STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Sandcastles Foundation, Inc. FHFC Case No.: 2022-057VW

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ORDER GRANTING WAIVER FROM RULES 67-48.004(3)(i), (l) and 67-48.0072(26), 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 October 28, 2022. On October 12, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition Waiver of Rule 67-48.004(3)(i), (l) and 67-48.0072(17)(g) [sic], Florida Administrative Code (the "Petition") from Sandcastles Foundations, Inc. (the "Petitioner"). Notice of the Petition was published on October 13, 2022, in Volume 48, Number 200, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

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

2. On November 19, 2020, Petitioner applied for $5,826,000.00 in HOME funding pursuant to Request for Application 2020-206, HOME Financing/or the Construction of Small, Rural Developments and requested

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ashley Glumory /DATE: 10/28/2022

(the "Application") to finance the construction of a proposed twenty-five (25) unit single family home affordable housing development to be known as Sandcastle Pines located in Bradford County, Florida (the "Development").

3. Rule 67-48.004(3)(i) and (l), Fla. Admin. Code (2020), states:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
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> (i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;
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> (l) Funding Request Amount, exclusive of adjustments by the Corporation as outlined in any applicable competitive solicitation.

4. Rule 67-48.0072(26), Fla. Admin. Code (2020), states:

> (26) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s),

unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

5. Petitioner seeks a waiver of rule 67-48.0072(26) to allow for an extension of the Loan Closing Date for 120 days from the previously extended closing date of October 7, 2022 and a waiver of Rule 67-48.004(3)(i) and (1) so that Petitioner may reduce the total number of units in the proposed Development from 25 to 21 units (all units will remain four bedroom with two baths) and for a reduction in the Loan amount from $6,826,000.00 to $6,508,137.00.

6. On January 22, 2021, the Florida Housing Finance Corporation Board (the "Board") approved Petitioner's application for funding, and Petitioner was subsequently invited to enter credit underwriting. On March 18, 2021, staff issued the preliminary commitment letter. Pursuant to Rule 67-48, the credit underwriting report had to be completed and firm loan commitment issued by March 29, 2022.

7. On March 4, 2022, the Board approved the final credit underwriting report with a positive recommendation for a HOME loan in the amount of $5,826,000 and a Viability Loan of $186,042.33. The Loans were scheduled to close on July 8, 2022.

8. Prior to the loan closing date, the Petitioner advised Florida Housing that it would need to seek additional funding due to significant increases in construction costs. On July 21, 2022, Petitioner formally notified Florida Housing of its intent to seek additional funding and requested a 90-day extension of the loan closing deadline to October 6, 2022.

9. On August 5, 2022, the Board approved the 90-day extension of the loan closing deadline.

10. On September 23, 2022, Florida Housing issued a revised firm commitment for a HOME Loan in the amount of $5,826,000.00 and increased

Viability Loan in the amount of $1,000,000.00 for a total amount of $6,826,000.00. The Loan closing was to occur by October 7, 2022.

11. During this same period, the Petitioner was working diligently with officials from the City of Starke including the Planning and Zoning Board to acquire all the necessary approvals. During this process it was determined that a Zoning Map amendment was required. The Planning and Zoning Board Staff deemed the Zoning Map Amendment consistent with the City's Comprehensive Plan and in compliance with the Land Development Code and recommended approval by the Starke City Commission.

12. On September 19, 2022, the Starke City Commission approved the Zoning Map Amendment filed by the Petitioner to change the relevant zoning designation of the 6.37-acre parcel from Single Family, Medium Density to Multi-Family Residential.

13. The Zoning Map Amendment was scheduled for Second Reading, as is required, before the City Commission on Tuesday, October 4, 2022. Unexpectedly, the Starke City Commission denied the Zoning Map Amendment by a vote of 5-0 because of concerns raised for the first time by a few citizens regarding stormwater issues, traffic, and a concern that single family rental units would cause a diminution of property values in the general neighborhood.

14. The Petitioner made the rezoning request at the suggestion of City staff to accommodate the number of proposed units and adequate stormwater treatment required by the Suwanee River Water Management District. Since the October 4th denial, Petitioner has been meeting with its own engineers to determine how it can build the proposed units under the existing zoning.

15. Petitioner states that a modified site plan and a reduction in the number of units is necessary to meet the lot size required by the current zoning category of the property. The modified site plan and reduction of units will allow the Petitioner to meet the applicable technical requirements for approval by the City (the proposed change will provide 21 HOME-assisted units, 5 Low HOME Rental Units and 16 High HOME rental units). The City approval going forward is an administrative approval and not a quasi-judicial hearing.

16. Petitioner further indicates that the reduction in units will also require a corresponding loan reduction amount. The combined total of $6,826,000.00 will be reduced to a combined total loan amount of $6,508,137.00 (the loan reduction is a result of the application of HUD's Maximum Subsidy Limits for HOME units).

17. The Petitioner believes the needed approvals can be obtained from the City of Starke within 120 days.

18. Petitioner argues that application of Rules 67-48.004(3)(i), (1) and 67-48.0072(26), Fla. Admin. Code (2020) will prohibit the extension of the loan closing and preclude the Petitioner from reducing both the total number of units and the amount of the loan. This will result in difficulties moving forward and obtaining the necessary zoning approvals and will threaten the financial viability of the Development and the delivery of needed units in Bradford County.

19. 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.

20. 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.

21. 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.

22. 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)(i), (1) and 67-48.0072(26), Fla. Admin. Code (2020) is hereby **GRANTED** to allow for an extension of the Loan Closing Date for 120 days from the previously extended closing date of October 7, 2022 and so that Petitioner may reduce the total number of units in the proposed Development from 25 to 21 units, all of which will remain four bedroom with two baths, and so that the Loan amount may be reduced from $6,826,000.00 to $6,508,137.00.

DONE and ORDERED this 28th day of October 2022.

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.