

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF ADMINISTRATION

RHODE ISLAND HOUSING RESOURCES COMMISSION

**RULES AND REGULATIONS GOVERNING
THE BUILDING HOMES RHODE ISLAND PROGRAM**

RULE 1. PURPOSE

1.1 The purpose of these rules and regulations is to govern BUILDING HOMES RHODE ISLAND (the "Program"). The primary purpose of the Program is to provide Eligible Developers with resources to finance the creation of affordable homes and apartments. These Regulations establish procedures and conditions for the Housing Resources Commission's (the Commission) approval of this financing. The Program is designed to encourage the production of rental housing and the development of homeownership opportunities through the allocation of financing from the State as approved by the electorate on November 7, 2006.

1.2 The Commission will provide deferred loans for the financing of rental developments and forgivable loans for the development of homes to be owner occupied. These Regulations set forth criteria established by the Commission for the Program.

1.3 Approval of proposals under this Program is subject to availability of funds.

RULE 2. AUTHORITY

These rules and regulations are promulgated pursuant to Chapter 128.1, Title 42, in accordance with 42-35, Administrative Procedures, of the Rhode Island General Laws of 1956, as amended.

RULE 3. APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Housing Resources Commission to effectuate the purposes of state law, goals, and policies.

RULE 4. SEVERABILITY

If any provision of these Rules and Regulations, or any application thereof to any purpose or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

RULE 5. SUPERSEDED RULES AND REGULATIONS

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of 42-35-1, *et seq.*, and § 42-128.1-1, *et seq.*, shall be superseded. However, any enforcement action taken by, or application submitted to, the Commission prior to the effective date of these Rules and Regulations shall be

governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

RULE 6. REGULATIONS

As follows:

6.1 DEFINITIONS: For the purposes of these regulations, the following terms shall have the following meanings:

6.1.1 **“Act”** means the Rhode Island Housing Resources Commission Act of 1998 more particularly set forth in Chapter 128 of Title 42 of the Rhode Island General Laws, as amended.

6.1.2 **“Affordable”** means, in the case of a rental unit, a rent including utility costs, not to exceed 30% of the monthly income of a family with an income of 80% of Median Family Income; and, in the case of a home for sale to an Eligible Buyer, a sales price resulting in a monthly cost that does not exceed 30% of the monthly income of a family with an income of 100% of Median Family Income including the monthly cost of principal, interest, taxes, insurance, and condominium fees, if applicable.

6.1.3 **“Approved affordable housing plan”**, means a plan prepared and adopted by a town or city to meet requirements of chapter 45-53 or to meet the requirements of subsection 45-22.2-10(f) of Rhode Island General Laws that has been reviewed and approved by the director of administration pursuant to RI General Laws, § 45-22.2-9.

6.1.4 **“Approved Monitoring Agent”** means a monitoring agent approved by Rhode Island Housing

6.1.5 **“Capacity”** means demonstrated experience in successfully implementing financially sound housing programs as well as the ability to provide or coordinate necessary supportive services if applicable.

6.1.6 **“Chair”** means the Chair of the Rhode Island Housing Resources Commission, or designee.

6.1.7 **“Commission”** means the State of Rhode Island Housing Resources Commission, a public corporation existing under the Rhode Island Housing Resources Act of 1998, RIGL § 42-128-1, *et seq.*

6.1.8 **“Complete Application”** means an application submitted to the Commission including all completed application forms and certifications and meeting all eligibility requirements.

6.1.9 **“Development”** means a property which will provide apartments or for sale homes for eligible individuals and families and includes unit(s), site(s), or an entire building. Development includes all the activities associated with the site and building.

6.1.10 **“Development Budget”** means the sources and uses budget submitted with a Proposal by an Eligible Developer. The Development Budget shall set forth in reasonable detail to the satisfaction of the Commission all estimated costs and expenses of the Development and sources to finance the Development through the lease-up and/or sale of the Development.

6.1.11 **“Eligible Buyer”** means a family, individual, or unrelated persons living together with an annual income that does not exceed 100% of the Median Family Income.

6.1.12 **“Eligible Renter”** means a family, individual, or unrelated persons living together whose annual income does not exceed 80% of Median Family Income.

