STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: TIMBER SOUND PRESERVATION, LP

FHFC Case No.: 2022-022VW

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ORDER GRANTING WAIVER FROM RULE 67-21.003(8)(j), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on March 4, 2022, pursuant to a "Petition for Waiver of the Rule 67-21.003(8)(j), F.A.C. (10-6-2015)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on February 16, 2022 from Timber Sound Preservation, LP ("Petitioner"). Notice of the Petition was published on February 17, 2022, in Volume 48, Number 43, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner was awarded non-competitive housing credits and Multifamily Mortgage Revenue Bonds ("MMRB") to assist in the rehabilitation of Timber Sound and Timber Sound II, family affordable housing development in

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
3/4/2022
DATE

Orange County, Florida (collectively the "Development") and entered credit underwriting.

3. Rule 67-21.003(8)(j), Florida Administrative Code (2015), provides in relevant part:

> (8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:
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> ....
>
> (j) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application; notwithstanding the foregoing, the Total Set-Aside Percentage may be increased after the Applicant has been invited to enter Credit Underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

4. Petitioner requests waiver of the above cited rule to allow Petitioner to reduce its set-aside of 85% (204 units) of the units rented to tenants at or below 60% area median income ("AMI") to 40% AMI (96 units), with a net result of reducing the Total Set-Aside Percentage from 100% of the units (240 units) to 55% of the units (132 units).

5. Petitioner states that pursuant to the terms of the MMRB Land Use Restriction Agreement ("LURA") at least 40% (96 units) of the units in the Property shall be occupied by tenants with incomes equal to or less than 60% of AMI, however, Petitioner agreed to set-aside 100% (240 units) of the units for rental to

tenants with AMI of 60% or less. Of the 100% (240 (units) that are set-aside, 15% (36 units) of the units are to be rented to tenants with 40% AMI or less and the remaining 85% (204 units) of the units are to be rented to tenants with 60% AMI or less.

6. Prior to funding through MMRB in 2017, the Development was encumbered by two Extended Low-Income Housing Agreements ("ELIHA") (one for each phase), which imposed a set-aside requirement of 15% of units at 35% AMI and 85% of units at 60% AMI. Upon the 2017 resyndication closing, the two phases were combined into one and the LURA and a new Corporation ELIHA[1] were recorded.

7. Currently, Petitioner cannot comply with the LURA set-aside requirements because some tenants who qualified under the ELIHA when they moved into the Development have had income increases over the years and because of that, 21 tenants do not meet the LURA thresholds. These tenants nonetheless qualify to remain in the Development under Section 42 of the Internal Revenue Code since their incomes are less than the 140% AMI threshold for remaining.

8. Though the LURA includes at Section 3(a) a "Transition Period" of 12 months to the extent that the Development does not meet the requirements on the Closing Date, Petitioner does not want to violate the Fair Housing Act nor the

[1] A waiver of the new ELIHA set asides is not needed as these set asides are not be affected by the future increases in income of the tenants because the AMI is measured at move in.

Corporation's policies and goals by forcing these residents from their homes. Each time over-income residents voluntarily move out, Petitioner will replace them with income-qualified tenants. In the meantime, Petitioner must request a waiver to allow the Development's overall set-aside percentage to be reduced because full compliance cannot be achieved, otherwise, Petitioner would be forced to eject residents from their homes. Petitioner does not want to displace these tenants, as a matter of compassion as well as a matter of remaining in compliance with the Fair Housing Act.

9. Further, the waiver will allow residents to remain in their homes until they voluntarily move out or their incomes exceed the 140% threshold imposed by Section 42 of the Internal Revenue Code. The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the MMRB Program would be reduced from 100% total set-aside to 55% total set-aside.

10. Section 120.542(2), Florida Statutes, provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

11. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

12. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

13. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-21.003(8)(j), Fla. Admin. Code (2015) is hereby **GRANTED** to allow Petitioner to reduce its set-aside of 85% (204 units) of the units rented to tenants at or below 60% AMI to 40% AMI (96 units), with a net result of reducing the Total Set-Aside Percentage from 100% of the total units (240 units) to 55% of the units (132 units).

DONE and ORDERED this 4th day of March 2022.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Brian J. McDonough, Esq.
Bridget Smitha, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson
BMcdonough@swmwas.com
BSmitha@swmwas.com

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.