STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Hawthorne Park, LTD

FHFC CASE NO.: 2020-064VW

_____/

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(g)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 4, 2020, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on October 26, 2020, from Hawthorne Park, LTD ("Petitioner"). Notice of the Petition was published on October 27, 2020, in Volume 46, Number 210, of the Florida Administrative Register. 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 was selected to receive 9% housing tax credits under Request for Applications (RFA) 2018-112, to assist in the construction of a Development serving elderly persons in Orange County, Florida.

3. Rule 67-48.004(3)(g), Fla. Admin. Code (2018), provides:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 12/4/2020

(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:

* * *

(g) Development Type. . . .

4. In its Application for funding under the RFA, Petitioner selected the Development Type of "Garden Apartments." Petitioner originally intended to construct a three-story garden style apartment building housing 120 units. Petitioner now alleges that the land seller (who retained ownership of contiguous property on which a shopping center is located) required as a condition to close on the property that Petitioner decrease the Development's building footprint to increase the shopping center's exposure. To accommodate this requirement, Petitioner proposes to increase the height of the building and amend its application to change its development type to Mid-Rise 4 Stories. The total number of units will not change. The Application's scoring, ranking, and funding would not have been affected had Petitioner selected Mid-Rise 4 Stories in its Application.

6. 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.

7. 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.

8. Petitioner has demonstrated that the waiver is needed in order to efficiently serve elderly persons. 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.

9. 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 67-48.004(3)(g), Fla. Admin. Code (2018), is hereby **GRANTED** to permit Petitioner to change its Development Type from "Garden Apartments" to "Mid-Rise 4 Stories" and to allow Petitioner to use the Total Development Cost Per Unit limitation for the Development Type of "Mid-Rise ESS" excluding the portion allocated to the maximum developer fee, which shall remain at the "Garden ESS" limit.

DONE and ORDERED this 4th day of December, 2020.

Florida Housing Finance Corporation

By: _____
Chair

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.