STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: THE LANDINGS AT SUGARLOAF KEY, LLC

FHFC Case No.: 2021-002VW

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ORDER GRANTING WAIVER FROM RULES 67-48.0072(21)(b), AND 67-48.002(96), FLORIDA ADMINISTRATIVE CODE AND SECTION II.K OF THE 2018 QUALIFIED ALLOCATION PLAN

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on January 22, 2021. On January 6, 20201 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(21)(B) and for Waiver of the Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations and Rule 67-48.002(96) (the "Petition). Notice of the Petition was published on January 7, 2021, in Volume 47, Number 04, of the Florida Administrative Register. On January 12, 2021, Florida Housing received public comments regarding the Petition from Stuart Schaffer on behalf of Sugarloaf Shores Property Owners Association, Inc., as managing member of Lower Density for Lower Sugarloaf, LLC. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION

/DATE: 1/22/2021

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL") funding and 9% Housing Tax Credits under Request for Applications 2018-115 (the "RFA"), to assist in the construction of a workforce housing Development in Monroe County, Florida to be known as The Landings at Sugarloaf Key (the "Development").

3. Rule 67-48.0072(21), Fla. Admin. Code (2018), provides:

> (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 an approved extension is utilized, for profit Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. Non-Profit Applicants may request to pay the extension fee at the time of closing. Any such

request must be made in writing to the Corporation. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

4. Rule 67-48.002(96), Fla. Admin. Code (2018), in pertinent part, adopted and incorporated by reference the 2018 Qualified Allocation Plan (the "QAP").

5. At Section II.K, the 2018 QAP, provides:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting

> affordable housing needs. A Development located in a HUD designated DDA or QCT at the time of original allocation may retain its designation as such.

(emphasis added)

6. The SAIL loan firm commitment issuance deadline was originally January 2, 2020, which was twelve months from the invitation to enter credit underwriting. On October 8, 2019, Petitioner and Florida Housing entered a Carryover Allocation Agreement ("Carryover Agreement") mandating that the Development be placed in-service by October 31, 2021.

7. On December 13, 2019, the Board approved Petitioner's first request to extend the firm loan commitment issuance deadline from January 2, 2020 to July 1, 2020. On July 17, 2020, the Board granted Petitioner's request to extend the loan commitment issuance deadline to January 31, 2021. Petitioner now asserts that the SAIL firm loan commitment will not be issued by January 31, 2021 deadline and the placed in-service deadline of October 31, 2021 cannot be met.

8. Petitioner contends that due to substantial opposition received from neighboring landowners in Monroe County to Petitioner's major conditional use application and the impact of the Covid-19 pandemic, Petitioner is requesting to return its 2019 Housing Credit allocation and obtain

an immediate allocation of 2021 Housing Credits and an extension of the firm loan commitment issuance deadline until January 31, 2022.

9. Petitioner states that it has and continues to face substantial opposition from organized entities and neighboring landowners in Monroe County to its major conditional use application causing the Developer and Applicant to retain planners, traffic engineers, biologists, legal counsel, and other professionals to establish an extensive record and address expressed concerns. Petitioner asserts that it held two voluntary, large public meetings on Sugarloaf Key in which it presented conceptual drawings and polled neighborhood reactions to design alternatives.

10. Petitioner participated in a mandatory community meeting and public participation on October 1, 2020 required by the Monroe County Planning and Environment Resources Department. Petitioner states that it also participated in a public Development Review Committee meeting on November 16, 2020 in which Monroe County presented its staff report recommending approval of requested conditional uses and heard public comment.

11. Petitioner also participated in a public meeting of the Monroe County Planning Commission on December 16, 2020 in which the conditional uses were approved 5-0 after active public participation. According to

Petitioner, entities opposed to this proposed action may appeal to the Florida Division of Administrative Hearings ("DOAH"). Petitioner asserts that it is unknown how long the DOAH process will take, but the pending legal appeal precludes Petitioner from taking certain development actions necessary to satisfy the Housing Credit requirements including the purchase of the subject property and initiating construction.

12. Petitioner asserts that the developer has responded to numerous requests from entities and individuals in opposition to the Development. Additionally, Petitioner states that the Developer and Applicant have been forced to respond to a series of correspondence addressed to potential Housing Credit investors, the assigned credit underwriting firm, and Florida Housing from entities in opposition to the Development. Petitioner asserts that this interference with the financial resources and credit underwriting process has caused significant delay and financial harm including legal costs to be borne by the Developer and Applicant.

13. Petitioner also cites to public health orders and pandemic-related delays as a cause of the slow-down and details those delays in paragraphs 22 through 27 of the Petition.

14. Section 120.542(2), Florida Statutes, provides in pertinent part:

> 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.

15. The Board finds that granting the requested waiver would not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing.

16. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

17. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of waiver of Rule 67-48.0072(21)(b), Fla. Admin. Code (2018), Section II.K of the 2018 Qualified Allocation Plan, and Rule 67-48.002(96), Fla. Admin. Code (2018) is hereby **GRANTED** to extend Petitioner's SAIL loan firm commitment deadline from January 31, 2021 to January 31, 2022 and to allow Petitioner to return its 2019 Housing Credits now and receive an immediate allocation of 2021 Housing Credits.

DONE and ORDERED this 22nd day of January 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.