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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ROSELAND GARDENS, LLLP,
a Florida limited liability limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

CASE NO. 2024-041VW

Application No. 2023-115C

RFA 2022-202

PETITION FOR WAIVER OF THE 2022 QUALIFIED ALLOCATION PLAN'S REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS AND RULE 67-48.002(96), F.A.C. (07/06/2022)

The petitioner Roseland Gardens, LLLP, a Florida limited liability limited partnership (the "Petitioner"), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's 2022 Qualified Allocation Plan's prohibition on returning a 2023 Housing Credit Allocation prior to the second calendar quarter of 2025. The return of these 2023 Housing Credits is required before the Corporation may reserve a new allocation of Housing Credits that the Petitioner requests be immediately allocated by the Corporation. Accordingly, pursuant to Section 120.542 of the Florida Statutes (2022) and Rules 28-104.001 through 28-104.006 of the Florida Administrative Code (2022), the Petitioner hereby requests a waiver of Rule 67-48.002(96) of the Florida Administrative Code (July 6, 2022) and Section II.J. of the 2022 Qualified Allocation Plan (June 9, 2022) to allow for the immediate return of its 2023 Housing Credit Allocation coupled with an immediate allocation of new Housing Credits (year 2024 or later). In support of this Petition, the Petitioner states the following:

A. <u>THE PETITIONER</u>

1. The name, mailing address, telephone number and email address for the Petitioner and its qualified representative are:

Roseland Gardens, LLLP
Attention: Darren Smith
1100 NW 4th Avenue
Delray Beach, Florida 33444
Telephone: (561) 859-8520
E-mail: dsmith@smithhenzy.com

2. For purposes of this Petition, the name, mailing address, telephone number and email address of the Petitioner's attorney are:

Bilzin Sumberg Baena Price & Axelrod LLP
Attention: Terry M. Lovell, Esquire
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Telephone: (305) 350-2428
E-mail: tlovell@bilzin.com

B. THE DEVELOPMENT

3. The Petitioner timely submitted its Application No. 2023-115C (the "Application") on December 29, 2022 in response to RFA 2022-202 issued on November 14, 2022 (the "RFA") for the development named "Roseland Gardens" (the "Development").

4. The Application was submitted by the Petitioner for competitive Housing Credits under the Corporation's Housing Credit Program.

5. Equity raised from the Housing Credits will be used for the development and construction of the Development. The following information pertains to the Development, which is set forth in the 2023 CAA (as defined below):

- Development Name: Roseland Gardens
- Development Location: City of West Palm Beach, Palm Beach County, Florida
- Type of Construction: New Construction
- Number of Total Units: 148
- Number of Residential Buildings: 2
- Demographics: Elderly, Non-ALF
- Set-Asides: 10% (15 units) at or below 30% AMI; 90% (133 units) at or below 60% AMI; and 50% of ELI units will be set-aside for Persons with Special Needs
- Funding: 9% Housing Credits; annual amount of $2,850,000

6. The Application was preliminarily selected for funding by the Corporation, the Petitioner was invited by the Corporation to enter into credit underwriting, and the Petitioner accepted the invitation to credit underwriting on April 14, 2023.

7. Under Rule 67-48.028(1) of the Florida Administrative Code (July 6, 2022), if an applicant is not able to complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, such applicant must enter into a carryover allocation agreement with the Corporation by December 31st of such year in which the preliminary allocation of Housing Credits is issued. As such, on October 20, 2023, the Petitioner and the Corporation entered into that certain 2023 Carryover Allocation Agreement (the "2023 CAA") in connection with a certain 2023 Housing Credit Allocation for the Development.

8. In accordance with Section 42 of the U.S. Internal Revenue Code, the carryover allocation agreement should require that the applicant place the development in service by the end of the second year following the year in which the carryover allocation was issued. Thus, pursuant to the 2023 CAA, the Corporation mandated that the Development be placed in service by the Petitioner no later than December 31, 2025 (the "Placed In Service Deadline").

9. In accordance with Section 42 of the U.S. Internal Revenue Code, the property owner must expend ten percent (10%) of the property's reasonably expected basis within twelve (12) months of the effective date of the carryover allocation. Pursuant to a letter from the Corporation to the Petitioner dated May 1, 2024 (the "Letter"), the Corporation extended the deadline for the Petitioner to satisfy the ten percent (10%) test requirement, with respect to the Development, to a date no later than October 20, 2024 (the "Ten Percent Test Deadline").

10. As explained in greater detail below, there is uncertainty as to whether (or not) the Petitioner and the Development will be able to satisfy the Ten Percent Test Deadline; and as such, the Petitioner is requesting an exchange of Housing Credits in order to effectuate an extension of the Ten Percent Test Deadline.

