STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

Hampton Point Preservation, Ltd.
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2022-058VW
Application No. 2021-

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULES 67-21.0025(7)(c) AND 67-21.003(1)(b), F.A.C. (05/18/2021) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (03/2021)

Hampton Point Preservation, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of: (1) the requirement under Rule 67-21.0025(7)(c), Florida Administrative Code ("F.A.C.") that only natural persons (or trusts with natural person principals) be disclosed by or at the third principal disclosure level ("Rule"); and (2) the prohibition under Rule 67-21.003(1)(b), (05/18/2021), and the Non-Competitive Application ("NCA") instructions (03/2021), of changes to an applicant's organizational structure prior to the MMRB Loan closing ("NCA Instructions"). Nearly a year after submitting its application, Petitioner's principals received a U.S. Department of Housing and Urban Development ("HUD") National Mortgage Credit Approval that required the principals to sign Section 50 of the HUD Regulatory Agreement on new HUD loans. To comply with related requirements, all of Petitioner's lenders are requiring Jeremy Bronfman and Lincoln Avenue Capital, LLC to appear as managers of the general partner entity. Because Petitioner must add Lincoln Avenue Capital

as a manager at the second principal disclosure level, a trust (with all natural person principals) will appear at the fourth level. Additionally, because a member at the second level desires to make a change that would cause it to fall out of compliance with the Rule, Petitioner seeks to replace that member with a special purpose entity. This change in principals must occur now, as opposed to waiting until after the MMRB Loan closing, to satisfy the HUD requirement and because the 2022 tax returns must reflect the ownership entity structure that will in fact operate the Development. Because natural person principals of a trust must appear at the fifth level, and because the change is requested prior to the MMRB Loan closing, Petitioner respectfully requests a waiver of the Rule and NCA Instructions. Absent the Rule waiver, Petitioner cannot complete the acquisition. In support, Petitioner states as follows:

A. <u>THE PETITIONER.</u>

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

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

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B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. On June 30, 2021, Petitioner applied for non-competitive housing credits to assist in the construction of the following development (the "Development").

- Development Name: Hampton Point Apartments
- Development Address: 2511 Luther Rd, Port Charlotte, 33983
- County: Charlotte County
- Developer: Hampton Point Developer LLC
- Number of Units: 284
- Type: Garden Apartments (Acquisition and Rehabilitation)
- Set Asides: 40% at or below 60% AMI (MMRB); 100% at or below 60% AMI (4% HC); 12% at or below 35% AMI and 5% at or below 40% AMI (SAIL ELI)
- Demographics: Family
- Funding: $33,000,000 (MMRB); $2,100,000 (4% Housing Credit annual allotment)

D. THE RULE AND NCA INSTRUCTIONS FROM WHICH WAIVER IS REQUESTED.

5. To allow Petitioner's principals to appear below the fourth principal disclosure level, Petitioner requests a waiver of Rule 67-21.0025(7)(c), F.A.C. (05/18/2021) which provides in pertinent part:

> (7) Disclosure of the Principals of the Applicant must comply with the following:
> (a) The Applicant must disclose all of the Principals of the Applicant (first principal disclosure level). For Applicants seeking Housing Credits, the Housing

> Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required;
>
> (b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level);
>
> (c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). **Unless the entity is a trust, all of the Principals must be natural persons**; and
>
> (d) If any of the entities identified in paragraph (c) above are a trust, the Applicant must disclose all of the Principals of the trust (fourth principal disclosure level), all of whom must be natural persons.

Id. (emphasis added).

6. To change Petitioner's principals before the MMRB loan closing, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (05/18/2021) which provides in pertinent part:

> (b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 03-2021) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-13093, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. Rule 67-21.003(1)(b), F.A.C. (05/18/2021) incorporates by reference the Non-Competitive Application Package (Rev. 03/2021) ("NCA"), which includes the following requirement:

> The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form **cannot be changed in any way (materially or non-materially) until after the MMRB Loan closing**. After loan closing, (a) any material change in the ownership structure of the named Applicant will require review and approval of the Credit Underwriter, as well as Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require review and approval of the Corporation, as well as Board approval prior to the change. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapter 67-21, F.A.C. for the duration of the Compliance Period. Changes to the ownership structure of the Applicant entity (material or non-material) prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to loan closing to the officers or

> directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or the limited partner of an investor limited partnership or an investor member of a limited liability company owning the syndicating interest therein will not result in disqualification, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval.

Id. at Part A. 6. b. (2) (emphasis added).

