STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: THE LANDINGS AT SUGARLOAF KEY, LLC **FHFC Case No.: 2023-028VW**

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ORDER GRANTING WAIVER OF RULE 67-48.004(3)(e) AND (i) AND 67-48.0072(21)(b), FLA. ADMIN. CODE

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on March 10, 2023. On February 21, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Florida Administrative Code Rules 67-48.004(3)(e) and (i) and 67-48.0072(21)(b) (the "Petition") from The Landings at Sugarloaf Key, LLC (the "Petitioner"). Notice of the Petition was published on February 23, 2023, in Volume 49, Number 37, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

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

2. Petitioner successfully applied for funding under RFA 2018-115 SAIL Financing for the Construction of Workforce Housing for Hurricane

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann McManus DATE: 3/10/2023

Recovery in Monroe County to assist in the construction of The Landings at Sugarloaf Key in Monroe County, Florida (the "Development").

3. Rule 67-48.004(3) Fla. Admin. Code (2018), provides in relevant part:

> [N]otwithstanding any other provision of these Rules, the following as identified in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
>
> ... (e) Site for the Development...
>
> ... (i) Total number of units.

4. Rule 67-48.0072(21)(b), Fla. Admin. Code (2018), provides, in relevant part:

> (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 form 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.

5. Petitioner requests a waiver of the above rules to move its Development Site, and to extend the Firm Loan Commitment Deadline to July 31, 2023.

6. Petitioner has previous received multiple extensions to the Firm Loan Commitment deadline. The original deadline was January 2, 2020. On December 13, 2019, the Board extended this deadline to July 1, 2020. The Board subsequently granted further extensions to January 31, 2021, January 31, 2022, and lastly to January 31, 2023.

7. As grounds for this current request, Petitioner states that it has faced substantial opposition to the Development by local entities and landowners causing Developer to incur costs and delays to retain planners, traffic engineers, biologists, legal counsel, and other professionals. These groups have previously appeared at Board meetings and spoken in opposition to the Development. In addition to public meetings with local government

culminating in approval of the Development, local groups appealed the decisions to the Division of Administrative Hearings (DOAH). The Division issued its Final Order on July 22, 2021, ruling in favor of the Petitioner and local government. On August 18, 2021, the opposed local entities appealed this Final Order in the Circuit Court of Monroe County.

7. On January 4, 2023, the local entities and Petitioner entered into a settlement agreement which will permit Petitioner to proceed with the Development. That agreement provides for the relocation of the Development Site to an overlapping site to the east (which results in the relocation of the Development Location Point) a reduction of the Development site from 181,500 sq. ft. to 84,700 sq. ft., and a reduction of the Total number of units from 60 to 28. The new site is also located in a safer non-high velocity flood zone area. Due to the relocation of the site and the continued litigation, Petitioner also asks for another extension to the Firm Loan Commitment deadline to accomplish additional permitting and credit underwriting.

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

9. 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 were not granted.

10. 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," would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rules 67-48.004(3)e) and (i) and 67-48.0072(21)(b) Fla. Admin. Code (2018), is hereby **GRANTED** to permit relocation of the Development Site as set forth in the Petition, to reduce the total number of units from 60 to 26 and to extend the Firm Loan Commitment Deadline to July 31, 2023.

DONE and ORDERED this 10th day of March 2023.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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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.