11. The requested waivers and relief set forth in this Petition will not adversely affect the Development or the Corporation. However, a denial of this Petition: (i) would result in substantial hardship to the Petitioner,[1] (ii) could deprive the City of West Palm Beach and Palm

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. *See* Section 120.542(2) of the Florida Statutes (2022).

Beach County of desperately needed affordable housing units, particularly Housing for the Elderly, (iii) would prevent or hinder the implementation of the Corporation's Housing Credit Program, and (iv) would violate principles of fairness.[2]

C. RULE AND QAP FROM WHICH WAIVER IS REQUESTED

12. The Petitioner hereby requests a waiver from Rule 67-48.002(96) of the Florida Administrative Code (July 6, 2022) (the "FAC Rule") and a waiver from Section II.J. of the 2022 Qualified Allocation Plan (June 9, 2022) (the "2022 QAP Requirement").

13. The FAC Rule provides in relevant part:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2022 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-14429.

14. The 2022 QAP Requirement provides in relevant part:

> 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 the Applicant has returned its Housing Credit Allocation after the end of the second 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 will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will 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) A site inspection reflecting the percentage of Development completion must be completed. If the Development is at least fifty (50) percent completed, as reflected in the site inspection, the approval may be made by Corporation staff. If the Development is less than fifty (50) percent completed, as reflected in the site inspection, the approval must be made by the Board. In making such determination, the Board must find and determine that the delay was caused by circumstances beyond the Applicant's control, and that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay; and (iii) The Corporation or Board, as applicable, must find that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated,

[2] "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* Section 120.542(2) of the Florida Statutes (2022).

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.

D. STATUTES IMPLEMENTED BY THE RULE AND QAP

15. Section 42(m) of the U.S. Internal Revenue Code requires that each state housing credit agency adopt an allocation plan for the allocation and distribution of section 42 low-income housing tax credits. The Corporation, as the state housing credit agency, must allocate and distribute section 42 low-income housing tax credits to applicants pursuant to, and in accordance with, its applicable qualified allocation plan (QAP).

16. The FAC Rule and the 2022 QAP Requirement are enforcing Sections 420.5093 and 420.5099 of the Florida Statutes (2022), among other sections of the Florida Housing Finance Corporations Act (the "Act"),[3] the statute that designates the Corporation as the housing credit agency for the State of Florida (within the meaning of Section 42(h)(8)(A) of the U.S. Internal Revenue Code) and grants the Corporation with the responsibility, power and authority to establish and implement the section 42 low-income housing tax credit program for the State of Florida. Accordingly, the Corporation is responsible for, and is authorized to establish and implement, the procedures for allocating and distributing section 42 low-income housing tax credits in the State of Florida (the "Tax Credit Allocation Procedures"); and therefore, the FAC Rule and the 2022 QAP Requirement effectuate, among other sections of the Act, the statutory power and authority for the Corporation's establishment and implementation of the Tax Credit Allocation Procedures for the Housing Credit Program.

E. JUSTIFICATION FOR GRANTING THE REQUESTED WAIVER

17. Under Section 120.542(1) of the Florida Statutes (2022) and Chapter 28-104 of the Florida Administrative Code (2022), the Corporation has the power and authority to grant waivers to its rule requirements when strict application of such rules or requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Pursuant to Section 120.542(2) of the Florida Statutes (2022), a waiver shall be granted when: (i) the person subjected to the rule demonstrates that application of the rule would either create a substantial hardship or violate principles of fairness; and (ii) the purpose of the underlying statute has been, or otherwise will be, achieved by other means by the person.

[3] The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes (2022).

18. The Petitioner timely submitted the Application on December 27, 2022 in response to the RFA, and the Petitioner was invited by the Corporation to enter into credit underwriting. In turn, the Development received an allocation of 2023 Housing Credits from the Corporation in accordance with the Housing Credit Program and Sections 42(h)(1) and 42(m)(2) of the U.S. Internal Revenue Code (the "Petitioner's Current Tax Credits"). Furthermore, the Petitioner and the Corporation executed the 2023 CAA on October 20, 2023 in connection with the Petitioner's Current Tax Credits.

19. Pursuant to Section 42(h)(1)(E)(i) of the U.S. Internal Revenue Code, the Development must be placed in service no later than the close of the second calendar year following the calendar year in which the section 42 low-income housing tax credit allocation is made. In this case, the federally-mandated placed-in-service deadline for the Development is December 31, 2025 (as memorialized by the Placed In Service Deadline within the 2023 CAA).