E. STATUTES IMPLEMENTED BY THE RULE.

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- Section 420.503, Definitions.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

8. Per Section 420.5099(1),(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND NCA INSTRUCTIONS.

9. Petitioner submitted its Application on June 30, 2021.

10. On June 15, 2022, HUD's Office of Multifamily Production Technical Support Division approved Jeremy Bronfman, Eli Bronfman, and Lincoln Avenue Capital, LLC ("LAC") to a maximum FHA-insured authority of $800 million. As a condition of this approval, Jeremy Bronfman and LAC were required to sign Section 50 of the HUD Regulatory Agreement for all

new applications. Section 8.3.6 of HUD's Multifamily Accelerated Processing Guide, available at https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430, requires that this Section 50 signer have the "requisite control and involvement or interest in the Project." HUD further clarified this requirement by stating: "Who will sign Section 50 is determined by HUD upon a recommendation by the Lender, using credit review analysis. Such parties (whether individuals or entities), in Lender's professional opinion, are to (1) exercise control over the Borrower, so as to be in a position to commit or protect against the malfeasance set forth in Section 50, and (2) have the financial capacity to compensate for damages arising from such malfeasance." *See* Regulatory Agreement MF projects, *available at* https://www.hud.gov/program_offices/general_counsel/mffaqs/mfprojects#Q12 (last accessed October 12, 2022). To comply with this requirement, all of Petitioner's lenders have required it to implement Jeremy Bronfman and LAC as managers of the general partner entity. Because such HUD approval has already been granted, Petitioner has no choice but to change its organizational structure. Accordingly, Petitioner seeks through this petition for LAC and Jeremy Bronfman to appear as managers of Hampton Point GP LLC at the second level.

11. Additionally, a subsequently imposed investor requirement necessitates combining the general partner and the Hampton Point Partner entities. As a result, LAC TC Partners Holdings LLC (99.99% Investor Limited Partner entity) and Hampton Point Partner LLC (0.05% Non-Investor Limited Partner entity) must be removed from the first principal disclosure level and replaced with a to-be formed affiliate of Key Community Development Corporation as the 99.99% Limited Partner at the first level.[1] After Hampton Point Partner LLC

[1] Pursuant to the NCA Instructions, "Changes prior to loan closing to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or the **limited partner of an investor limited partnership** or an investor member of a limited liability company owning

is removed from the structure, its members must be reassigned to Hampton Point GP LLC (0.01% General Partner) to capture their interests in the partnership. Unrelatedly, several employees left the Hampton Point Employee Fund LLC, and replacements were added, resulting in changes to the LLC's members (see paragraph 12, below, for a description of the members that left and that were added, and the changed percentages related to same).

12. If the Petition is granted, the foregoing changes would have a ripple effect that would cause several entities to be removed and other entities to be added. *See* Current Organizational Chart, attached as Exhibit A; and Proposed Organizational Chart, attached as Exhibit B. While new names would appear on the chart, the natural person principals disclosed in the Proposed Organizational Chart are the same natural persons, or family members of the same natural persons, disclosed in the application (*i.e.*, Bronfman and Condas family members) and/or employees of the Hampton Point Employee Fund LLC. Specifically, the following entities would be removed from the Current Organizational Chart:

- At the first level: LAC TC Partners Holdings LLC (99.99% Investor LP) and Hampton Point Partner LLC (0.05% Non-Investor LP)
- At the second level: SJB Management LLC will no longer be the sole (100%) member of Hampton Point GP LLC. Additionally, several members of Hampton Point Partner LLC, will be removed from the organizational structure, *i.e.*, SJB Management LLC (33.3293% managing member), ENB Family LLC (22.2232% member); Schore Lincoln Holdings, LLC (8.2485% member); and the Russell C. Condas Revocable Trust dated October 26, 2020 (5% member). While Hampton

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the syndicating interest therein will not result in disqualification, however, the Corporation must be notified of the change." *See* NCA Instruction, Part A. 6. b. (2) (emphasis added). Accordingly, Petitioner hereby advises Florida Housing of the change from LAC TC Partners Holdings LLC to a to-be formed affiliate of Key Community Development Corporation.

Point Employee Fund LLC will no longer be a 31.1990% member of Hampton Point Partner LLC (since that entity is being removed from the first level), it will remain at the second level as a 40.5555% member of Hampton Point GP LLC.

- At the third level: the sole member of Schore Lincoln Holdings, LLC (*i.e.*, Neal Schore) and several members of the Hampton Point Employee Fund LLC, *i.e.*, Brett Buss (4.562%), Andrew Cribbs (11.71%), Andrew Mika (7.15%),[2] Mike Martin (7.15%), and Oren Gabriel (9.2%) will be removed from the organizational structure. The remaining principals will remain at the third level, but the entities they are members of (and their percentages) will change, as set forth below.

