STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

HAWTHORNE PARK, LTD.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2020-064VW
Application No. 2019-123C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(g), F.A.C. (7/8/18)

Hawthorne Park, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.004(3)(g), Florida Administrative Code ("F.A.C.") effective July 8, 2018 (the "Rule"), which prohibits revising the development type identified in the application it submitted in response to RFA 2018-112 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties ("RFA"). Due to forces outside of Petitioner's control, Petitioner must change the development type identified in its application, necessitating this request for a Rule waiver. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

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2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

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B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's Application No. 2019-123C (the "Application"):

- Development Name: Hawthorne Park
- Development Address: Silver Star Rd.; Approximately 1200 ft. Southwest of the intersection of Silver Star Rd. and N Pine Hills Rd., Unincorporated Orange County
- County: Orange
- Developers: Hawthorne Park Developer, LLC
- Number of Units: 120 new construction
- Type: Garden was indicated in the Application, but this Petition seeks a change to Mid-Rise 4 Stories
- Set Asides: 88.33% of units at or below 60% AMI and 11.67% at or below 35%.
- Demographics: Elderly, Non-ALF
- Funding: HC request of $2,300,000 annually

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.004(3)(g), effective July 8, 2018, which provides in pertinent part:

> (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 . . . .

Id.

E. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-48.004, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.5087, State Apartment Incentive Loan Program;
- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund; and
- Section 420.5099, Allocation of the low-income housing tax credit.

7. Per Section 420.5099(1)-(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner timely submitted its Application on November 12, 2018.

9. At the time the application was submitted, Petitioner intended for the Development's 120 units to comprise three stories and selected Garden as the Development Type. Subsequently, during the development planning process, 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 must decrease the number of units on each floor, necessitating the addition of a fourth floor in order to maintain the unit total of 120. Accordingly, Petitioner is in need of a Rule waiver to allow amendment of the Development Type from Garden 3-story to Mid-Rise 4 Stories.

10. If the Petition is granted, and the Development Type is changed, Petitioner will maintain the Enhanced Structural Systems Construction qualification.

11. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[1] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

12. If the Rule is imposed, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Specifically: (a) the building footprint restriction will not allow Petitioner to fit 120 units within three stories; (b) denial of this Petition will cause a 6-8 month delay, which in turn will require a full rebid and will likely result in increased building

[1] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), Fla. Stat.

costs; and (c) the Development is not financially feasible without the benefit of the housing credits awarded.

13. Petitioner meets the standards for granting the requested waiver. The need for the waiver was requested early in the process and will not prejudice the Development, Florida Housing, nor any other applicant. The change of Development Type from Garden to Mid-Rise does not negatively impact the Total Development Cost Per Unit Limitation and it has a positive impact on the Leveraging calculation. Per the RFA, the Total Development Cost per unit limitation to be used during the scoring process, as well as during credit underwriting and final cost certification, is higher for the requested development type (Mid-Rise) than the current development type (Garden). *See* RFA, Section Five at p. 70 and Exhibit C at p. 78. Accordingly, even if Petitioner had selected Mid-Rise as the Development Type in the Application, it still would have been selected for funding.

14. The requested waiver will ensure that 120 affordable housing units will be made available for the target population in Orange County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because the redesign is necessary to satisfy requirements imposed by a third-party. Granting the waiver will benefit the residents by including an elevator. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would deny Orange County these much-needed affordable housing units.

G. ACTION REQUESTED

15. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule such that Petitioner is able to amend the

Development Type as described in the Application; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 26th day of October, 2020.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.