STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

AMBAR TRAIL, LTD.,
A Florida Limited Partnership,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent

Florida Housing Finance Corporation
FILED 12/14/2020 4:59 P.M.

Case No. 2020-071VW
Application No.: 2020-436BS

PETITION FOR WAIVER OF RULE 67-21.013, F.A.C. (JULY 11, 2019) TO IMPLEMENT THE SELF-SOURCED FINANCING INITIATIVE

Petitioner Ambar Trail, Ltd., a Florida limited partnership ("Petitioner") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's general requirement that any issuance of non-Credit Enhanced revenue Bonds be sold only to a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender, per Rule 67-21.013, Florida Administrative Code (July 11, 2019) (collectively, the "Rule"), as well as related RFA requirements, such that Petitioner may implement the self-sourced financing provided for under RFA 2019-116 SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits (the "RFA"). The RFA reflects the Corporation's effort to decrease the maximum amount of per-unit SAIL funding in order to increase the SAIL funds that may be used in conjunction with other developments (the "Self-Sourced Financing Initiative"). While the Self-Sourced Financing Initiative has benefits, it also imposes hardships upon Petitioner, such as preventing Petitioner's principals from purchasing the Corporation's

tax-exempt bonds since they are not Qualified Institutional Buyers. Petition therefore respectfully requests a waiver of the Rule. In support of this request, Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative for Petitioner's application are:

Ambar Trail, Ltd.
3030 Hartley Road, Suite 310
Jacksonville, FL 32257
Attention: Elena Adames
Telephone: 305-216-1894
Facsimile: N/A
E-Mail: eadames@ambarco.com

2. The name, address, telephone and facsimile numbers for Petitioner's attorneys are:

Brian J. McDonough, Esq.
Stearns, Weaver, Miller, Weissler,
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: (305) 789-3350
Facsimile: (305) 789-3395
E-Mail: bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns, Weaver, Miller, Weissler,
Alhadeff & Sitterson, P.A.
106 E. College Ave. Suite 700
Tallahassee, FL 32301
Telephone: (850)329-4852
Facsimile: (850) 329-4864
E-Mail: BSmitha@StearnsWeaver.com

B. THE DEVELOPMENT

3. Petitioner timely submitted its application on December 17, 2019 with respect to the following development:

- Development Name: Ambar Trail (the "Development")
- Developers: Ambar3, LLC
- County of Development: Miami-Dade
- Number of Units: 210

- Type: Mid-Rise, 4-stories
- Set Asides 5.24% at or below 40% AMI, 89.52% at or below 60% AMI, and 5.24% at or below 80% AMI.
- Demographics: Family
- Funding Amounts: $5,000,000 in SAIL funding, $25,500,000 MMRB and $2,500,000.00 Self-Sourced: Bond Financing.

C. PERMANENCY

4. The waiver being sought is permanent in nature.

D. RULE FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from the Rule, which provides, in relevant part, as follows:

> Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender.

See Rule 67-21.013, Florida Administrative Code (7-11-19).

6. Petitioner also seeks a waiver of the following RFA requirements:

> Self-sourced financing will be funded at closing of the SAIL loan via escrow account controlled by the SAIL loan servicer and will be dispersed pro rata along with SAIL funding.

See RFA 2019-116 Section 4, A.3.a.(1)(b).

> The Applicant entity . . . cannot be changed in any way (material or non-material) until after the closing of the loan(s).

See RFA 2019-116 Section 4, A.3.c.(3).

E. STATUTES IMPLEMENTED BY THE RULE

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"), Section 420.507(Powers of the corporation) and Section 420.509 (Revenue bonds), Florida Statutes.

F. JUSTIFICATION FOR WAIVER

8. Under Section 120.542(1), Florida Statutes, and Chapter 28-104, Florida Administrative Code, the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* Section 120.542(2), Florida Statutes.

9. The requested waiver is necessary to prevent Petitioner from incurring a substantial economic hardship; prevent Miami-Dade County from being deprived of essential affordable housing units; and ensure implementation of the Corporation's Self-Sourced Financing Initiative. The purpose of the underlying statute will nonetheless be achieved as the waiver will allow Petitioner to effectively implement the Self-Sourced Financing Initiative.

10. For purposes of the Self-Sourced Financing Initiative, Petitioner is a "Self-Sourced Applicant," as that term is defined in the RFA. Petitioner's principals, as Self-Sourced Applicants, must provide financing in the amount of $2,500,000 (*i.e.*, at least 50% of Petitioner's eligible SAIL request amount of $5,000,000).