6.1.13 **“Eligible Developer”** means: (i) any State department or agency, municipality, recognized tribe, public housing authority or redevelopment authority, or corporation lawfully created and located in the State of Rhode Island; (ii) any organization exempt from state and federal income taxation which has as one of its organizational purposes to provide housing and related facilities and services; (iii) any partnership or joint venture that includes participation by an entity described in subsection (ii); or (iv) any for-profit entity.

6.1.14 **“Eligible Property”** means any (i) undeveloped real estate or vacant lot; (ii) developed properties containing one or more vacant buildings; (iii) developed properties containing one or more occupied but blighted or dilapidated buildings; (iii) properties containing non-residential buildings to be converted to residential use; or any combination of such properties.

6.1.15 **“Family”** means a household with or without children.

6.1.16 **“HUD”** means the United States Department of Housing and Urban Development

6.1.17 **“Income”** shall be defined as adjusted gross annual income which includes but is not limited to: gross wages, salaries, overtime pay, commissions, fees, tips, bonuses, public assistance, retirement and pension benefits, Workmen’s Compensation, Temporary Disability Insurance, Supplemental Security Income (SSI), and interest income from assets.

6.1.18 **“Loan Documents”** shall mean collectively, (i) the program agreement, (ii) the mortgage, (iii) the regulatory agreement, (iv) the promissory note, and (v) all other agreements, documents and instruments executed and delivered in connection with the financing of the Development.

6.1.19 **“Low/Mod Act”** means the requirements at RIGL 45-53 of the General Laws of the State of Rhode Island.

6.1.20 **“Median Family Income”** means the published median family income of the area, as determined by the United States Department of Housing and Urban Development, adjusted for family size.

6.1.21 **“Mixed-use development”** means developments that incorporate commercial/retail space with residential units.

6.1.22 **“Mixed income”** development means any combination of market- rate and/or affordable or subsidized units in a development.

6.1.23 **“Operating Budget”** means a budget projecting the costs and expenses associated with the physical day-to-day operation of the site(s) and building(s) through the period of the financing. Examples of these costs and expenses include, but are not limited to: utilities; taxes and insurance; maintenance; repairs and capital reserves

6.1.24 **“Operating cost”** means costs associated with the day-to-day operation of a Development. Some examples include: maintenance and repair, operations staff, taxes, utilities, equipment, supplies and insurance.

6.1.25 **“PHA”** means Public Housing Authority

6.1.26 **“Proposal”** means any eligible activity or group of activities necessary to implement a single program or Development submitted to the Commission by an Eligible Developer for participation in the Program.

6.1.27 **“Rhode Island Housing”** means Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under Chapter 55 of Title 42 of the Rhode Island General Laws, as amended.

6.1.28 **“Term of affordability”** for the purpose of this program means consistency with RIGL § 45-53-3 (5) which requires that the housing shall remain affordable for a period of not less than thirty (30) years.

6.2 ALLOCATION OF FUNDS

6.2.1 Availability of Funds. Funds will be available through a Request for Proposals issued by the Commission. Applicants are encouraged to contact the Commission staff to discuss the application process and required documentation needed to facilitate the financing. Capital funds are available in the form of deferred loans for rental developments and as forgivable loans for homeownership units with liens to be released upon satisfaction of program requirements and sale to an eligible buyer. Operating funds and funds for services are not available through this Program.

6.2.2 Eligible Applicants. Generally eligible applicants include all Eligible Developers including non-profit organizations, Community Housing Development Organizations, private for-profit entities, limited partnerships, any of the 39 cities and towns incorporated in the State of Rhode Island and Public Housing Authorities, Redevelopment agencies and any joint venture including one of these entities.

6.2.3 Income Targeting. Developments must benefit low and moderate income individuals and families with adjusted gross annual incomes at or below 100%, or 80% in the case of renters, of the Median Family Income, adjusted for family size. Proposals targeting lower incomes will receive priority for funding with consideration given to the percentage of lower-income units to overall affordable and market rate units.

