STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SOUTHWICK COMMONS, LTD.

FHFC Case No.: 2022-060VW

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ORDER GRANTING WAIVER
OF RULE 67-48.0072(21)(b), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on December 9, 2022. On November 12, 2022, Florida Housing Finance Corporation ("Florida Housing") received a "Petition for Waiver of Rule 67-48.0072(21)(b)," and an "Amended Petition for Waiver of Rule 67-48.0072(21)(b)" (the "Petition") on December 5, 2022, from Southwick Commons, Ltd. (the "Petitioner"), to allow Petitioner to extend the firm loan commitment issuance deadline. Notice of the Petition was published on November 16, 2022, in Volume 48, Number 223, 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.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 12/9/2022

2. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL"), Extremely Low Income ("ELI") funding, and National Home Trust Fund ("NHTF") funding under RFA 2020-205 via Application Number 2021-269SN, to assist in the new construction of a 195-unit family housing development named Southwick Commons to be located in Orange County, Florida (the "Development").

3. Rule 67-48.0072(21)(b), Florida Administrative Code (2020), in relevant part, provides:

> (21) Information required by the Credit Underwriter shall be provided as follows:
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> ...
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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 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, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. 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. Petitioner requests a waiver of the above-cited rule to allow Petitioner to extend the firm loan commitment issuance deadline from December 29, 2022, to June 29, 2023.

5. Petitioner accepted an invitation to credit underwriting, which provided a firm loan commitment issuance deadline of June 29, 2022.

6. At the meeting of the Board on June 17, 2022, the Board granted Petitioner's request to extend the loan commitment issuance deadline to December 29, 2022.

7. Petitioner asserts that the December 29, 2022, deadline for the issuance of the FHFC firm loan commitment will not be met. Due to unavoidable delays encountered in obtaining approval for the Development from the City of Apopka (the "City"), Petitioner is requesting an additional extension of the firm loan commitment issuance deadline until June 29, 2023, to have additional time to complete litigation, permitting, and credit underwriting for the Development.

8. Petitioner states that the City provided the Petitioner with the Florida Housing Financing Corporation Local Government Verification that

the Development is Consistent with Zoning and Land Use Regulations (the "Verification"), on November 4, 2020. As a result, Petitioner expected the City to fully cooperate with the approvals necessary for the Development.

9. On November 2, 2021, Petitioner closed on the sale of the property for the Development. Petitioner then filed an Application with the City of Apopka requesting an amendment to the Amended Development Agreement (the "Application").

10. In the Application, Petitioner requested that the City remove the unlawful restriction in the Amended Development Agreement that required the residential multi-family Development to be a non-subsidized, market rent project (the "Restrictions").

11. The Application was heard before the City of Apopka Council on May 4, 2022. At the conclusion of the hearing, the City Council voted 3 to 2 to deny the Application. The City found that the sources of funding for the Development (i.e., FHFC and Orange County), resulted in the Development being subsidized housing, which is not a permitted use of the property.

12. The Petitioner asserts that the City's refusal is contrary to Section 760.26, Florida Statutes. Section 760.26 makes land use and permitting decisions based upon "the source of financing of a development or proposed development" a violation of the Florida Fair Housing Act.

13. On June 16, 2022, Petitioner filed a Complaint in the Ninth Judicial Circuit against the City, asserting that the City's refusal to allow the Development was a violation of the Florida Fair Housing Act and requesting entry of a permanent, mandatory injunction ordering the City to approve the Application and eliminate the requirement that multifamily be non-subsidized, market rate.

14. A final hearing was held on November 21, 2022, on the Petitioner's claim for permanent, mandatory injunction. On November 28, a Final Judgment was entered in favor of Petitioner and against the City of Apopka. The Final Judgment found that the Restrictions were a violation of Section 760.26, Florida Statutes (2022). The Court struck the requirement that Residential Multi-Family be "non-subsidized, market rent." Furthermore, the City is permanently enjoined from requiring that the Property be developed as non-subsidized and rented at market rent.

15. The attorney for the City in the litigation has stated that the Final Judgment will not be appealed, so the litigation will not further delay the issuance of the FHFC firm loan commitment past the six-month extension requested in this Petition.

16. Petitioner argues that a denial of the Petition would (a) result in substantial economic hardship to Petitioner because Petitioner has expended

funds to acquire the land and because Petitioner has incurred substantial costs to date toward ensuring that the Development proceeds to completion; (b) deprive Orange County and the City of Apopka of the provision of much needed affordable housing; and (c) violate principles of fairness.

17. Petitioner states that the delays have been caused by circumstances outside Petitioner's control. As a result, the delay makes it impossible to meet the December 29, 2022, deadline for issuance of a firm loan commitment. The requested waiver will ensure the availability of SAIL, ELI, and NHTF funding which will otherwise be lost as a consequence of the development delays.

18. 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.

19. 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.

20. 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.

21. 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 Rule 67-48.0072(21)(b), Florida Administrative Code (2020), is hereby **GRANTED** to allow Petitioner to extend its firm loan commitment issuance deadline from December 29, 2022, to June 29, 2023.

DONE and ORDERED this 9th day of December 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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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.