

# RISE RESIDENTIAL

November 22, 2023

Cody Campbell  
Texas Department of Housing and Community Affairs  
221 E. 11th St  
Austin, TX 78701

**Re:** 2023 - 9% HOME-ARP 22231/23707 Force Majeure Request – Woodcrest Apartments

Dear Mr. Campbell,

On or about July 31, 2022, TX Woodcrest HAP, LP (the “Partnership”), received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the rehabilitation of a project called Woodcrest Apartments, located at 2550 W 8<sup>th</sup> Street, 314 Odessa, Texas (the “Project”). The Partnership is required to place the Project into service no later than December 31, 2024, as required by Section 42(h)(1)(E)(i) of the Internal Revenue Code of 1986, as amended. Unfortunately, the Partnership faces the likelihood that it will not be able to place the Project into service by that date due to certain events and delays that we believe fall under the Force Majeure provisions of §11.6(5) of the Texas Administrative Code. I am writing to provide an update on the Project and submit a written request for an extension of the placed in-service deadline. The Project comprises 80 units, with over 90% of the units serviced by a HUD Housing Assistance Payments (HAP) contract.

Woodcrest Apartments has been directly impacted by the local market conditions, where we are in competition with the oil field industry for essential materials and labor. This competition has significantly heightened the difficulty in securing necessary resources, contributing to delays and increased costs.

The regional supply chain issues in Odessa and the rapid increase in interest rates have necessitated a shift in our approach to the Woodcrest Apartments project. To adapt to these challenges, we have undertaken a more efficient design for the project. This redesign, while crucial for moving forward, has required additional time and resources. The redesign process has been thorough and mindful of the project's long-term sustainability and efficiency. Consequently, we are also in the process of preparing a material amendment, which will be submitted to TDHCA in the near future.

These supply chain difficulties, coupled with the need for a redesign of the project, fall within the purview of unforeseen circumstances that have significantly hindered our ability to meet the original project timelines. We believe these challenges align with the force majeure conditions as outlined in §11.6(5) of the Texas Administrative Code.

In early December 2022, TDHCA acknowledged the increase in construction costs from the 2022 to 2023 QAP and released the HOME ARP Rental NOFA in connection with its efforts to support projects, specifically 9% and 4% projects awarded in 2022, experiencing construction cost increases. On or about January 31, 2023, the Partnership applied for HOME ARP funds to assist with increasing construction costs to rehabilitate the Project. The Project is a good use of HOME ARP funds as it has rental assistance on over 90% of the property, and because of the rental

# RISE RESIDENTIAL

assistance received from the HAP contract, TDHCA isn't required to use funds for COCA (Capitalized Operating Cost Assistance Reserves).

On or about October 26, 2023, TDHCA approved the Project's application for HOME ARP funds. However, as soon as the Partnership applied for HOME ARP funds, federal regulations precluded us from undertaking any choice-limiting decisions, which includes the commencement of any construction or development work on-site. This restriction was in compliance with the federal regulatory requirements associated with the HOME ARP funding and has resulted in a substantial delay to the commencement of construction and/or development work on-site.

The Project is now in serious jeopardy of being unable to meet the placed-in-service requirements by the December 31, 2024, deadline due to the delays described above and, therefore, we are requesting a one (1) year extension in accordance with § 11.6(5) of the 2022 QAP relating to Force Majeure. We believe the Partnership and Project meet all of the requirements in § 11.6(5), in that:

1. The events that caused the delay (i.e., the federal regulations related to the HOME ARP funds that precluded us from commencing construction) occurred before the issuance of 8609s and are the result of a presidentially declared disaster (i.e., TDHCA's allocation of HOME ARP funds came from HUD under Section 3205 of the American Rescue Plan Act, which was enacted in connection with the economic effects of the COVID-19 pandemic), which TDHCA may treat under the applicable federal provisions related thereto;
2. The delays were not caused by willful negligence or acts of the Partnership, any affiliate of the Partnership, or any other related party of the Partnership;
3. The Partnership, through this letter, has provided evidence and a timeline of the events related to the initial availability, application and final approval of HOME ARP funds for the Project, which shows that the delays were the direct result of the Force Majeure event;
4. Though there was little that could be done to minimize or mitigate the delays caused by the HOME ARP federal regulations, we took all reasonable steps to expedite the approval of the Partnership's application for the HOME ARP funds in an effort to minimize or mitigate such delay by promptly responding to each and every deficiency noted by TDHCA in the Partnership's application and providing any and all documents requested by TDHCA. Since the application was submitted, we received environmental clearance and a draft of the HOME ARP contract. We are working towards the Notice to Proceed, which will allow us to start and complete construction.

## RISE RESIDENTIAL

5. The Force Majeure prevents the Partnership from meeting the place in service requirements of the original allocation;
6. The current year Carryover Agreement, if applicable, allocates the same amount of Housing Tax Credits as those that would be returned; and
7. The Project continues to be financially feasible, as these delays have not significantly increased the original construction budget, nor have there been any insurance proceeds received related to the Force Majeure event.

We appreciate the TDHCA Board's and staff's understanding and support in this matter.

We reserve the right to supplement prior to any deadline.

Sincerely,

Melissa Fisher  
***RISE Residential***

Cc: Bill Fisher  
*Wallace Reed*