6.2.4 Funding shall be the minimum amount necessary for the feasibility of the proposed development.

6.2.5 Leveraging. Developments must leverage additional funds from other public (federal, state, and local) and private funding sources. Priority will be given to proposals that leverage the greatest percentage of the total development cost.

6.2.6 Funds will be in the form of deferred and forgivable loans to the applicant provided that the Development remains in compliance with the requirements of the program.

6.2.7 Maximum funding. When the development meets the targeting requirements as set forth in 6.2.3, applicants may receive capital funding up to \$ 40,000 per one bedroom unit, \$50,000 per two bedroom unit, and \$65,000 per three or more bedroom unit. However, additional funds may be allocated, as necessary, to units targeted for individuals and families with lower incomes provided the lower income targeting is incorporated into affordability restrictions. The Commission will review these caps annually.

6.2.8 Use of Funds. 20% of the bond funds shall be used to produce affordable units to be owner- occupied and 80% for deferred loans to developers of affordable rental housing.

6.3 APPLICATION PROCESS

6.3.1 Submission of Proposals for Funding.

Once each fiscal year, at a minimum, the Commission will issue a Request for Proposals indicating the amount of funding available, the deadline for submission, and the estimated timeframe for review. Proposals must be submitted to the Commission during regular business hours on or prior to the deadline established in the request for proposals. A Proposal shall be deemed received as of the date the Commission determines that the Proposal contains all the information required

by Section 6.5 of the Regulations. Proposals shall be reviewed by the Commission and considered for financing subject to the availability of funds.

6.4 REVIEW OF APPLICATIONS

6.4.1 Complete Proposals containing all documentation required by the request for proposals shall be determined to be complete by the Commission staff and then submitted to Rhode Island Housing for review. Proposals will be reviewed by Rhode Island Housing staff to determine eligibility and conformance with the threshold requirements. Staff of the Division of Planning will review for consistency with comprehensive plans and the Historic Preservation Commission will review all properties that are of historic significance. All Proposals that satisfy the threshold requirements will be evaluated based on the Program funding priorities specified in Section 6.8 of the Regulations. A program review committee appointed by the Chair shall make recommendations for funding, and those that should be denied, to the Commission based on the funding priorities in section 6.8. Financing under the Program is subject to approval by the Housing Resources Commission.

6.5 CONTENTS OF THE PROPOSAL. Eligible Developers applying to the Program shall submit to the HRC one (1) original and three (3) copies of the Proposal. Each Proposal shall contain the following information together with such other information as the HRC may request:

6.5.1 The name, address, telephone number, fax number, email address and taxpayer identification number of the applicant.

6.5.2 A resolution of the Board of Directors, Owner, or other governing body of the applicant authorizing submission of the Proposal.

6.5.3 A description of the proposed Development, including address of the site, location map, plat and lot number and type of buildings currently on the property where applicable, and those proposed including a site plan and preliminary schematic plans.

6.5.4 Evidence of ownership or site control.

6.5.5 Identification and evidence of other financing commitments for the Development.

6.5.6 Evidence of compliance with local zoning and environmental regulations where applicable or identification of applicable requirements for which the developer will need permitting and a proposed schedule.

6.5.7 Projected date for commencement of rehabilitation or construction activities, development schedule, and a timetable for completion of the Development.

6.5.8 A description of the experience of the Eligible Developer including identification of key staff, their qualifications and experience, past projects undertaken and current housing projects underway.

6.5.9 Identification of partners in the Development.

6.5.10 A construction budget prepared by a consultant, architect, contractor, or other qualified professional.

- 6.5.11 The Development Budget and Operating Budget for the project.
- 6.5.12 If the property is occupied, a plan for relocation of displaced individuals.
- 6.5.13 A marketing plan in compliance with the Rhode Island Fair Housing Practices Act, RIGL § 34-37-1, *et seq.*
- 6.5.14 Identification of the Monitoring Agent, where applicable.

