STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SOUTHWICK COMMONS, LTD.

FHFC Case No.: 2023-030VW

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ORDER GRANTING WAIVER
OF RULE 67-48.004(3)(i), 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 April 28, 2023. On March 17, 2023, Florida Housing Finance Corporation ("Florida Housing") received a "Petition for Waiver of Rule 67-48.004(3)(i)," (the "Petition") from Southwick Commons, Ltd. ("Petitioner"), to allow Petitioner to reduce the total number of units. Notice of the Petition was published on March 20, 2023, in Volume 49, Number 56, of the *Florida Administrative Register*. Florida Housing did not timely receive any 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 State Apartment Incentive Loan ("SAIL") funding, Extremely Low Income funding, and National Housing Trust Fund funding under RFA 2020-205 via Application Number

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
Ann McRamon DATE: 4/28/2023

2021-269SN (the "Application"), 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 67-48.004(3)(i), *Florida Administrative Code* (6/23/20), in relevant part, provides:

> (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;...
>
> (emphasis added)

4. Petitioner requests a waiver of the above-cited rule to allow Petitioner to reduce the total number of units from 195 units to 192 units. The number of units to be set-aside remains 100%.

5. Petitioner states that the number of units indicated in its Application was based on a review of the City of Apopka Land Development

Regulation and preliminary discussions with planning staff. These initial discussions culminated with the City of Apopka (the "City") providing Petitioner the "Florida Housing Financing Corporation Local Government Verification" form that the Development is Consistent with Zoning and Land Use Regulations (the "Verification"), on November 4, 2020, confirming 195 units on the Development site. As a result, Petitioner expected the City to fully cooperate with the approval of 195 units on the Development site.

6. Petitioner states that City staff is now indicating that Petitioner is only approved for 192 units, not 195 units as the City confirmed on the Verification.

7. Based on Florida Housing staff analysis, neither the leveraging level for Petitioner nor the final award of SAIL would be affected by a unit count reduction from 195 units to l92 units.

8. In support of its request, Petitioner argues that the requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive funding in the RFA or the Corporation. A denial of the Petition, however, would 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 and would deprive Orange County and the City of the provision of much needed affordable housing.

9. 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.

10. 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.

11. 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.

12. 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 67-48.004(3)(i), *Florida Administrative Code* (6/23/20), is hereby **GRANTED** to allow Petitioner to reduce the total number of units

from 195 units to 192 units, with the number of units to be set-aside remaining at 100%.

DONE and ORDERED this 28th day of April 2023.

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.