STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2023-085VW
FHFC APPLICATION NO. 2022-512C

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FLORIDA HOUSING FINANCE CORPORATION

DOUGLAS GARDENS IV, LTD.

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(8)(i)

DOUGLAS GARDENS IV, LTD., a Florida limited partnership, (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver or variance from Rule 67-21.003(8)(i), Florida Administrative Code ("F.A.C") (2022) (the "Rule") to decrease the Total Set-Aside Percentage as stated in the Total Set-Aside Breakdown Chart for the Development (as defined below) provided in the Application (as defined below). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

DOUGLAS GARDENS IV, LTD.
777 Brickell Avenue, Suite 1300
Miami, FL 33131
Telephone: (786) 257-2767
Attention: McDowell Housing Partners, LLC, c/o Christopher L. Shear
Email: cshear@mcdhousing.com

2. For purposes of this petition, the address, telephone number, facsimile number, and email address of Petitioner's counsel is:

Roman J. Petra, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4247
Facsimile: (407) 425-8377
Email: roman.petra@nelsonmullins.com

3. On December 2, 2022, Petitioner submitted a Non-Competitive Application (the "Application") for 4 Percent Housing Credits ("4 Percent HC") to finance the development of a 410-unit multifamily residential housing project in the city of Pembroke Pines, Broward County, Florida, to be commonly known as Douglas Gardens – Senior Health and Living (the "Development") in combination with (i) a loan of $77,000,000 Multifamily Housing Revenue Note issued by the Housing Finance Authority of Broward County, Florida and (ii) a loan of $14,000,000 from Broward County, Florida.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-21.003(8)(i), F.A.C. (2022), which provides:

67-21.003 – Application and Selection Process for Developments.

* * *

(8) Notwithstanding any other provision of these rules, **there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:**

* * *

(i) **The Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application**; notwithstanding the foregoing, the Total Set-Aside Percentage 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;

(Emphasis added.)

C. STATUTES IMPLEMENTED BY THE RULE

5. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See §§ 420.509, 420.5099, Fla. Stat.

D. WAIVERS WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

6. Petitioner requests waivers of, or variances from, the Rule to decrease the overall set-aside percentage for the Development provided in the Application.

7. Section 10(a) of the Application requires applicants to select a minimum set-aside commitment for a proposed development. In the Application, Petitioner selected the 40% of units at 60% Area Median Income (AMI) or lower commitment. Section 10(b) of the Application requires applicants to complete a breakdown chart identifying the set-aside commitments for units in a proposed development contingent on the election made by such applicant. When Petitioner completed the Application, it filled out the chart in Section 10(b)(1) for applicants committing to the minimum set-aside commitment of 20 percent of the total units at 50 percent of the Area Median Income or less, or 40 percent of the total units at 60 percent of the Area Median Income

(the "Total Set-Aside Breakdown Chart"). In the Total Set-Aside Breakdown Chart, Petitioner made a scrivener's error and inadvertently identified set-asides as (i) at or below 60% AMI for 95% of the units in the Development and (ii) at or below 30% AMI for 5% of the units in the Development, resulting in the Total Set-Aside Percentage equaling 100% (or all 410 units) in the Development.

8. Petitioner now seeks to revise the Development's Total Set-Aside Percentage provided in the Total Set-Aside Breakdown Chart to reduce the Total Set-Aside Percentage of the units in the Development from 100% to 95% of the units in the Development, and in connection therewith, reduce the percentage of units set as at or below 30% AMI to 0% such that all of the units (or 0 units) committed to be set aside in the Development (95%) shall be set aside At or below 60% AMI. In other words, the Petitioner requests the Total Set-Aside Percentage be reduced from 100% to 95%; and to change its set-aside commitments so that 390 units (or 95% of the units) in the Development be at 60% AMI or less and 20 units (5%) be at Market Rate.

9. The Petitioner has closed and drawn on a gap financing loan from Broward County that is vital to the Project's feasibility (the "Broward Loan"). A Declaration of Covenants and Restrictions executed in connection with the Broward Loan (the "Broward Covenant"), conflicts with a Total Set-Aside Percentage of 100% and, therefore, if the Petitioner's request to modify the non-competitive application is not granted, the Broward Loan would be subject to default and repayment thereby creating a material hardship for the Petitioner. If the Petitioner is required to repay the Broward Loan, Petitioner would suffer substantial economic hardship.

10. For clarification purposes, the Petitioner respectfully requests the following:

a. Approval of waiver for a reduction to the Total Set-Aside Percentage from 100% to 95%; and

b. Approval for the set-aside commitments to reflect the following:

i. 390 units (95%) at 60% AMI; and

ii. 20 units (5%) at Market Rate.

11. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance 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[1] *or* violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

12. The Florida Housing Finance Corporation Act (Section 420.501, *et seq.*) was passed to encourage private and public investment in facilities for persons of low-income. The purposes of the State Apartment Incentive Loan Program, National Housing Trust Fund, Multifamily Mortgage Revenue Bonds Program, and Housing Tax Credit Program are to stimulate and prioritize initiatives to increase the supply of affordable housing. By granting the requested waivers, the Corporation would recognize the goal of providing persons of low-income with affordable housing through private investment. The requested waivers or variances will not adversely impact the Development or the Corporation or provide Petitioner with an unfair advantage, and will ensure that the affordable housing units of the Development will be preserved and made available for the target population in Broward County to obtain decent, safe, and sanitary

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "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. *See* Fla. Stat. § 120.542.

housing. Alternatively, strict application of the Rule will result in substantial economic hardship for Petitioner as it attempts to confront the pressures of rising interest rates, inflating construction costs, and direct competition with a neighboring development for identical income-level tenants, all of which will place the affordable housing units of the Development in jeopardy.

E. TYPE OF WAIVER

12. The waivers or variances being sought is permanent in nature.

F. ACTION REQUESTED

13. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waivers or variances of the Rule to reduce the Total Set-Aside Percentage for the Development listed in the Application, (ii) grant the Petition and all the relief requested herein, and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted the 11th day of October, 2023.

Respectfully submitted,

Roman J. Petra, Esq.
Fla. Bar No. 450030
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, FL 32801
Telephone: (407) 669-4247
Facsimile: (407) 425-8377
Email: roman.petra@nelsonmullins.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

The 11th day of October, 2023.

By: _____
Roman J. Petra, Esq.
Fla. Bar No. 450030