

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

CASE NO. 2018-057VW

AMBAR KEY HOMES, LTD.  
Petitioner

vs.

FHFC APPLICATION: 2016-112  
REQUEST FOR APPLICATIONS: 2017-167BS

FLORIDA HOUSING FINANCE  
CORPORATION,  
Respondent

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**PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C.**

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner Ambar Key Homes, Ltd., a Florida limited partnership, submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of Rule 67-48.0072(21)(b), F.A.C. (2016) (the “Rule”) in effect at the time the Petitioner submitted its application in response to Florida Housing’s Request for Applications 2016-112, for SAIL Financing for the Construction of Workforce Housing in Miami-Dade County and Monroe County (the “RFA”). Petitioner seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. In support of its Petition, the Petitioner states as follows:

**A. THE PETITIONER**

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

Ambar Key Homes, Ltd.  
c/o The Vestcor Companies  
3030 Hartley Road, Suite 310  
Jacksonville, FL 32257  
Attention: Jason Floyd  
Telephone: 904-288-7822  
Facsimile: 904-260-9031  
E-Mail: [jfloyd@vestcor.com](mailto:jfloyd@vestcor.com)

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorney are:

Brian J. McDonough  
Stearns Weaver Miller Weissler Alhadeff & Sitterson  
150 West Flagler Street  
Suite 2200  
Miami, FL 33130  
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**B. THE DEVELOPMENT AND ITS FINANCING**

3. Florida Housing issued the RFA on October 21, 2016.

4. Petitioner timely submitted its Application in response to the RFA for the development named "Ambar Key Homes," located in Miami-Dade County (the "Development"). The Development will comprise 149 new construction and rehabilitated townhouse units for families. The Developer is Ambar3, LLC. Petitioner requested a SAIL of \$8.5 million and an annual 4% housing credit of \$177,885. The set asides consist of 5% at 28%; 40% at 60% and 55% at 80% area median income.

5. The FHFC Board approved the final scores and recommendations for the RFA on February 3, 2017 and directed staff to proceed with all necessary credit underwriting activities.

6. On April 24, 2017, FHFC staff issued a preliminary commitment letter and an invitation to enter credit underwriting to Petitioner, which stated that the firm loan commitment had to be issued within 9 months of the acceptance to enter credit underwriting. The acceptance was acknowledged on April 28, 2017, giving Petitioner a firm loan commitment issuance deadline of January 28, 2018. Per the Rule, applicants such as Petitioner were permitted to request one extension of up to 6 months to secure a firm loan commitment. Petitioner requested that extension on November 2, 2017.

7. The request was made to allow additional time to obtain civil and architectural plans, and to complete the underwriting process. Issues had slowed the progress due to volatility in the equity markets and development approvals due to Hurricane Irma.

8. At its December 8, 2017 meeting, the Board granted the request and extended the firm loan commitment issuance deadline from January 28, 2018 to July 28, 2018, subject to payment of the required non-refundable extension fee of one percent of the loan amount, pursuant to the RFA requirements.

9. During the extension period, Petitioner made progress, but has not fully caught back up to where it would have been absent Hurricane Irma. Petitioner has been further delayed in underwriting due to rising construction costs, which caused it to have to go back out to bid. While Petitioner is now under contract, the plan and cost review are not complete. The rising construction costs, and changes in the equity market, also forced Petitioner to change courses on its financing. Due to the foregoing, the credit underwriting report will not be available in time to present it at the Board's July 27 meeting, necessitating another extension.

10. The Development needs the sources of financing resulting from the contemplated tax-exempt financing and equity raised through the syndication of the resulting low-income tax credits in order for the Development to be financially feasible.

11. Petitioner is in need of a six-month extension of the credit underwriting period through and including January 28, 2019, in order for the credit underwriting report to be completed.

12. The requested waiver is permanent in nature.

**C. RULE FROM WHICH WAIVER IS SOUGHT**

13. Petitioner requests a waiver from the Rule, which provides:

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment

must be issued within nine (9) 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 Board 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 nine (9) 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.

*See* Rule 67-48.072(21)(b), F.A.C. (2016).

**D. STATUTES IMPLEMENTED BY THE RULE**

14. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),<sup>1</sup> Section 420.5087 (State Apartment Incentive Loan Program); Section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund); and Section 420.5099 (allocation of the low-income housing tax credit).

**E. JUSTIFICATION FOR REQUESTED WAIVER**

15. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

16. Petitioner's acceptance of Florida Housing's invitation to credit underwriting on April 28, 2017 means that a firm loan commitment for the Development would have initially been required to be issued to Petitioner by no later than January 28, 2018. Petitioner was granted a six-month extension of the firm loan commitment deadline, as allowed under the Rule, to July 28, 2018, in order to address delays caused in part by Hurricane Irma. Even though Petitioner has worked diligently to overcome these setbacks, additional delays resulted from a rise in construction costs and changes in the equity market, preventing the credit underwriting report from being available for the Board's next meeting. A further extension of the firm loan commitment deadline may not be granted without a waiver of the Rule.

17. Petitioner is requesting a six-month extension of the firm loan commitment deadline to ensure the credit underwriting report is available in time for the January 2019 Board meeting.

18. There are no obstacles known to Petitioner that would prevent Florida Housing's issuance of the firm loan commitment following delivery and approval of the credit underwriting report.

19. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA, or Florida Housing. A denial of the Petition, however, would: (a) result in substantial economic hardship to Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Miami-Dade County of essential work force housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness<sup>2</sup>.

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<sup>2</sup>“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “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 the rule. *See* Section 120.542(2), Florida Statutes.

*See* § 120.542(2), F.S. Additionally, the Development will serve as recovery housing for the Keys and South Florida, post-Hurricanes – a benefit that will not be available absent the requested extension.

20. If this Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction and the Development will not be constructed.

21. As discussed herein, Petitioner is requesting a second extension of the deadline for issuance of the firm loan commitment from July 28, 2018 to January 28, 2019, which request requires a waiver of the Rule.

22. The requested waiver will ensure the availability of SAIL and 4% HC financing which will otherwise be lost as a consequence of the pre-development delays described herein.

23. The foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the loss of a substantial sum of money should the transaction not go forward, and the loss of critical housing for Miami-Dade County and recovery housing for the Keys and South Florida.

24. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated above, the requested 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 low-income persons and households. Further, by granting the requested waiver, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing.

25. Should Florida Housing require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

**F. ACTION REQUESTED**

26. Petitioner requests the following:
- a. That Florida Housing grant Petitioner a waiver from Rule 67-48.0072(21)(b), Florida Administrative Code, extend the deadline for issuance of the firm loan commitment from July 28, 2018 to January 28, 2019, and to refrain from imposing an extension fee in relation to this short-term extension;
  - b. That Florida Housing grant the Petition and all the relief requested therein; and
  - c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
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By: s/ Brian J. McDonough  
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

The Petition is being served by electronic mail and hand-delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served via hand-delivery to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 5th day of July, 2018. .

*s/ Brian J. McDonough*  
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BRIAN J. MCDONOUGH, ESQ.