**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

In Re: DOCKSIDE AT SUGARLOAF KEY, LLC

FHFC CASE NO.: 2022-005VW

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

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 21, 2022, pursuant to a "Petition for Waiver of Rule 67-48.0072(21)(b) ("Petition") and for Waiver of the Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations and Rule 67-48.002(96) (the "Petition). Florida Housing Finance Corporation ("Florida Housing") received the Petition on January 6, 2022, from Dockside at Sugarloaf Key, LLC ("Petitioner"). Notice of the Petition was published on January 7, 2022, in Volume 48, Number 05, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

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-

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 3/4/2022

115 (the "RFA"), to assist in the construction of a workforce housing Development in Monroe County, Florida to be known as Dockside 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.

6. Petitioner reports substantial opposition to affordable housing by local entities and neighboring landowners in Monroe County, requiring Developer and Applicant to retain planners, traffic engineers, biologists, legal counsel, and other professionals to manage.

7. Petitioner voluntarily held public meetings on Sugarloaf Key, where it presented conceptual drawings and polled neighbor reactions to design

alternatives. On October 1, 2020, Petitioner participated in a mandatory community meeting and public participation required by the Monroe County Planning and Environmental Resources Department in accordance with the Monroe County Land Development Code and on November 16, 2020 participated in a public Development Review Committee meeting where Monroe County presented its staff reports recommending the approval of requested conditional uses. On December 16, 2020, Petitioner participated in an extensive public meeting of the Monroe County Planning Commission, in which the conditional uses were approved unanimously.

8. On February 5, 2021, entities opposed to this action appealed to the Florida Division of Administrative Hearing ("DOAH"). DOAH subsequently affirmed the issuance of the major conditional use for the Development. On August 18, 2021, the entities who appealed the Planning Commission's Approval filed a Writ of Certiorari seeking to overturn the DOAH order. Petitioner filed a response on September 29, 2021. The opposing parties' reply brief was extended from October 29, 2021 to February 28, 2022 because the parties have reached tentative agreement on resolution of litigation, which allows Petitioner to proceed with the Development.
9. The Developer has also responded to many correspondence requests from corporations, LLC companies and individuals who oppose the project,

including requests for its charitable tax returns and audits. Both the Developer and Applicant have been forced to respond to a series of correspondences addressed to potential Housing Credit investors, the assigned credit underwriting firm and FHFC from entities in opposition of the project. The inference with financial sources and credit underwriting has caused significant delay and financial harm to both the Developer and Applicant. Due to the pandemic, the process in completing this project has been slowed down even further.

10. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

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

    a. 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.

12. Petitioner has demonstrated that the waiver is needed to efficiently serve families and workers. 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.

13. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:** Petitioner's request for a 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, 2022 to January 31, 2023 and to allow Petitioner to return its 2021 Housing Credits now and receive an immediate allocation of 2022 Housing Credits.

**DONE and ORDERED** this this 4th day of March, 2022.

Florida Housing Finance Corporation

By: _____
Chair

**Copies furnished to:**

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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.**