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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ROCHESTER PARK, LTD.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-086VW
Application No. 2020-301C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.002(96), F.A.C. (7/11/19) AND THE 2019 QAP

Rochester Park, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the provisions of the 2019 Qualified Allocation Plan ("2019 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (July 11, 2019), such that Petitioner may return its 2020 Housing Credit Allocation now as opposed to waiting until the last quarter of 2022. While Petitioner has expended approximately $442,270 to diligently move the development forward, delays related to labor and supply chain issues necessitate this request for 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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1105 Kensington Park Dr., Suite 200
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Telephone: (407)333-3233
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Email: jwolf@wendovergroup.com

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:

- Development Name: Rochester Park
- Development Address: Candlelight Blvd.; Approximately 740 feet North of the intersection of Cortez Blvd and Candlelight Blvd, Brooksville, FL
- County: Hernando
- Developer: Rochester Park Developer, LLC
- Number of Units: 84 new construction
- Type: Garden Apartments
- Set Asides: 90% of units at or below 60% AMI and 10% at or below 33%; 50% of the ELI units will be set-aside for Persons with Special Needs.
- Demographics: Elderly Non-ALF
- Funding: HC request of $1,650,000 annually[1]

[1] On November 2, 2021, Petitioner submitted an application in response to RFA 2021-211 (Development Viability Loan Funding) with a Loan Funding Request Amount of $1,963,000.

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 67-48.002(96), effective July 11, 2019, which provides in pertinent part:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2019 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from http://www.flrules.org/Gateway/reference.asp?No=Ref-10769.

6. Subsection II.K. of the 2019 QAP, provides as follows:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs. A Development located in a HUD designated DDA or QCT at the time of original allocation may retain its designation as such.

7. The process found in the 2019 QAP requires an applicant to return its allocation of housing tax credits in the last quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange to allow a credit exchange now rather than in the last calendar quarter of 2022. As demonstrated below, the delay was caused by circumstances beyond Petitioner's control, due diligence was employed in an attempt to resolve those circumstances, the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

E. STATUTES IMPLEMENTED BY THE RULE AND THE 2019 QAP.

8. The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[2] The Act designates FHFC as the State of Florida's housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). *See* § 420.5099(1) and (2), Fla. Stat. Accordingly, the, Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. *Id*.

[2] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

9. Petitioner timely submitted Application No. 2020-301C for the Development on November 3, 2019 ("Application") in response to RFA 2019-113 (Housing Credit Financing For Affordable Housing Developments Located In Medium And Small Counties).

10. The Development received an allocation of the 2020 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986 as amended ("Tax Credits") and was invited to credit underwriting.

11. Florida Housing staff executed a 2020 Carryover Allocation Agreement ("CAA") on or about December 22, 2020 for the allocation of its Tax Credits. The CAA required Petitioner to demonstrate site control and incur at least ten percent of the reasonably expected basis of the Development (the "10% Test") on or before June 30, 2021. This deadline was later extended to December 23, 2021. Petitioner was also required under the CAA to close its tax credit partnership and to commence construction by September 30, 2021, which deadline was extended to December 31, 2021. Failure to comply with the foregoing CAA deadlines (collectively, the "CAA Deadlines") will cause the Housing Credits allocated within the CAA to be deemed returned to Florida Housing under 26 U.S.C. § 42(h)(3)(C).

12. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development must be placed in service no later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally-mandated placed-in-service date would be December 31, 2022.

13. Petitioner requests a waiver of the 2019 QAP to permit Florida Housing to approve the tax credit exchange now as opposed to waiting until the last quarter of 2022. It is not possible for Petitioner to meet the CAA Deadlines for reasons that are outside of Petitioner's control. Petitioner is experiencing delays stemming from an increase in construction costs due to

the volatility of the industry resulting from labor and supply chain disruptions related to the COVID-19 pandemic. As construction costs escalated to the point of non-feasibility, the Development was forced to undergo value engineering and to renegotiate with contractors in order to execute a manageable construction contract. The unprecedented escalation in construction costs over the past year resulted in a domino effect of delays in the pre-development process.

14. The delays have also prevented Petitioner from commencing construction.

15. When Petitioner submitted the Application in November 2019, COVID-19 had not yet affected the supply chain, nor labor force. The Development could not have continued to be viable without the actions taken by Petitioner to lower costs – time-consuming actions that prevent Petitioner from complying with the CAA Deadlines.

16. While Petitioner anticipates being able to close in late December 2021, it will not have sufficient time to satisfy the CAA Deadlines.

17. Petitioner respectfully requests a waiver to allow the credit swap now as opposed to waiting until the last quarter of 2022.

18. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development towards construction. In fact, approximately $442,270 has been expended to date in relation to the Development and Petitioner has successfully obtained:

- Fully completed and approved architectural plans
- Fully completed and approved engineering plans
- Fully completed and approved site plan

- Fully completed soils tests (Phase I Environmental dated October 26, 2020, Original Phase 1 dated August 14, 2020, Updated Phase 1 dated April 9, 2021, and a Further Updated Phase 1 is expected November 11, 2021)
- Environmental Resource Permit, Individual Construction Permit, issued by the Water Management District on February 4, 2021 to construct a stormwater management system
- Florida Department of Environmental Protection Notification of Acceptance of Use of a General Permit and permit to construct a domestic wastewater collection/transmission system issued on April 20, 2021
- Building permit issued April 20, 2021
- A contract with the general contractor is expected to be executed this week.

19. Petitioner applied for viability loan funding under RFA 2021-211 (Development Viability Loan Funding) on November 2, 2021. Petitioner expects Board Approval on December 10, 2021 and closing shortly thereafter.

20. If the Petition is denied, the Development cannot move forward because Petitioner will not have sufficient time to satisfy the CAA Deadlines and will lose the allocated Housing Credits. Without this funding source, Hernando County will thus be denied these 84 affordable housing units.

21. This Petition should be granted, as opposed to de-obligating the award, because Hernando County is currently experiencing a shortage of affordable housing units for persons with special needs and 50% of the ELI units will be set-aside for Persons with Special Needs. In fact, Hernando County is so desirous to see the Development completed that it pledged additional funds in the amount of $100,000 to help offset the unexpected cost increases. Granting

the Petition will result in the delivery of 84 affordable housing units much faster than would reallocating the funding to a new development.

22. 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,[3] 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.

23. In this instance, Petitioner meets the standards for a waiver of the Rule and the 2019 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 84 affordable housing units will be preserved and made available for the target population in Hernando County, Florida. The strict application of the 2019 QAP would prevent Petitioner from completing the swap now and will create a substantial hardship for Petitioner because it cannot – due to no fault of its own – satisfy the CAA Deadlines. 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.

24. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State for low-income households. Moreover, the Statute was enacted, in

[3] "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. *See* § 120.542(2), Fla. Stat.

part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, and further ensuring the development of 84 affordable housing units in Hernando County, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

25. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

26. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. ACTION REQUESTED

27. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to permit the requested credit exchange, immediate return of Petitioner's 2020 Housing Credit Allocation, and an immediate allocation of new Housing Credits; (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 15th day of November, 2021.

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