STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

Trenton Preservation, LP

Petitioner,

FHFC CASE NO._2024-066VW____
Application No. 2020-153C/2021-328C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.002(96) (2019) AND 2019 QUALIFIED ALLOCATION PLAN

Petitioner Trenton 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 2019 Qualified Allocation Plan ("2019 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:

Trenton 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
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3. On October 24, 2019, Petitioner timely submitted its Application in response to RFA 2019-115 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") to assist in the rehabilitation of Trenton Apartments, a 60-unit development located in Trenton, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $638,482. The Development received an allocation of 2020 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on February 5, 2020. On August 21, 2020, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Petitioner's deadline to submit site control documentation and its 10% test certification was February 28, 2021, the deadline to commence construction was May 31, 2021, and the placed-in-service deadline was December 31, 2022. Subsequently, the Board approved an exchange of credits on July 30, 2021, and a new carryover allocation was executed on August 9, 2021 with an allocation of tax credits in an amount not to exceed $638,482 annually. Per the new Carryover Agreement, the site control and 10% test deadlines were February 28, 2022, the commencement of construction deadline was May 31, 2022 and the placed-in-service deadline was December 31, 2023. The 10% test deadline was further extended to December 31, 2022, and the 10% test was satisfied as of December 20, 2022. On June 28, 2024, the Board approved a request by Petitioner to modify its

development category after submission of its application from "Preservation" to "Acquisition and Preservation." 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. The Carryover Agreement's placed-in-service deadline of December 31, 2023 was automatically extended to December 31, 2024 by IRS Notice 2022-52.

B. WAIVER IS PERMANENT

4. The waiver sought is permanent in nature.

C. THE RULE FROM WHICH THE WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(96), F.A.C. that adopted Subsection II.K. of the 2019 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."

6. The process found in the 2019 QAP permits a developer to return its allocation of housing tax credits in the last 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 under certain circumstances. Petitioner is requesting 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 2019 QAP

7. The 2019 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 2019 QAP.

8. As mentioned above, Petitioner requests a waiver of the requirements found in the 2019 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) As a condition of the RFA, the Petitioner must assume an existing 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. Finally, RD processed Petitioner's loan assumption request, and RD issued its letter of conditions on December 26, 2023 approving the loan transfer.

b) Petitioner was invited to credit underwriting approximately one month before the pandemic Covid-19 became a household name. In spite of the difficulties presented by the pandemic, Petitioner was able to complete its plans, reports, appraisals and other necessary items and submitted its request for RD approval of the assumption and transfer by and to Petitioner on July 3, 2021. RD requested additional information on August 19, 2021 which Petitioner diligently obtained and provided in October of 2021. RD required a new appraisal which was submitted in November of 2021. In January of 2022, RD rejected the format of the appraisal and apologized for the delay in providing guidance. RD advised Petitioner the reviewer was "catching up on their workload." In March of 2022, RD advised Petitioner its organizational documents and construction documents that had been submitted in August 2021 were still under review. At RD's direction, a revised appraisal was prepared and submitted in July 2022. Thereafter, RD advised Petitioner that additional appraisals would be required since the Development consists of two separate parcels. RD advised they would require a separate appraisal for each parcel and a combined appraisal to include both parcels. The combined parcel

appraisal was prepared and submitted on November 2, 2022. RD rejected the CNA that had been prepared as part of the FHFC underwriting, and Petitioner had a difficult time finding a provider willing to prepare a CNA with the additional requirements. Petitioner obtained the CNA and provided it to RD in August 2022. As of December 1, 2022, Petitioner was awaiting comments from RD on the CNA and the architectural plans. According to RD's underwriters, an appraisal dated February 17, 2023 was not accepted by RD until May 30, 2023. Finally, with information current through December 31, 2022, RD's underwriters reviewed and recommended the Development on December 22 and 26, 2023. RD granted approval on December 26, 2024. With the approval in hand, Petitioner began the process to find the funding for the Development since the original lenders and partner were no longer willing to participate. Equity and construction loan terms were finalized effective July 15, 2024 with Regions Bank and Regions Affordable Housing, LLC through RAH Investor 444 LLC. The permanent lender is Neighborhood Lenders Partners of Florida, Inc.

