STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

Timbers Preservation, LP

Petitioner,

FHFC CASE NO. 2021-048VW
Application No. 2020-162C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-48.002(96)**

Petitioner Timbers Preservation, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the timing 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:

Timbers Preservation, LP
1022 West 23rd Street,
Suite 300
Panama City, FL 32405
Attn: Joseph F. Chapman, IV
Telephone: 850-769-8981
Fax: 850-914-8445
E-mail: joey.chapman@royalamerican.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

James A. Boyd, Jr., General Counsel
Royal American Development, Inc.
1002 West 23rd Street
Suite 400
Panama City, FL 32405
850-769-8981 (Phone)
850-914-8445 (Facsimile)
Email: jim.boyd@royalamerican.com

3. On October 23, 2019, Petitioner timely submitted its Application in response to RFA 2019-115 for Housing Credit Financing for the Preservation of Existing Affordable Mulifamily Housing Developments (the "RFA") to assist in the rehabilitation of Timbers Apartments, a 32-unit development located in Cross City, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $387,556. 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. Pursuant to the Carryover Agreement, the Petitioner must submit site control documentation and its 10% test certification by February 28, 2021; the Development must commence construction by May 31, 2021; and the Development must be placed in service no later than December 31, 2022.

4. On March 2, 2021, pursuant to a written request from the Petitioner, Florida Housing extended the Petitioner's deadline for submitting its 10% Test to August 21, 2021 and site control documentation, construction commencement and limited partnership agreement to December 31, 2021.

**B. WAIVER IS PERMANENT**

5. The waiver being sought is permanent in nature.

## C. THE RULE FROM WHICH WAIVER IS REQUESTED

6. Petitioner requests a waiver of Rule 67-48.002(96), F.A.C. and 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."

(emphasis added).

7. The process found in the 2019 QAP requires an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit

exchange, to allow a credit exchange to be approved by the Executive Director, or the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2022.

## D. STATUTES IMPLEMENTED BY THE RULE AND THE 2019 QAP

8. 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.

9. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2019 QAP to permit Florida Housing to approve the tax credit exchange prior to the last quarter of 2022.

10. The culminative effect of the following events necessitate an extension of the August 21, 2021 10% Test 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"). Unfortunately, beginning in 2020, RD began a nationwide reorganization of their regional and local staff members operational responsibilities. This reorganization has negatively impacted RD's ability to process any type of request or to follow through with any type of loan assignment and restructuring. Currently, we have submitted an application for an RD 515 loan assignment and restructure on Heritage Apartments

(2019-133C) , an application which was recently submitted for similar funding under RFA 2018-113.). That application package for Heritage Apartments was submitted in June 2020 and we did not receive the first response from RD until August of 2020. Since that time, we have supplied RD with all the requested documents as well as followed up with them via phone calls and emails on a regular monthly/weekly basis. Our last correspondence with them was April 2021. At this point, RD cannot even provide the Petitioner a date for the Development's RD515 assignment and restructuring application to be assigned to an underwriter, let alone a proposed closing date. We continue to follow up with them daily via email and they continue to be unresponsive. The timeframe of our current loan application is indicative of how we feel the Development will be processed as well. RD's restructuring is still on going and has led to a complete halt in RD's ability to process RD515 loan assignments and restructuring. Petitioner feels RD's processing of RD515 loan assignments and restructuring will not improve anytime in the foreseeable future and therefore, will require additional time to the meet the requirements of the 2019 QAP. While the Petitioner has prepared a complete RD submission package for the Development, Petitioner has not submitted the package pending final feedback on submission for Heritage Apartments.

b) In addition, since the Covid-19 Pandemic began in March of 2020, RD has been working remotely and, as of this date, RD is still not back in their offices. The work conditions imposed by the Pandemic have furthered

exasperated RD's inability to process the Development's RD515 loan assignment and restructure.

11. The Developer is actively trying to engage with RD to initiate the processing of the Petitioner's application to overcome the unforeseen circumstances described in this Petition.

12. 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. Accordingly, the Petitioner is unable to meet 10% Test deadline and; accordingly, Petitioner is unable to meet the requirements of the 2019 QAP.

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 timing limitations in the 2019 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 32 existing subsidized affordable family housing units will be preserved and made available for the target population in Dixie

[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)

County, Florida. The strict application of the 2019 QAP and the timing on the credit swap 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.

15. As mentioned above, the requested waiver serves the purpose of the Stature 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 Timbers Preservation, LP respectfully requests Florida Housing:

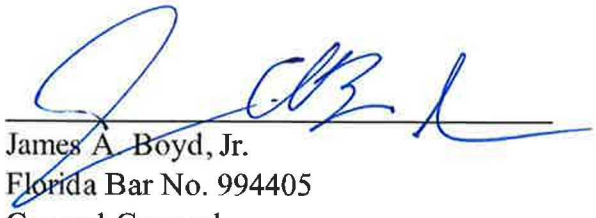
A. Grant this Petition and all of the relief requested herein;

B. Grant the requested waiver of the timing requirements found in the 2019 QAP and all the requested credit exchange before the last calendar quarter of Development's Placed in Service date;

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 July 13, 2021



James A. Boyd, Jr.
Florida Bar No. 994405
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Panama City, FL 32405
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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 13th day of July, 2021. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us

James A. Boyd, Jr.