11. Within the Corporation's tax-exempt bonds that will be issued are Self-Sourced Bond Financing B Bonds (the "B Bonds"). To implement the Self-Sourced Financing Initiative, Petitioner's principals are required by the RFA to purchase the B Bonds. However, the Rule prohibits this transaction because Petitioner's principals are not "Qualified Institutional Buyers," as that term is defined in Rule 67-21.002. A Rule waiver is therefore required to permit Petitioner's principals, who are Accredited Investors as that term is defined in 17 C.F.R. § 230.501, to purchase the B Bonds in the amount of $2,500,000. By purchasing the B Bonds,

Petitioner's principals are lending their own funds to the Development, which increases the amount of unallocated SAIL funds that would otherwise be available, and thus increases the funds that may instead be used by other developments. Absent same, the Corporation's Self-Sourced Financing Initiative would be frustrated, the Development's financing would be delayed, and alternative financing would be more costly and inefficient. If this Petition is granted, the Corporation will not be prejudiced because the A Bonds, which will be the first mortgage bonds and which – in the amount of $25,500,000 – are substantially higher than the B Bonds, will be purchased by a Qualified Institutional Buyer (*i.e.*, a designee of R4 Capital Funding, LLC).

12. Prior to closing, Petitioner must change the members of the Ambar Trail GP, LLC ("General Partner"), as set forth in Exhibit 1, attached hereto, to comply with tax-exempt bond requirements regarding eligibility to purchase the B Bonds and to receive the requisite bond counsel opinion at closing. If granted, the change will be made at or before closing and will not affect the General Partner's management or control.

13. Petitioner requests that the B Bonds' funding be draw-down instead of fully funded at closing such that the B Bonds may be funded pro-rata with the Development's other financing. If granted, expenses related to construction loan interest will be reduced. If denied, the Development will incur an unnecessary construction expense in the form of additional interest.

14. The requested waiver will not adversely affect the Corporation, the Development, or any other applicant.

15. The requested waiver would serve the purposes of Section 420.5099, Florida Statutes, and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to households of limited

means and the waiver will increase the amount of unallocated SAIL funds that would otherwise be available, and that may instead be used by other affordable housing developments.

16. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. RELIEF REQUESTED

WHEREFORE, Petitioner Ambar Trail, Ltd, respectfully requests that the Corporation:

a. Grant Petitioner a waiver from Rule 67-21.013, Florida Administrative Code (July 11, 2019) such that Petitioner's principals may purchase the B Bonds.

b. Grant Petitioner a waiver of the above-referenced RFA requirements such that Petitioner may change the General Partner's members and use draw-down funding for the B Bonds.

c. Grant the Petition and all the relief requested therein; and

d. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Petitioner
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

By: *s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 14th of December, 2020.

s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

Exhibit 1 – Proposed General Partner's Members

The Vestcor Companies, Inc.
3030 Hartley Road, Suite 310
Jacksonville, Florida 32257
T 904-260-3030
F 904-260-9031

November 18, 2020

Tim Kennedy
Assistant Director of Multifamily Programs
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, FL 32301

RE: Ambar Trail (2020-436BS)

Dear Tim:

Please allow this letter to serve as approval request for changes to the members of the GP entity, Ambar Trail GP, LLC, for the above project. Below is a summary of the org structure with the intended changes for a portion of the GP ownership Mr. Rood has assigned to one other Member identified below. Management and control of the General Partner by Mr. Rood will not change. These changes are necessary in order to meet the tax-exempt bond requirements and will be made at closing.

Current Structure:	New Structure:
(99.99%) Limited Partner – John D. Rood (to be replaced with Investor LP)	*No change*
(00.01%) General Partner – Ambar Trail GP, LLC	*No change*
Members of General Partner:	*Members of General Partner:*
(13.375%) – John D. Rood Rev Trust u/a/d 1/26/88	(7.00%) – John D. Rood Rev Trust u/a/d 1/26/88
(14.00%) – JDR WC1, LLC	(14.00%) – JDR WC1, LLC *(no change)*
(14.00%) – JDR WC2, LLC	(14.00%) – JDR WC2, LLC *(no change)*
(14.00%) – JDR WC3, LLC	(14.00%) – JDR WC3, LLC *(no change)*
(25.50%) – Clarence S. Moore	(25.50%) – Clarence S. Moore (no change)
(12.75%) – Elena M. Adames	(12.75%) – Elena M. Adames (no change)
(6.375%) – Jason O. Floyd	(6.375%) – Jason O. Floyd (no change)
	(6.375%) – Alexander G. Hepler

Please let me know if any additional information is required.

Sincerely,

Jason O. Floyd
Vice President of Ambar Trail GP, LLC,
General Partner of Ambar Trail, Ltd.