6.6 EVALUATION PROCESS

All applications will be evaluated by Rhode Island Housing staff in accordance with the following criteria:

- 6.6.1 Applications must meet the threshold criteria for review
- 6.6.2 Applications will be ranked based on the extent to which the application addresses any of the priorities set forth in Section 6.8 of these Regulations.
- 6.6.3 The Division of Planning staff in the Department of Administration will review applications for consistency with the State Land Use Plan, the Rhode Island Strategic Housing Plan, local affordable housing plans, and elements of the State Guide Plan as applicable.
- 6.6.4 The Rhode Island Historic Preservation Commission will review the plans for all properties of historic significance as determined by RIGL § 42-45-5, and § 44-33.1-1, *et seq.*
- 6.6.5 The Governor's Commission on Disabilities will review the site and building plans for accessibility as determined by the State of Rhode Island "ADA" Conformance Regulations as applicable.
- 6.6.6 Rhode Island Housing will review all applications for threshold criteria, with the exception of 6.3 and 6.4, to determine the extent to which they meet priorities.
- 6.6.7 The review committee appointed by the Chair will make recommendations for funding to the Housing Resources Commission based on the priorities in section 6.8.
- 6.6.8 The Housing Resources Commission will approve or deny each proposal and all funding allocations

6.7 THRESHOLD CRITERIA

- 6.7.1 Applicant must be an Eligible Developer as defined in Section 6.1.13 of the Regulations.
- 6.7.2 Developer has submitted a complete application for an Eligible Property.
- 6.7.3 It is likely that the Eligible Developer will proceed with construction or rehabilitation within six (6) months of the commitment of Program financing.
- 6.7.4 Developer has the capacity to complete the project. Applicants must be able to demonstrate to the satisfaction of the Commission their ability to proceed with the Development specified in the Proposal and to continue to maintain and operate the Development for the duration of the financing.
- 6.7.5 The proposal is financially feasible at the proposed rents or sales price.
- 6.7.6 The developer has identified an approved monitoring agent for the development or demonstrates that there is a responsible agency for monitoring long term affordability for a minimum of 30 years.
- 6.7.7 The proposed development must be consistent with the State Land Use Plan, or a municipal Affordable Housing Plan, and the State Strategic Affordable

Housing Plan, or meet the general standards and principles set forth in the aforementioned plans.

6.7.8 Properties of historic significance must be reviewed by the Rhode Island Historic Preservation Commission.

6.8 FUNDING PRIORITIES

The Program represents a limited resource with a large mandate. To ensure that resources are expended in the most efficient manner that most positively impacts the intended beneficiaries, the Commission has established a list of Program priorities. Developments that do not significantly advance these priorities may be denied funding through the Program. Priorities will be reviewed annually and relative priorities will be determined and reviewed regularly by the HRC. The priorities are as follows:

6.8.1 Proposals that make the most efficient use of funding, creating the most housing for the lowest income families, for the fewest public dollars.

6.8.2 Proposals that demonstrate sound project location, siting and design. Projects must demonstrate efficient operating and maintenance costs and a healthy and accessible living environment for residents. To the extent feasible, priority will be given to Eligible Developers that incorporate “Universal Design,” “Healthy Housing,” “Green Building” and “Energy Star” or other energy efficient technologies into the Development. Projects with links to transportation and access to transportation will be a priority. Jobs and services should be considered in the siting of a Development.

6.8.3 The extent to which the Proposal leverages capital and operating financing. Priority will be given to proposals that require the least state and municipal financing from scarce resources and that leverage the greatest total private equity, including 4% housing tax credits.

6.8.4 Proposals that maximize long-term affordability for the residents of the Development. Projects must demonstrate a thirty (30) year minimum commitment, but will receive higher priority for longer term affordability.

6.8.5 Proposals that address critical housing needs including, but not limited to, workforce housing, first time homebuyers, persons with disabilities, persons in need of supportive services, and seniors.

6.8.6 Mixed income proposals that include units affordable to very low income households, provided that the affordable units are comparable to other units in the development.

6.8.7 Locations that promote smart growth: this includes compact development, re-use of existing buildings, proximity to public transportation, use of existing infrastructure, brownfields redevelopment, historic preservation, mixed use, and revitalization of deteriorated neighborhoods.

6.8.8 Projects that promote geographic diversity of affordable housing and assist communities in meeting their housing goals.