20. Pursuant to Section 42(h)(1)(E)(ii) of the U.S. Internal Revenue Code, the Petitioner must expend ten percent (10%) of the Development's reasonably expected basis within twelve (12) months of the effective date of the 2023 CAA. In this case, the federally-mandated ten percent (10%) test deadline for the Development is October 20, 2024 (as memorialized by the Ten Percent Test Deadline within the Letter).

21. Since the execution of the 2023 CAA on October 20, 2023, the Development has encountered unforeseen events that unmistakably demonstrate to the Petitioner that the Petitioner will not satisfy the ten percent (10%) test requirement by the Ten Percent Test Deadline.

22. The Development has encountered substantial delay due to the HUD Section 18 Demolition and Disposition processes and procedures (collectively, the "HUD Section 18 Process"). As you may know, the Development is a redevelopment and rehabilitation of an existing public housing development; and therefore, the Development's utilization of the HUD Section 18 Process requires the cooperation and collaboration of the U.S. Department of Housing and Urban Development ("HUD"), the West Palm Beach Housing Authority (the "WPB Housing Authority"), and the City of West Palm Beach's Department of Housing and Community Development (the "City of WPB's DHCD").

23. The initial review and approval process conducted by the City of WPB's DHCD, in order for the Petitioner to complete and submit the application for the HUD Section 18 Process (such as the review and approval of environmental reports), expended more time and

resources than originally anticipated. The environmental reports for the Development, completed by D3G (Dominion Due Diligence Group) on the HUD-required form (the "Environmental Reports"), were originally submitted to the City of WPB's DHCD (as the "responsible entity") for review and approval on August 2, 2023, immediately after review of the draft Environmental Reports was completed by the Petitioner and the WPB Housing Authority.[4] Subsequent to the submission of the Environmental Reports to the City of WPB's DHCD, various additional reviews were required by various governmental authorities, one such governmental authority being the U.S. State Historic Preservation Offices ("SHPO"), which required a case study for the Development. The case study, and the related memorandum of agreement, was submitted by the Petitioner to SHPO on October 18, 2023 and November 29, 2023, respectively. SHPO did not provide approval and issue a signed memorandum of agreement to the Petitioner until January 29, 2024. Copies of such case study and such executed memorandum of agreement were provided by the Petitioner to the City of WPB's DHCD.

24. Moreover, the City of WPB's DHCD required a review of the Environmental Reports by the U.S. Fish and Wildlife Service ("FWS"), and the Petitioner reached out to FWS on January 18, 2024 regarding same, and FWS sent a response to the Petitioner on March 22, 2024. Promptly following receipt of the response by FWS, the Petitioner had the Environmental Reports updated and resubmitted to the City of WPB's DHCD. Thereafter, the City of WPB's DHCD conducted its final review and confirmed on April 22, 2024 that its approvals would be available in the near future; and as such, the City of WPB's DHCD provided all of its approvals and signed forms on May 10, 2024 to the Petitioner and the WPB Housing Authority.

25. With the Petitioner and the WPB Housing Authority having received the necessary approvals and documentation from the City of WPB's DHCD in order for the Petitioner and the WPB Housing Authority to complete and submit the application for the HUD Section 18 Process (the "HUD Section 18 Submission"), on or around May 28, 2024, the Petitioner and the WPB Housing Authority filed the HUD Section 18 Submission with HUD. The Petitioner and the WPB Housing Authority expect to hear an initial response from HUD, in connection with the HUD Section 18 Submission, by the beginning of August 2024.

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[4] Please note that the WPB Housing Authority (as a partner in the Development) had a complete draft of the HUD Section 18 Submission ready to submit to HUD, in July 2023, pending approval of the environmental reports by the City of WPB's DHCD.

26. The Petitioner estimates that delays in connection from the HUD Section 18 Process have totaled, as of the date hereof, approximately seven (7) months of time.[5] These delays were not a result of the Petitioner's mistakes or negligence (as the Petitioner worked to provide documents and information, and engage consultants, in order to move the Development forward through the review processes of various governmental authorities), but such delays were caused by various governmental authorities reviewing documents, reports and studies.

27. As of the date hereof, the Petitioner continues to progress through the development process for the Development, and the Petitioner currently anticipates (i) closing on the necessary financing in December 2024 and (ii) completing the development and construction of the Development within eighteen (18) months following such closing (i.e., completion of the development and construction of the Development by July 2026).

28. As outlined above, the delays have been caused by circumstances outside the control of the Petitioner and not by any fault of the Petitioner. As a result, such delays currently make it impossible for the Petitioner to satisfy the Ten Percent Test Deadline; and as such, the Petitioner currently requests the relief set forth in this Petition so that the Petitioner is able to create a new and accurate schedule, including updated deadlines, for the redevelopment and rehabilitation of the Development (the "New Schedule"), and then a copy of the New Schedule may be provided to the various interested parties (including, for example, the WPB Housing Authority, the City of WPB's DHCD, and the Corporation).