c) Now that RD has issued its letter of conditions and alternative financing has been secured, Petitioner has been conducting regular closing calls since August with its lenders, equity investor and other necessary parties and anticipates closing on the construction financing and the partnership in the next sixty days with the express goal of closing no later than October 31, 2024. However, closing cannot occur unless the placed-in-service deadline and other deadlines are extended accordingly.

d) In addition to the foregoing, 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 but not yet obtained final approval for the assignment of the HAP Contract from the U. S. Department of Housing and Urban Development ("HUD"). HUD requested a radon report and an asbestos report and represented that these are the final two items required for approval. HUD has represented that preliminary approval will be granted on October 7, 2024. Once preliminary approval is granted, Petitioner expects the necessary documentation will be provided to close with its partner and lenders by the end of October.

e) 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. Knowing the RD process would be long, Petitioner waited until RD approved the Development before submitting to HUD. However, even though Petitioner had successfully received HUD's approval of numerous other HAP Contract assignment requests over the last two years, Petitioner found that new HUD requirements slowed down the approval process. In particular, the requirement for submittal of the CNA in HUD's e-Tool system by a HUD registered CNA provider caused delays. In addition, the new requirement for an environmental report that is submitted in HUD's HEROS system by a HUD registered provider caused even more delays.

f) Once it appeared timely to submit with HUD, the following occurred:

- 04/23/2024–Petitioner submitted HAP Assignment request to HUD via email.
- 05/08/2024–HUD requested additional items.
- 05/15/2024–Petitioner provided most of the requested items and asked for clarification on a couple of items.
- 05/30/2024–HUD requested more information and noted that CNA must be submitted via e-Tools and Environmental Report must be submitted via HEROS.

- 06/03/2024–Petitioner noted that it had already completed two HAP contract assignment transactions this year that did not require the submittal of the CNA in e-Tool. (Petitioner learned that the requirement to submit in e-Tool is fairly new and that the CNA must be prepared by a registered e-Tool provider). Petitioner further noted that it had not been required to submit Environmental Reports with any of its other HAP contract assignment requests. (Petitioner learned that the requirement to submit in HEROS is new and that Environmental Reports must be prepared by a registered HEROS provider).
- 06/06/2024– Petitioner received an email from HUD requesting additional items. The email stated that the Environmental Report must be submitted in HEROS in order to continue with the review of our HAP contract assignment request.
- 06/14/2024– Petitioner engaged a group that is a registered HEROS provider to perform an Environmental Report.
- 06/20/2024– Petitioner received email from HUD indicating they are waiting for the CNA report to be submitted in e-Tool and the Environmental Report to be submitted in HEROS.
- 06/20/2024–Petitioner noted that their 06/06/2024 email did not mention the CNA report so Petitioner assumed that the CNA report submitted via email was acceptable.
- 06/21/2024–Petitioner made request to CNA provider that prepared report for RD purposes to submit the report since the firm is a registered e-Tool provider.
- 08/08/2024– HUD indicates that Environmental Report is unacceptable because it did not include asbestos study and radon testing.
- 09/10/2024– Petitioner submitted asbestos study and radon testing report via email prior to provider submitting in HEROS.
- 09/24/2024 –Informed HUD that provider was having difficulties in submitting asbestos study and radon testing report in HEROS because it is a resubmission
- 10/01/2024–HUD requested anticipated closing date and construction start schedule
- 10/01/2024–Had conference with HUD and were informed that preliminary approval letter should be issued approximately October 7, 2024.

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 extremely slow process of consideration and approval by RD was beyond Petitioner's control. The delays with HUD were the result of the implementation of new procedure that were not anticipated. Accordingly, the Petitioner is unable to meet its placed-in-service deadline, and Petitioner is unable to meet the requirements of the 2019 QAP.

11. Petitioner has exercised due diligence in seeking to resolve the issues that caused the delay. Petitioner has stood ready, willing and able to proceed with the Development and has timely responded to any requests from RD and HUD.

12. The Development still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

13. 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).

14. In this instance, Petitioner meets the standards for a waiver of the Rule and the requirements of the 2019 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 60 existing subsidized affordable family housing units will be preserved and made available for the target population in Gilchrist 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.

[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)

15. 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).

F. ACTION REQUESTED

WHEREFORE, Petitioner Trenton 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 2019 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
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Counsel for Petitioner, Trenton 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