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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

THE LANDINGS AT SUGARLOAF KEY, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case No. 2025-014VW
APPLICATION NO. 2024-064CS

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C. (6/28/23)

Petitioner, The Landings 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. (2023) in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2023-212 (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 (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:

The Landings at Sugarloaf Key, LLC
c/o Rural Neighborhoods, Inc.
19308 SW 380th Street
Florida City, FL 33034
(305) 242-2142
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
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2. Pursuant to the RFA, Petitioner timely submitted its application for low-income housing tax credits ("Credits") and SAIL funding. See Application Number 2024-064CS ("Application"). Petitioner was preliminarily awarded $4,900,400.00 in SAIL funding under the RFA (the "SAIL Award"). The SAIL Award Firm Loan Commitment issuance deadline was originally September 15, 2024, which was twelve (12) months from the invitation to enter credit underwriting, which date was extended at the October 22, 2024 meeting of the Board of Directors of the Corporation ("Board") to March 15, 2025. It is the Corporation's policy that, since the extended deadline did not expire until after the Corporation's January 24, 2025 Board meeting, this petition for further extension of such deadline is timely filed for consideration at the March 28, 2025 Board meeting.

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

4. For the reasons explained more fully below, the SAIL Award Firm Loan Commitment will not be issued by the March 15, 2025 deadline.

B. Rules from Which the Waiver is Sought.

5. The relevant portions of the Rules in effect at the time the SAIL funds were awarded for which this waiver is sought, provide as follows:

(b) Rule 67-48.0072 provides that "(21) Information required by the Credit Underwriter shall be provided as follows:

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(b) For SAIL and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued by the date of the Board of Directors meeting immediately following twelve (12) months after the Applicant is invited to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve 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 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. (2023).

C. Statute Implemented.

6. The Rules for which a waiver is requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that created the SAIL program and provides for the allocation of Housing Credits. See §§ 420.5087 and §§ 420.5099(2), Florida Statutes (2023).

7. Pursuant to Chapter 120.542(1), Florida Statutes, "strict 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.

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

D. Justification for Petitioner's Requested Waiver

9. Petitioner was previously granted a six month extension to secure a firm loan commitment of the SAIL Award, extending such deadline to March 15, 2025. A further extension of the deadline to secure a firm loan commitment may not be granted without a waiver of the Rule.

10. Petitioner is requesting an extension of the deadline to secure a loan commitment from March 15, 2025 to September 15, 2025, to have additional time to complete permitting and credit underwriting for the Development. The reasons for this request are as set forth below.

11. The Development initially encountered delays in pre-development due to higher than anticipated construction costs. Managing construction prices in the Lower Florida Keys market has proved challenging given the limited number of trades and sources of critical materials such as concrete necessitating repeated approaches to various general contractors. Applicant has also worked with its design consultants to value engineer plans to make the Development more feasible while maintaining ESS construction. As a result of the foregoing, revised construction

bids have been received from multiple general contractors, and a contractor has been tentatively selected subject to reaching final contractual terms.

12. Applicant initially encountered delays in securing financing due to adverse economic conditions, high interest rates and lower than anticipated housing tax credit pricing. However, the economic conditions have improved such that Applicant is now in final negotiations for debt and equity financing. Applicant expects to enter into letters of intent with construction and permanent lenders and a tax credit investor by April 30, 2025.

13. Applicant has requested local governmental approvals related to two other prerequisite steps. ROGO extensions have been submitted to the Monroe County Board of County Commissioners, along with the requests for permit and impact fee waivers. Each are scheduled before the Monroe County Board of County Commissioners in April 2025. Building plans are ready for submission as soon as fee waivers are approved.

14. Applicant anticipates submitting its credit underwriting package in April 2025, and receiving FHFC Board approval of the final credit underwriting report at the June 13, 2025 FHFC Board meeting. Based on this estimated timeline, Applicant believe it will be able to achieve closing by the end of the third quarter of 2025.

15. 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.

16. As discussed above, the delays have been caused by circumstances outside Petitioner's control. As a result, the delay makes it impossible to meet the March 15, 2025 deadline for issuance of a firm loan commitment.

17. The requested waiver will ensure the availability of SAIL and Housing Credit equity funding which will otherwise be lost as a consequence of the development delays described herein.

E. Conclusion

18. The facts set forth in Sections 11 through 17 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the selection of a general contractor and the securing of debt and equity financing and the loss of a substantial sum of money should the transaction not go forward.

19. As demonstrated above, the requested waiver serves the purposes of Sections 420.5087 and 420.5089, 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.

20. 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 for an additional extension of the deadline to secure a firm loan commitment from March 15, 2025 to September 15, 2025; and

C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

Gary J. Cohen, Esq.
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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 10th day of March, 2025.

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