29. Additionally, the Petitioner respectfully requests the Corporation's acknowledgement of the fact that the Petitioner continues to act in good faith and with due diligence to complete the Development pursuant to the RFA and the Application, as demonstrated by the Petitioner's recent completion and filing of the HUD Section 18 Submission with HUD.

30. Because the Petitioner knows that circumstances outside the control of the Petitioner will prevent satisfaction of the Ten Percent Test Deadline, the Petitioner hereby (i) respectfully requests a waiver from the FAC Rule and the 2022 QAP Requirement, (ii) seeks the current return to the Corporation of the Petitioner's Current Tax Credits, rather than wait for the

[5] On an additional note, it has recently become known to the public that HUD will be performing an extensive computer system conversion in this 2024 year, and this extensive computer system conversion is expected to create some delay in connection with HUD's upcoming review and approval processes.

second calendar quarter of 2025 (as required under the 2022 Qualified Allocation Plan), (iii) seeks to obtain from the Corporation a new allocation of Housing Credits (year 2024 or later), (iv) seeks an extension of the Ten Percent Test Deadline, and (v) seeks an extension of those other applicable and additional deadlines set forth in the 2023 CAA.

31. As demonstrated above, the Petitioner meets the standards for a waiver of the FAC Rule and the 2022 QAP Requirement because the Petitioner (i) has demonstrated the hardships and other circumstances which justify the Petitioner's requests set forth in this Petition and (ii) has acted in good faith and with proper diligence to develop and construct the Development pursuant to the RFA, the Application and the 2023 CAA.

32. The granting of this Petition will not adversely impact the Development or the Corporation; and rather, the granting of this Petition will ensure that much needed affordable housing units will be made available for the Elderly population in Palm Beach County.

33. If this Petition is not granted, then the Petitioner and the Development will suffer substantial and irrevocable hardship because the Development will need to be abandoned (as the Petitioner will not have sufficient time to satisfy the Ten Percent Test Deadline, leading to a loss of the Petitioner's Current Tax Credits). Consequently, granting this Petition will (i) ensure the availability of Housing Credits which may otherwise be lost due to the aforementioned delays, (ii) promote principles of fundamental fairness in the development of affordable housing, (iii) permit the development and construction of new affordable housing units via the Development, (iv) enable the Petitioner to utilize (and not lose) its significant investments made to-date in connection with the Development, (v) allow the Petitioner to obtain the necessary financing in order to proceed with the development and construction of the Development, (vi) encourage private and public investment in facilities benefiting persons of low income, and (vii) promote the goal of increasing the supply of affordable housing through private investment.

34. Further, this Petition should be granted, as opposed to de-obligating the award of 2023 Housing Credits, because Palm Beach County is currently experiencing a shortage of affordable housing units, particularly Housing for the Elderly. Granting this Petition will result in the delivery of one hundred forty-eight (148) affordable housing units for the Elderly in Palm Beach County (increasing the availability of decent, safe, affordable and sanitary housing for the Elderly in Palm Beach County) much faster than would a reallocation of funds to a new

development. As such, the granting of this Petition would serve the purposes of the Act, the RFA and the Corporation's 2022 Qualified Allocation Plan.[6]

35. Should the Corporation require any additional information, a representative of the Petitioner is available to answer questions and to provide information necessary for the Corporation's review and consideration of this Petition.

F. PERMANENCY OF WAIVER

36. The waiver being sought is permanent in nature.

G. ACTIONS REQUESTED

For the reasons set forth in this Petition, the Petitioner respectfully requests that the Corporation:

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

b. Waive application of the FAC Rule and the 2022 QAP Requirement in connection with the Petitioner, the Development and the 2023 CAA;

c. Allow the immediate return of the Petitioner's Current Tax Credits back to the Corporation;

d. Allocate new Housing Credits (year 2024 or later) to the Petitioner in the same annual amount equal to the Petitioner's Current Tax Credits;

e. Grant an extension of the Ten Percent Test Deadline relative to the new Housing Credits (year 2024 or later);

f. Grant extensions to other deadlines set forth in the 2023 CAA relative to the new Housing Credits (year 2024 or later); and

g. Award or grant such further relief as may be deemed appropriate.

[6] One of the primary goals of the Act is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income individuals and households by ensuring: "the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought." *See* Section 420.5099(2) of the Florida Statutes (2022).

Respectfully submitted,

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/s/ Terry M. Lovell

CERTIFICATE OF SERVICE

This Petition is being served via electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation (CorporationClerk@FloridaHousing.org), with a copy being served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, as of this 30th day of July, 2024.

/s/ Terry M. Lovell