6.8.9 Projects that are collaborative efforts between developers and municipalities or service providers.

6.8.10 Projects that are included in an approved local affordable housing plan.

6.9 PROGRAM REQUIREMENTS

6.9.1 **Eligible Residents** are families and individuals who are Eligible Buyers with an annual median income that does not exceed 100% of the Median Family

Income and Eligible Renters with an annual median income that does not exceed 80% of the Median Family Income. Eligible Residents must occupy units of appropriate size for the number of persons in the household.

6.9.2 **Renters** who are no longer Eligible Residents due to income may continue to reside in the Development and pay 30% of the family's gross monthly income. The next available unit shall be rented to an Eligible Resident.

6.9.3 **Term of affordability.** Units assisted hereunder must remain Affordable for a minimum of thirty (30) years from the date of initial occupancy, or such longer affordability period as may be included in the proposal and approved by the Commission, and must be enforced by either a recorded deed restriction or land trust covenant.

6.9.4 **The maximum rent** is a rent that does not exceed 30% of the gross monthly income of a family with a gross annual income of 80% of Median Family Income and shall be determined by Rhode Island Housing.

6.9.5 **Purchase Price** - The maximum purchase price shall be established at a price with a monthly cost to an Eligible Buyer of 30% of the gross monthly income of a family with a gross annual income of 100% of Median Family Income, including principal, interest, taxes, insurance and condominium fees, if applicable.

6.9.7 **Repayment of funds.** If the Development is not operated to provide direct benefit to eligible residents for the term of affordability, all funds advanced for the development plus interest at an annual rate of 9% shall be repaid to the Commission.

6.9.8 **Financing Terms.** Funds will be in the form of deferred loans to the developer. An Eligible Developer will be required to repay the deferred loan for a rental development upon the sale, refinance, or disposition of the Development at the end of the Term of Affordability. For housing developed for homeownership, the deferred loan will be forgiven upon sale of the property to an Eligible Buyer. In any case, the affordability restrictions shall apply for the duration of the term of affordability.

6.9.9 **Terms of the Agreement.** At the discretion of the Commission, the terms of the Agreement may be negotiated where conflicts exist with other funding sources or where refinancing will benefit the development.

6.9.10 **Eligible Program Costs.** All funds must be used for the development of transitional or permanent housing for sale or rent to Eligible Residents. Funding may be used for any approved development cost including acquisition, construction, financing, on-site infrastructure, and soft costs normally associated with the cost of development. Funding may not be used for local impact fees, off-site improvements, or public facilities. Developer fees and/or profit are limited to the lower of 20% of the total development cost or restrictions imposed by other funding sources. Neighborhood Opportunities Program funding may be used in the same project, but not in the same unit as bond funds.

6.9.11 **Construction/Rehabilitation Standards** – All Development must at a minimum meet all State Building Code and Fire Code requirements § 23-27.3-100.0, *et seq.*, and Fire Code requirements, RIGL § 23-28.1, *et seq.*, § 23-29.1-1, *et seq.*, and meet the HUD Section 8 Housing Quality Standards, 24 CFR Part 982, as authorized by 42 U.S.C. § 1437, *et seq.*, State and Federal Lead Paint regulations, 24 CFR Part 35, Part 291.430, and 40 CFR Part 745, as authorized by 42 U.S.C. § 4821-4846, and 42 U.S.C. § 4851-4856, and asbestos mitigation rules

and regulations, as authorized by, RIGL § 23-19.1, *et seq.*, and 23-24.5, *et seq.* Developments must meet accessibility requirements in RIGL § 37-8-15, *et seq.* and RIGL § 37-8-15.1, *et seq.* At the discretion of the Commission, more substantial rehabilitation may be required. Developers will be required to submit a work plan and a preliminary cost estimate for the Development. All sites of state historic significance shall be reviewed and approved by the Rhode Island Historic Preservation Commission. Energy efficiency and healthy housing practices are encouraged.

6.9.12 Relocation. If any sites identified for development in the Proposal are currently occupied, the applicant must provide a relocation plan to address displacement of residents that is satisfactory to the Commission.

