STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

Wilson West Preservation, LP

Petitioner,

FHFC CASE NO. 2024-065VW
Application No. 2022-234C

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 Wilson West 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:

Wilson West 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 Wilson West Apartments, a 50-unit development located in Jacksonville, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $545,633. 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 21, 2022, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Petitioner's initial deadlines were January 31, 2023 for site control and the 10% test, April 30, 2023 for submission of the Credit Underwriting Report, closing the tax credit partnership and commencing construction and December 31, 2024 to place all qualified buildings into service. After a request to extend the deadline for satisfaction of the 10% test was approved, Petitioner satisfied the 10% test as of December 5, 2023. Subsequent deadline extensions were granted, and on August 13, 2024, Petitioner requested a final extension to December 31, 2024 of the

deadlines for commencement of construction, closing its tax credit partnership, site control and the credit underwriting report. 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.

8. 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.

9. The culminative effect of the following events necessitates an extension of the December 31, 2024 placed-in-service deadline, thereby justifying 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"). Petitioner's budget for the Development contemplates post-renovation rents under the HAP contract.

b) Petitioner's progress was delayed when it discovered it was not eligible for a Markup to Market contract based on a Rent Comparability Study ("RCS"). Eligibility for a Markup to Market contract depends upon comparable rents in the area as determined by a RCS. Shortly after being invited to credit underwriting on March 16, 2022, Petitioner engaged Novogradac to prepare an RCS. The Novogradac RCS was transmitted to Petitioner on July 11, 2022. Novogradac completed an additional RCS and transmitted it to Petitioner on April 24, 2024. In addition, Petitioner engaged Stephen L. Clark to prepare an RCS, and he provided a report on June 7, 2023 and a subsequent report on August 8, 2024. Both Novogradac and Clark are HUD approved vendors. All the RCSs reflect decreasing rents, and none support a Markup to Market contract.

c) Since the Markup to Market contract is not available, Petitioner has been working with North Tampa Housing (HUD's designated agent) regarding

the process to renew under Chapter 15 of the Section 8 Renewal Policy Guidebook in order to be eligible for the post- renovation rents following rehabilitation. With North Tampa Housing's guidance, Petitioner is making final preparations to submit its request for the assignment request to HUD.

d) Petitioner's difficulties with HUD on this development have been somewhat of a surprise. During the past year, Petitioner's affiliates have been successful in obtaining HUD's consent for the HAP Contract assignments for Orangewood Preservation, Sherwood Oaks Preservation and College Preservation. Petitioner's affiliates have also submitted requests for HUD's consent for the HAP Contract assignment for Trenton Preservation and Century Woods Preservation. HUD has advised that the preliminary approval for Trenton Preservation should be issued the second week of October, and Petitioner expects approval of Century Woods Preservation within forty-five days. In spite of Petitioner's experience and success in dealings with HUD on other projects, the process for this particular development has been very tedious and difficult. This is primarily due to HUD staff changes and the realignment of properties in the HUD asset management division. Petitioner and its affiliates have seen assignment requests shifted from one HUD account executive to another account executive numerous times in this process. There is no continuity when that occurs, and Petitioner's requests are not reviewed for weeks or even months.

e) Another factor that has slowed down the process is the update to the Section 8 Renewal Policy Guidebook that went into effect in 2023. This update subjects any HAP Contract assignment that includes capital repairs to new criteria. Petitioner, HUD and North Tampa Housing are all learning and adapting under this new policy.

f) Since July 2024, Petitioner has been corresponding with North Florida Housing on the different nuances of proceeding under Chapter 15. As of last week, Petitioner received information confirming its understanding of the submission requirements, and Petitioner is prepared to submit its request in the next two weeks.

g) Because Petitioner has not been able to secure the HAP Contract with post-renovated rents, Petitioner had difficulty finalizing its financing terms. Petitioner has agreed to terms with Raymond James as its equity investor, Ameris Bank as its construction lender and Neighborhood Lending Parnters of Florida, Inc. ("NLP") as its permanent lender. Because Petitioner has successfully closed and completed multiple tax credit projects with Raymond James and NLP, they have the benefit of a streamlined system. As such, they anticipate closing by February 15, 2025, and once closed, Petitioner's contractor is ready to proceed immediately. Petitioner's affiliates have demonstrated competence and success in getting tax credit projects closed and constructed for many years throughout Florida often in partnership with Raymond James and with funding by NLP. Closing cannot occur unless the placed-in-service deadline and other deadlines are extended accordingly.

h) Petitioner met the 10% test as of December 5, 2023. As reported to FHFC, Petitioner had expended $805,034.98, and since then, Petitioner has expended an additional $311,539.53 toward this Development for a total expenditure to date of $1,116,574.51.

10. As discussed above, the delays have been caused by circumstances outside the control of the Petitioner. The decreasing rents were unanticipated at the time of application and are outside of Petitioner's control. This information was not known until the first RCS was performed. In its continued efforts, Petitioner engaged the additional RCSs which confirmed the first study.

11. Petitioner has been diligent in its efforts to address the issues that caused the delays. Petitioner has worked with North Tampa Housing to formulate a plan that makes the Development financially feasible by making application under Chapter 15 and is ready to proceed accordingly.

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).

[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)

13. 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 Duval 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.

14. 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).

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

F. ACTION REQUESTED

WHEREFORE, Petitioner Wilson West 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 4th, 2024.

/s/ Cecilia Redding Boyd
Cecilia Redding Boyd
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Counsel for Petitioner,
Wilson West 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