STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

Harbour Place Preservation, LP

Petitioner,

FHFC CASE NO._2024-064VW__
Application No. 2022-233C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-48.002(96) (2021) AND 2021 QUALIFIED ALLOCATION PLAN**

Petitioner Harbour Place Preservation, LP (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 2021 Qualified Allocation Plan ("2021 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (the "Rule") (the Rule effective May 18, 2021 was in effect at the time of the tax credit allocation) 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:

Harbour Place 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:

Cecilia Redding Boyd
Florida Bar No. 0004030
Boyd Law Office, P.A.
211East Fourth Street
Panama City, FL 32401
Tel: (850)872-8514
Email: cboyd@boydlawofficepa.com

3. On December 7, 2021, Petitioner timely submitted its Application in response to RFA 2021-204 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") to assist in the rehabilitation of Harbour Place Apartments, a 68-unit development located in unincorporated Escambia County, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $737,280. The Development received an allocation of 2022 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on March 16, 2022. On July 29, 2022, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Petitioner's original deadlines were January 31, 2023 for site control and the 10% test, April 30, 2023 for commencement of construction, closing its tax credit partnership and submission of the Credit Underwriting Report and December 31, 2024 to place in service all qualified buildings. The deadline to satisfy the 10% test was extended to July 29, 2023, and Petitioner satisfied the 10% test as of June 21, 2023. Subsequent deadline extensions were granted, and on August 13, 2024, Petitioner requested a final extension to December 31, 2024 . Pursuant

to the Carryover Agreement, the Development must be placed-in-service no later than December 31, 2024.

**B. WAIVER IS PERMANENT**

4. The waiver sought is permanent in nature.

**C. THE RULE FROM WHICH THE WAIVER IS REQUESTED**

5. Petitioner requests waiver of Rule 67-48.002(96), F.A.C. (2021) that adopted Subsection II.J. of the 2021 QAP, which provides as follows:

> "J. 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 completed must be completed. If the Development is at least (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, 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."

6. The process found in the 2021 QAP permits a developer to return its allocation of housing tax credits after the end of the second calendar quarter of the year 2024 in exchange for an allocation not to exceed the amount of the credits returned and the issuance of a new Carryover Allocation Agreement if certain conditions are met. Petitioner is requesting a rule waiver to allow it to return its allocation of housing tax credits in exchange for a new allocation of credits to Petitioner with a placed-in-service deadline of December 31, 2026.

## D. STATUTES IMPLEMENTED BY THE RULE AND THE 2021 QAP

7. The 2021 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. (2020)* (the "Statute").

## E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.J OF THE 2021 QAP.

F. As mentioned above, Petitioner requests a waiver of the requirements found in the 2021 QAP to place the Development in service by December 31, 2024 and approve the exchange for an allocation not to exceed the amount of the credits returned and the issuance of a new Carryover Allocation Agreement allocating the credits to Petitioner with a placed-in-service deadline of December 31, 2026.

G. The culminative effect of the following events necessitates an extension of the December 31, 2024 placed-in-service deadline, thereby requiring a credit exchange.

a) The existing apartment complex is subject to a Housing Assistance Payment Contract (the "HAP Contract"), and the assignment of the HAP Contract to Petitioner is required to finance the Development. Petitioner must receive approval for the assignment of the HAP Contract from the U.S. Department of Housing and Urban Development ("HUD").

b) The current HAP Contract was set to expire in November of 2024. Petitioner anticipated a budget-based increase of rents based on a HUD program in place or anticipated at the time of the application. HUD was very slow in implementing the program, and the program was not funded as anticipated. As a result, Petitioner was not awarded a contract with the increased rents expected.

c) Once Petitioner concluded the budget-based increase of rents would not be available, Petitioner adjusted its plans and proceeded to request an extension of the current HAP Contract for an additional ten years. This process was completed, and a new HAP Contract was finalized on July 17, 2024. Under the extension, the rents will be less than anticipated at the time of the application.

d) To illustrate the financial obstacle facing Petitioner by example, a two bedroom 60% AMI LIHTC apartment should have a gross rent of $1,215 per month, but Petitioner's Mark to Market two bedroom apartment has a

gross rent of $1,086 per month making the Mark to Market rent less than the LIHTC rent.

e) Because of the unexpected financial shortfalls, Petitioner has had to renegotiate its financing. Petitioner's equity partner is Raymond James, and the parties have come to terms on financing (on terms much less favorable than anticipated) and are ready to proceed. Petitioner's new construction lender is Cadence Bank, and the new permanent lender is Neighborhood Lending Partners of Florida, Inc. ("NLP"). Petitioner, Raymond James, Cadence Bank and NLP have an established record of together successfully closing and completing construction on tax credit projects in Florida. Petitioner's construction contractor is ready to begin construction immediately upon closing. Petitioner anticipates closing by March 15, 2025. Petitioner's affiliates have demonstrated competence and success in getting tax credit projects closed and constructed for many years throughout Florida.

f) Petitioner met the 10% test as of December 5, 2023. As reported to FHFC, Petitioner had expended $966,990.04 as of July 2, 2024, and since then, Petitioner has expended an additional $315,671.55 toward this Development for a total expenditure to date of $1,282,661.59.

H. As discussed above, the delays have been caused by circumstances outside the control of the Petitioner. The financial obstacles to this Development were unanticipated. Petitioner reasonably expected to receive the increased rents under HUD's program, and HUD's implementation and operation of its program was beyond Petitioner's control.

I. Petitioner has been diligent in its efforts to address the issues that caused the delays. Petitioner has worked diligently to secure a renewal of the HAP Contract and development plan that is financially feasible.

J. 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).

K. In this instance, Petitioner meets the standards for a waiver of the Rule and the requirements of the 2021 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 68 existing subsidized affordable family housing units will be preserved and made available for the target population in Escambia County, Florida. The strict application of the placed-in-service deadline 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.

L. 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

[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)

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).

M. If the waiver is not granted, Petitioner will suffer substantial hardship because Petitioner has invested a significant amount of money in the Development.

## D. ACTION REQUESTED

**WHEREFORE,** Petitioner Harbour Place Preservation, LP respectfully requests Florida Housing:

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

B. Grant the requested waiver of the requirements found in the 2021 QAP, allow the requested credit exchange and extend the Development's placed-in-service deadline;

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 October 4, 2024.

/s/ *Cecilia Redding Boyd*
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Panama City, FL 32401
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Email: cboyd@boydlawofficepa.com
*Counsel for Petitioner,*
*Harbour Place 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 4th day of October, 2024. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us

*/s/ Cecilia Redding Boyd*
Cecilia Redding Boyd