6.9.13 Accessibility. All Developments must meet the accessibility standards set forth in 24 CFR Part 41, as authorized by 42 U.S.C. § 4151, *et seq.*, RIGL § 37-8-15, and § 37-8-15.1 *et seq.*

6.9.14 Fair Housing. All Developments must have an approved marketing plan in conformance with Fair Housing standards in 24 CFR 200.929a, as authorized by 42 U.S.C. § 3601-3619, and RIGL § 34-37-1, *et seq.*

6.10 PROGRAM ADMINISTRATION

6.10.1 Contracting. All contracts shall be submitted to Rhode Island Housing in support of funding requisitions.

6.10.2 Administration. The Commission shall designate Rhode Island Housing to implement and monitor the funding decisions made by the Commission with review and recommendation of the staff of Rhode Island Housing and the Housing Resources Commission in accordance with these regulations.

6.10.3 Monitoring. To ensure compliance with the requirements set forth in these Regulations, Rhode Island Housing and/or the Commission may require information and reports on Developments financed hereunder and may conduct site visits and inspections.

6.10.4 The Loan Documents. If the Proposal is approved, the Eligible Developer will execute the Loan Documents which shall set forth, among other things, certain terms and conditions of participation in the Program.

6.10.5 Financing Policy. Each affordable housing development is unique. Each Proposal submitted under the Program will be reviewed independently and with flexibility. With this approach in mind, Rhode Island Housing staff will work with the Eligible Developer to determine the amount of financing appropriate through the Program and other financing sources available to the Eligible Developer for the project.

Loans, if approved, shall be in the form of deferred loans with the appropriate terms determined by the Commission. The Commission shall base its determination on the financial feasibility of the proposed Development and on the requirements of other financing sources in the development proposal.

6.10.6 Underwriting Analysis. Rhode Island Housing and the Commission shall use the following criteria as part of its underwriting analysis of a Proposal to determine feasibility:

6.10.6.1 Staff may visit the site(s) to determine suitability for the Program.

6.10.6.2 Staff may require and commission an independent appraisal that conforms to the Uniform Standards of Professional Appraisal Practice (“USPAP”) and in accordance with Rhode Island Housing standards to determine project valuation for land and buildings.

6.10.6.3 The external and internal design of the building must be approved by Rhode Island Housing and must meet all applicable building code requirements.

6.10.6.4 The extent to which the construction budget will be sufficient to support the proposed work on the building.

6.10.6.5 The Eligible Developer must provide an estimate of local taxes based on current municipal policy.

6.10.6.6 Professional liability insurance is required for the contractor, architect and any other professional(s) for any project which has construction costs in excess of \$100,000. Architects must have “errors and omissions” insurance.

6.10.6.7 All Developments must have insurance policies providing property, crime, liability and equipment coverage approved by the Commission.

6.10.6.8 For those Developments that require moderate rehabilitation as approved by the Commission, the Commission may consider a general contractor’s services instead of engaging an architect, so long as all federal, state, and local requirements such as permits will be obtained by the general contractor.

6.10.7 **Recapture and Repayments.** All funding repaid to the program whether from loan repayment or recapture due to non-compliance, shall be reallocated to eligible developments in accordance with these regulations.

6.10.8 **Right to Waive Regulations.** Upon a determination and finding of "Good Cause" shown, the Commission, upon a majority vote, may waive any provision of these Regulations. Good Cause shall include facts, determinations, or circumstances where the granting of a specific case based waiver (i) is necessary to permit the Development to proceed, (ii) would not pose an undue financial risk to the Commission, regarding the particular project at issue, (iii) is necessary to carry out the purposes of the Program, with regards to the project request and, (iv) is consistent with the mission of the Commission in regards to affordable housing. Each waiver request must be in writing and must be supported by documentation of the pertinent facts and circumstances. A determination and finding of Good Cause shown, shall be made upon thorough review of the request and supporting documentation by Commission staff, recommendation for waiver, and majority vote of the Commission.

RULE 7. Effective Date. These Rules and Regulations shall take effect 20 days after filing with the secretary of State’s Office.

The foregoing "Rules and Regulations GOVERNING _____,” after due notice, are hereby adopted and filed with the Secretary of State this _____ day of _____, 20__ to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters _____ of the General Laws of Rhode Island of 1956, as amended.