STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

Century Woods Preservation, LP

Petitioner,

FHFC CASE NO.__2024-063VW_
Application No. 2021-048C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

RECEIVED
OCT 04 2024 10:28 AM
FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.002(96) (2020) AND 2020 QUALIFIED ALLOCATION PLAN

Petitioner Century Woods 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 2020 Qualified Allocation Plan ("2020 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:

Century Woods 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 October 22, 2020, Petitioner timely submitted its Application in response to RFA 2020-204 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") to assist in the rehabilitation of Century Woods Apartments, a 36-unit development located in Century, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $418,000. The Development received an allocation of 2021 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on February 3, 2021. On June 8, 2021, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Petitioner's initial deadlines were March 31, 2022 for the Credit Underwriting Report, closing its tax credit partnership and commencement of construction, December 31, 2021 for site control and the satisfaction of the 10% test and December 31, 2023 for all qualified buildings to be placed in service. On January 10, 2022, Petitioner was granted an extension of the site control and 10% test deadlines until June 8, 2022 and an extension of the deadline to close on its tax credit partnership and commence construction to September 30, 2022. Thereafter, these deadlines were extended to December 31, 2022, and Petitioner satisfied the 10% test as of December 20, 2022. 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 placed-in-service deadline

is December 31, 2023, but that deadline was automatically extended by IRS Notice 2022-52 to 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. (2020) that adopted Subsection II.K. of the 2020 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 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 2020 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 2020 QAP

7. The 2020 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.K OF THE 2020 QAP.

8. As mentioned above, Petitioner requests a waiver of the requirements found in the 2020 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 requiring a credit exchange.

    a) The existing property is subject to an RD515 loan provided by the United States Rural Development Administration ("RD"). Beginning in 2020, RD began a nationwide reorganization of their regional and local staff members operational responsibilities. This reorganization 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, during the COVID Pandemic, RD effectively shut down causing further delays.

    b) In spite of the referenced delays, Petitioner finally was permitted to begin the process of obtaining approval to assume the existing RD515 loan. Petitioner submitted its request on March 8, 2022, but RD's process became so difficult and time-consuming that Petitioner decided to pay off the RD515 loan instead of assuming it. By letter dated June 27, 2023, Petitioner withdrew its application for transfer and began the process for obtaining a payoff. Before a payoff is permitted, RD requires notice to be given to all tenants and requires that a tenant meeting be conducted. The notice has been given to the tenants, and the tenant meeting has been conducted. On October 2, 2024, RD gave approval for the payoff. RD requires a sixty day period following approval of the payoff before allowing the payoff. Petitioner has requested a waiver of this period which RD has granted to Petitioner in other deals. If the waiver is granted, the

payoff will be made immediately. If the waiver is not granted, the payoff will occur by December 2, 2024.

c) Due to the long delays in RD processing Petitioner's loan assumption request, the original financing Petitioner had obtained was no longer available, and Petitioner had to renegotiate terms with its equity partner and go back to the market to secure terms for the requisite construction and permanent loans to finance the Development. Petitioner worked diligently to obtain the alternative financing, but the process took several additional months and further delayed the Development. The equity investor is Raymond James. Petitioner has found a new construction lender, Servis1st Bank, and a new permanent lender, Neighborhood Lending Partners of Florida, Inc.

d) Now that the investors and lenders have been determined, Petitioner is already working toward closing. Servis 1st Bank circulated a due diligence checklist in September, and the development team has been preparing and collecting responsive documents. Petitioner anticipates closing by January 31, 2025. However, closing cannot occur unless the placed-in-service deadline and other deadlines are extended accordingly.

e) Petitioner has successfully closed many tax credit developments with Raymond James and Neighborhood Lending Partners of Florida, Inc., and as a result, the parties have streamlined many aspects of closing. Petitioner anticipates closing within ninety days. Petitioner's construction contractor is ready to proceed immediately upon closing.

f) A portion of 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 has diligently pursued approval for the assignment of the HAP Contract from the U. S. Department of Housing and Urban Development ("HUD"). Most recently, HUD requested a revised capital needs assessment report and an environmental report. Both reports were completed and have been submitted to HUD. There are no outstanding requests for additional information at this time. Petitioner expects HUD's final approval within the next forty-five days.

g) Any delay in submitting to HUD was justified because HUD discourages a premature submission. HUD expects all financing issues, particularly those with other governmental entities such as RD, to be resolved before requesting approval of an assignment from HUD.

10. 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. The complications of working with RD were so frustrating that Petitioner chose to pay off the loan even though it would have been better financially to have transferred it.

11. Petitioner has been diligent in its efforts to address the issues that caused the delays. Petitioner has stood ready, willing and able to work with RD to advance this Development.

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 the requirements of the 2020 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 36 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.

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

[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)

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).

F. ACTION REQUESTED

WHEREFORE, Petitioner Century Woods 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 2020 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
Florida Bar No. 0004030
Boyd Law Office, P.A.
211 East Fourth Street
Panama City, FL 32401
Tel: (850)872-8514
Email: cboyd@boydlawofficepa.com
Counsel for Petitioner,
Century Woods 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