STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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TALLMAN PINES HR, LTD.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-080VW
Application No. 2021-207BSN

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(g), F.A.C. (6/23/20)

Tallman Pines HR, 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 June 23, 2020 (the "Rule"), which prohibits revising the development type identified in the application it submitted in response to RFA 2020-205 SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits ("RFA"). After Petitioner submitted its application, the City of Deerfield Beach, as well as nearby residents attending neighborhood meetings, expressed a desire for Petitioner to lower the height of the proposed building to better complement the surrounding area. Petitioner expended funds to redesign the building layout to accommodate this request, making it more efficient in terms of design and construction without losing any of the original layout's amenities, and respectfully requests a Rule waiver to permit implementation. Neither FHFC, nor any other applicant, would be prejudiced if this Petition is granted because Petitioner would remain in Leverage Group 2 even with the requested Development Type change from High-Rise to Mid-Rise 5-6 Stories. 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 are:

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B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's Application No. 2021-207BSN (the "Application"):

- Development Name: Tallman Pines – Phase II
- Development Address: 3851 N. Dixie Hwy., Deerfield Beach
- County: Broward
- Developers: HTG Tallman HR Developer, LLC and Building Better Communities, Inc.
- Number of Units: 75, new construction

- Type: High-Rise was indicated in the Application, but this Petition seeks a change to Mid-Rise 5-6 Stories

- Set Asides: 12 units (16%) at or below 30% AMI, 27 units (36%) at or below 60% AMI, 36 units (48%) at or below 70% AMI, and 5 National Housing Trust Fund ("NHTF") units at or below 22% AMI.

- Demographics: Elderly, Non-ALF

- Funding: 4% HC request of $960,000 annually; SAIL request of $2,770,000 and ELI Loan Request of $600,000; an NHTF loan in an amount of up to $1,569,397; and MMRB request of $17,000,000

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 June 23, 2020, 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 13, 2020.

9. At the time the Application was submitted, Petitioner intended for the Development's 75 units to comprise eight stories and therefore selected "High-Rise" as the Development Type in the Application. The City of Deerfield Beach, as well as residents living close to the Development, subsequently expressed a desire for Petitioner to lower the height of the proposed building to six stories, a level more commensurate with nearby buildings. In an effort to satisfy this request, Petitioner redesigned the building layout to comprise less stories without losing any amenities. The new design will satisfy the requests from the City and the Development's neighbors without detracting from any of the benefits to be provided to the Development's subsequent residents. The new design is also more efficient in terms of design and construction. However, the new design will change the Development Type from "High-Rise" to "Mid-Rise 5-6 Stories," necessitating this Petition for Rule Waiver.

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

11. The requested change in development type would not prejudice FHFC, nor any other applicant; nor provide Petitioner with any advantage in terms of its assigned leveraging group and funding selection. After the final results of litigation surrounding RFA 2020-205 were approved by Florida Housing this year (making the Douglas Gardens IV, Quiet Meadows, The Willows and SoMi Pare applications ineligible), Petitioner's Application was recommended for

funding with a Florida Housing Funding Per Set-Aside of $24,797.91, corresponding to a Leverage Group 2 classification. Since the Development will still be an Enhanced Structural Systems ("ESS") construction type, only the High-Rise multiplier will change in Petitioner's leveraging calculation (from 0.82 for High-Rise to 0.84 for Mid-Rise 5/6 stories), resulting in a new Florida Housing Funding Per Set-Aside of $25,402.74. Since the Leverage Group 2 cut-off line was $28,534.26, the Development would remain in Leverage Group 2, even if the Petition is granted and the change in Development Type is approved. If the requested waiver is approved, the Development will also meet the Total Development Cost Limitation for "Mid-Rise-ESS."

12. 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.

13. If the Rule is imposed, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Specifically, if Petitioner is unable to implement the Development Type change, Petitioner anticipates substantial pushback from the City, as well as community residents, in the permitting process, which will likely result in construction delays. Given the upward trend of construction costs related to labor and supply chain issues due to

[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.

COVID-19, such delays will likely increase the Development's costs and may require a full rebid. The alternative, foregoing Florida Housing funding, is not an option as the Development is not financially feasible without the benefit of such funding.

14. As discussed above, 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. Additionally, the change of Development Type would not impact the Leveraging calculation and would please the City and the Development's neighbors.

15. The requested waiver will ensure that 75 affordable housing units will be made available for the target population in Broward County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because the unanticipated redesign is necessary to satisfy third-parties. Granting 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 Broward County these much-needed affordable housing units.

G. ACTION REQUESTED

16. 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 from High-Rise to Mid-Rise 5-6 Stories; (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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Counsel for Petitioner

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 3rd day of November, 2021.

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