access and management practices. Local elected officials attended each as part of the educational effort. Dockside incorporated elements of this feedback in the intervening months and will submit site plans and roadway improvements to the Monroe County Planning Commission and Florida Department of Transportation

in July 2020. Developer responsiveness to these concerns required substantially greater field survey work, traffic analysis and civil engineering.

- (b) FEMA, through a series of public meetings beginning January 27, 2020, issued proposed flood map changes throughout Monroe County, including significant changes to Sugarloaf Key. New maps, if approved, alter flood zones for the subject parcel newly designating its western portion to Zone VE, indicating FEMA's belief that there is a higher propensity for high velocity storm surge in the area. To construct the most resilient rental community possible, the Developer notified FHFC and took actions to mitigate and re-design previously drawn site plans to locate proposed building construction outside the newly designated Zone VE. These revisions required time consuming re-work.
- (c) State of Florida and local government COVID-19 orders caused essential businesses to close and requested employees to shelter-in-place in counties including Miami-Dade, Duval, Orange and Monroe in which the Development's land seller, co-developers, architect, biologist, legal counsel, accountants, and civil and traffic engineers operate their professional businesses and reside. Professional business interruptions ranged from closures to reductions in staff. Transition to remote operations resulted in reduced productivity and progress with respect to the Development's work products.
- (d) Monroe County officials closed highway access to the Florida Keys on March 22, 2020 to non-residents and persons without local business credentials. Lack of guidance on proof of business interests and confusion at US-1 roadblocks slowed or prohibited access and made site visits to and by design consultants and professionals burdensome until the June 1, 2020 reopening.
- (e) The Monroe County Board of County Commissioners and County Manager closed building permitting offices to the public on or about March 24, 2020 and remain closed until further notice. Beginning April 20, 2020 Monroe County - agreed to accept new permit applications limited to a Drop-Off system. The Monroe County Planning and Environmental Resources Department closed on a similar date and remained closed through June 1, 2020. Beginning June 1, 2020, Monroe County instituted a phased and changed approach to services. In the interim, community meetings required as part of planning commission approval were postponed. The Monroe County BOCC adopted a resolution enacting a 100-day temporary suspension of the acceptance and processing of applications to the Planning and Environmental Resources Department providing for an effective date of March 15 and ending June 23, 2020. This was subsequently lifted. These suspensions of service impacted the Development's ability to process, permit, obtain guidance and otherwise garner approvals necessary to obtain firm loan commitments among other project goals.
- (f) Inadequate access to Florida Department of Transportation officials and their external engineering consultants beginning in March 2020 limited informal guidance previously available and necessary to the project's accommodation of

neighborhood concerns. This precluded preliminary plan reviews forcing the Developer to complete full engineering plans to ascertain FDOT's willingness to approve US1 Overseas Highway access.

- (g) Final land acquisition has been delayed by the cumulative effect of these planning, permitting and design delays combined with business interruptions to local surveyors and appraisers reluctant to travel for on-site work.
- (h) It is not the impact of a singular impediment but the aggregate effect of the above that results in multiple state and local government departments and professionals being less accessible which has caused the delay in moving forward.

13. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred substantial costs to date toward ensuring that the Development proceeds to completion; (b) deprive Monroe County of the provision of much needed affordable workforce housing; and (c) violate principles of fairness. §120.542(2), F.S.

14. The requested waiver will ensure the availability of SAIL funding which will otherwise be lost as a consequence of the development delays described herein.

#### **E. Conclusion**

15. The facts set forth in Sections 11 through 12 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in permitting and revisions of plans and specifications for the new construction of the Development caused by COVID-19 and the loss of a substantial sum of money should the transaction not go forward.

16. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, Florida Statutes, 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 low income persons and households. Further, by granting the requested waiver, the Corporation

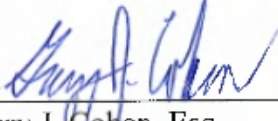
would recognize principles of fundamental fairness in the development of affordable rental housing.

17. The waiver being sought is permanent in nature. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

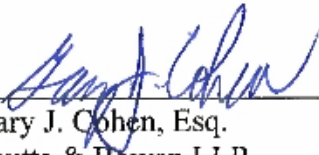
- A. Grant this Petition and all the relief requested therein;
- B. Grant a waiver of the Rule to extend the deadline to secure a firm loan commitment from July 1, 2020 to January 31, 2021, and not require that an additional extension fee be imposed; and
- C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

  
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Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
Counsel for Dockside at Sugarloaf Key, LLC  
200 S. Biscayne Blvd., Ste. 4100  
Miami, FL 33131  
Telephone: (305) 347-7308  
Fax: (305) 347-7808  
E-Mail: [gcohen@shutts.com](mailto:gcohen@shutts.com)

### CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 29<sup>th</sup> day of June, 2020.

  
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Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
Counsel for Dockside at Sugarloaf Key, LLC  
200 S. Biscayne Blvd., Ste. 4100  
Miami, FL 33131  
Telephone: (305) 347-7308  
Fax: (305) 347-7808  
E-Mail: [gcohen@shutts.com](mailto:gcohen@shutts.com)