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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

Heritage Preservation, LP

Petitioner,

FHFC CASE NO. 2022-021VW
Application No. 2019-133C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

PETITION FOR WAIVER OF RULE 67-48.002(96) AND FOR WAIVER OF QUALIFIED ALLOCATION PLAN

Petitioner Heritage Preservation, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the timing provisions of the 2018 Qualified Allocation Plan ("2018 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

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

Heritage 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 November 15, 2018, Petitioner timely submitted its Application in response to RFA 2018-113 for Housing Credit Financing for the Preservation of Existing Affordable Mulifamily Housing Developments (the "RFA") to assist in the rehabilitation of Heritage Apartments, a 50-unit development located in Defuniak Springs, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $420,000.. The Development received an allocation of 2019 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on March 4, 2019. On August 12, 2019, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Under the original Carryover Agreement, the Petitioner was to submit site control documentation and its 10% test certification by January 31, 2020; the Development must commence construction by April 30, 2020; and the Development must be placed in service no later than July 31, 2021.

4. After multiple extensions to the above-mentioned dates, by request of the petitioner under the Revenue Procedure 2014-49, Florida Housing extended the Petitioner's deadline for its placed in service date to December 31, 2022. As of January 31, 2021 the 10% test has been met, and site control documentation, construction commencement and limited partnership agreement deadlines are currently January 31, 2022. Furthermore, petitioner has submitted a request to further extend these deadlines.

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 67-48.002(96), F.A.C. and Subsection II.K. of the 2018 QAP, which provides as follows:

> "K. 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 67-48.002(96), F.A.C. 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."

(emphasis added).

7. The process found in the 2018 QAP requires an applicant to return its allocation of housing tax credits in the last calendar 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 to be approved by the Executive Director, or the Board of Directors of Florida Housing, at this time.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2018 QAP

8. The 2018 QAP and the Rule implement, 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 AND SUBSECTION II.K OF THE 2018 QAP.

9. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2018 QAP to permit Florida Housing to approve the tax credit exchange.

10. The culminative effect of the following events necessitate an extension of Heritage's placed in service deadline of December 31, 2022 and waiver of the QAP requirement to request such extension in the last calendar quarter of 2022.

    a) As a condition of the RFA, the Petitioner must assume an existing RD515 loan provided by the United States Rural Development Administration ("RD"). Unfortunately, beginning in 2020, RD began a nationwide reorganization of their regional and local staff members operational responsibilities. This reorganization has negatively impacted RD's ability to process any type of request or to follow through with any type of loan assignment and restructuring. In addition, RD's reorganization

bureaucratic paralysis was further exasperated by the Covid-19 pandemic necessitating all RD employees to work from home. We submitted Heritage's application to RD for the RD 515 loan assignment and restructure in June 2020 and we did not receive the first response from RD until August of 2020. Since that time, we have supplied RD with all the requested documents as well as followed up with them via phone calls and emails on a regular monthly/weekly basis. Finally, on January 7, 2021, we were contacted by Susan Mckitrick, Branch Chief for Heritage's RD Production and Preservation Branch, to start the underwriting process. Despite her assurances to place Heritage's application on a "fast track", over the next 11 months Heritage's application was transferred from RD underwriter to RD underwriter with no movement towards closing. In fact, sometime during the third quarter of 2021, we were informed that Ms. Mckitrick had been removed from her position. Finally, on December 8, 2021, Heritage's application was assigned to Kenneth Earl – our current RD Underwriter. Mr. Earl has been extremely helpful and over the last three months we have made tremendous progress and are on the path to finalizing our Preliminary Transfer Assessment Template ("PAT").

b) However, while petitioner is close to finalizing Heritage's PAT, once the PAT is finalized, Heritage's assignment and restructure is then assigned to RD's Office of General Counsel ("OGC") for closing and its anticipated OGC will require an additional sixty to ninety days to process the requisite documents for closing once the final PAT is transferred to OGC.

Accordingly, based upon Heritage's projected closing timeline and construction schedule, Heritage will be unable to meet its current placed in service deadline of December 31, 2022.

c) Finally, due to Heritage's current anticipated closing date and it's inability to meet its placed in service deadline of December 31, 2022, Heritage's syndicator is requiring a credit swap prior to closing as opposed to waiting till the fourth quarter of 2022. Accordingly, Heritage needs a waiver from the credit swap timing constraints contained within the 2018 QAP. Heritage needs to continue moving towards a closing and to do so, a credit swap is required at this time. Forcing Heritage to wait till the fourth quarter of 2022 would essentially kill the redevelopment and preservation of Heritage Apartments.

11. As discussed above, the delays have been caused by circumstances outside the control of the Petitioner. The issues which ensued due to RD's nationwide organizational restructure and RD's essential shut down due to the Pandemic were unforeseen and unanticipated by the Petitioner. Accordingly, the Petitioner is unable to meet the requirements of the 2018 QAP.

12. 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).

13. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2018 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 50 existing subsidized affordable family housing units will be preserved and made available for the target population in Walton County, Florida. The strict application of the 2018 QAP and the timing on the credit swap will create substantial hardship for Petitioner because it will not be able to rehabilitate the Development. 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.

14. As mentioned above, the requested waiver serves the purpose of the Stature 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).

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[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)

F. ACTION REQUESTED

WHEREFORE, Petitioner Heritage Preservation, LP respectfully requests Florida Housing:

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

B. Grant the requested waiver of the timing requirements found in the 2018 QAP and all the requested credit exchange of Development's Placed in Service date;

C. Grant a corresponding extension of deadlines relative to those credits; and

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

Respectfully submitted on February 16, 2022

James A. Boyd, Jr.
Florida Bar No. 994405
General Counsel
ROYAL AMERICAN DEVELOPMENT, INC.
1022 West 23rd Street, Suite 300
Panama City, FL 32405
Tel: (850)769-8981
Email: jim.boyd@royalamerican.com

Counsel for Petitioner, Heritage 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 16th day of February, 2022. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us

James A. Boyd, Jr.