STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

Prairie Oaks Preservation, LP

Petitioner,

FHFC CASE NO. 2024-030VW
Application No. 2020-161C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(f) (July 11, 2019)

Petitioner Prairie Oaks Preservation, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the restriction against changing a Development Category after submission of an application set forth in Rule 67-48.004(3)(f), Florida Administrative Code ("F.A.C.") (July 11, 2019) (the "Rule"). In support, Petitioner states as follows:

A. THE PETITIONER

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

Prairie Oaks Preservation, LP
1022 West 23rd Street,
Suite 300
Panama City, FL 32405
Attn: Joseph F. Chapman, IV
Telephone: 850-769-8981
E-mail: joey.chapman@royalamerican.com

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

James A. Boyd, Jr., General Counsel
Royal American Development, Inc.
1022 West 23rd Street
Suite 300
Panama City, FL 32405
850-769-8981 (Phone)
Email: jim.boyd@royalamerican.com

3. On October 24, 2019, Petitioner timely submitted its application (the "Application") in response to RFA 2019-115 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") to assist in the acquisition and development of Prairie Oaks Apartments, a 54-unit development located in Chiefland, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $671,223.00. The Development received an allocation of 2020 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on February 5, 2020. On August 21, 2020, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Under the original Carryover Allocation Agreement, FHFC allocated tax credits in an amount not to exceed $671,223.00 annually.

4. Petitioner's application included a minor irregularity by identifying the Development Category as "Preservation" as opposed to "Acquisition and Preservation." This irregularity was insignificant because (i) it is clear from a review of the entire application that the acquisition credits were intended to be included, (ii) the irregularity did not affect scoring or ranking and (iii) the irregularity did not affect the amount of allocation awarded.

B. WAIVER IS PERMANENT

5. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

6. Petitioner requests a waiver of Rule 67-48.004(3)(f), F.A.C. which provides as follows:

(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:

(f) Development Category;

(emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See §420.5099, Fla. Stat. (2019)* (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

8. As mentioned above, Petitioner requests a waiver of the restriction against changing the Development Category after the submission of an application to permit Florida Housing to approve the change of Development Category to allow the allocation of acquisition credits to Petitioner.

9. It is clear from a review of Petitioner's complete application that Petitioner intended to apply for acquisition credits. Specifically, the building acquisition costs are listed in the HC Eligible Basis Costs Column of the FHFC pro forma as opposed to the land portion of the acquisition costs which were listed in the ineligible basis column.

10. The RFA's scoring did not distinguish between applications submitted for preservation with or without acquisition. The purpose of the RFA and the resulting tax credit allocation was

to promote the rehabilitation of affordable housing units, and this purpose is furthered by Petitioner's development irregardless of whether the tax credits allocated are acquisition credits or preservation credits or both.

a) The scoring guidelines applicable to RFA 2019-115 made no distinction to developments seeking acquisition credits and those only seeking preservation credits. Petitioner received no advantage as a result of the error in identifying the Development Category, and Petitioner would have received the same score and ranking had the application been submitted with the Development Category identified as Acquisition and Preservation instead of just Preservation.

b) Petitioner would have received the same tax credit allocation had the application been submitted with the Development Category identified as Acquisition and Preservation instead of just Preservation. No other application was prejudiced by the minor irregularity.

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.* (2016).

12. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that

[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. (2016)

54 existing subsidized affordable family housing units will be preserved and made available for the target population in Levy County, Florida. The strict application of the Rule will create substantial hardship for Petitioner because it will not be able to rehabilitate the Development. Specifically, without the equity generated by the acquisition credits, the Development will no longer be financially feasible. 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.

13. 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 of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of preserving the current supply of subsidized affordable housing through private investment in persons of low-income and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. See §420.5099(2), *Fla. Stat.* (2020).

F. ACTION REQUESTED

WHEREFORE, Petitioner Prairie Oaks Preservation, LP respectfully requests Florida Housing:

A. Grant this Petition and all of the relief requested herein;

B. Grant the requested waiver of the restriction against changing the Development Category after the submission of an application for the Petitioner's application; and

C. Grant such further relief as it may deem appropriate.

Respectfully submitted on June 11th, 2024.

James A. Boyd, Jr.
Florida Bar No. 994405
General Counsel
ROYAL AMERICAN DEVELOPMENT, INC.
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Panama City, FL 32405
Tel: (850)769-8981
Email: jim.boyd@royalamerican.com

Counsel for Petitioner, Prairie Oaks Preservation, LP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy by U.S. Mail) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301 this 11th day of June, 2024. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us

James A. Boyd, Jr.