If the Petition is granted, the following entities would be added to the Proposed Organizational Chart:

- At the first level: a to-be formed affiliate of Key Community Development Corporation (99.99% Limited Partner).
- At the second level, the principals of Hampton Point GP LLC would be: Jeremy Bronfman 2014 Revocable Trust (32.6667% member); EB 2022 Revocable Trust (21.7778% member); Hampton Point Employee Fund LLC (40.5555% member, Condas Lincoln Holdings FL, LLC (5% member, a recently formed Delaware limited liability company), Jeremy Bronfman 0% manager); Lincoln Avenue Capital LLC (0% manager).
- At the third level: (1) the sole trustee and beneficiary of the Jeremy Bronfman 2014 Revocable Trust would be Jeremy S. Bronfman; (2) the sole trustee and

[2] Although Andrew Mika remains a current employee, it was subsequently determined that he is not eligible for equity here and has therefore been removed.

beneficiary of the EB 2022 Revocable Trust would be Eli M. Bronfman; (3) several members of the Hampton Point Employee Fund LLC would be added, *i.e.*, Brandon Hodge (6.173%); Nina-Lee Jewell Alhambra (9.259%); Wanda Langley-Hardy (3.086%); James Riley (6.173%); Brandon Sand (9.259%); and Rebecca Schulz (3.086%) and the manger would be Hana Jamar;[3] (4) the sole member of the Condas Lincoln Holdings FL, LLC would be Russel Condas; and (5) the members of Lincoln Avenue Capital LLC would be: Eli M. Bronfman (30%), JSB Family Capital, LLC (45.00%), and Matthew Bronfman Family EMBT (25%), and the managers would be Jeremy Bronfman and Eli M. Bronfman.

- At the fourth level: (1) the Jeremy Samuel Bronfman 2010 GST Exempt Trust would serve as the 100% member of JSB Family Capital, LLC and Jeremy Bronfman would serve as the manager; (2) the beneficiaries of the Matthew Bronfman Family EMBT would be Matthew Bronfman, Jeremy Bronfman, Eli Bronfman, Gabriela Bronfman, Sadie Bronfman, Sash Bronfman, Tess Bronfman, Ezekiel Bronfman, and Coby Bronfman, and the trustees would be Matthew Bronfman, Almog Geva, Mayo Shattuck and Edgar Bronfman Jr.
- At the fifth level, Jeremy S. Bronfman would be the sole beneficiary and would also serve as a co-trustee with Strauss Zelnick.

7. Upon information and belief, the purpose of the requirement to identify all natural persons by or at the third level is to ensure all persons financially benefitted by the funding are disclosed to avoid a conflict of interest. Here, the entities to be added are entities and family

[3] The following members of the Hampton Point Employee Fund LLC would remain, but their percentages would change: Graham Meharg (20.988%); Hana Jamar (20.988%); and Russell Condas (0.00%).

members of the natural persons disclosed in the application. Thus, the requested change should not create a conflict that would impact Florida Housing's decision regarding funding.

13. Since the MMRB loan has not closed, Petitioner is also in need of a waiver of the NCA Instructions to make the foregoing proposed change to Petitioner's organizational structure.

14. If the Rule and NCA Instructions are imposed, Petitioner will be prevented from making the change required by HUD, preventing Petitioner from acquiring the property and causing a substantial and unnecessary operational hardship. Granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule. Upon information and belief, the purpose of the NCA Instructions prohibiting changes to Petitioner's structure prior to the MMRB loan closing is to ensure full and fair consideration by Florida Housing of all persons that might exert control over the Development. Here, the persons exerting control over the Development were disclosed in the application. The changes sought are only to the names of the entities through which those persons will act and the family members that may benefit financially. The requested waiver should not, therefore, cause concern for Florida Housing. Since the same natural person principals disclosed in the Application will exert control over the Development, Florida Housing should have the same degree of comfort as if the structure were not changed. Accordingly, granting the Petition should not impact Florida Housing's confidence in the Development, Petitioner, or its principals.

15. 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,[4] 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.

16. For the reasons set forth above, granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule.

17. The requested waiver will not adversely impact the Development or Florida Housing.

G. ACTION REQUESTED.

18. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver to allow Petitioner to change its organizational structure such that natural person principals appear below the fourth level and so that the change may occur prior to MMRB loan closing; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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Counsel for Petitioner

[4] "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.

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

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 12th day of October, 2022.

By:___*/s/ Brian J. McDonough*_____
Brian J. McDonough, Esq.

Exhibit A – Current Organizational Structure

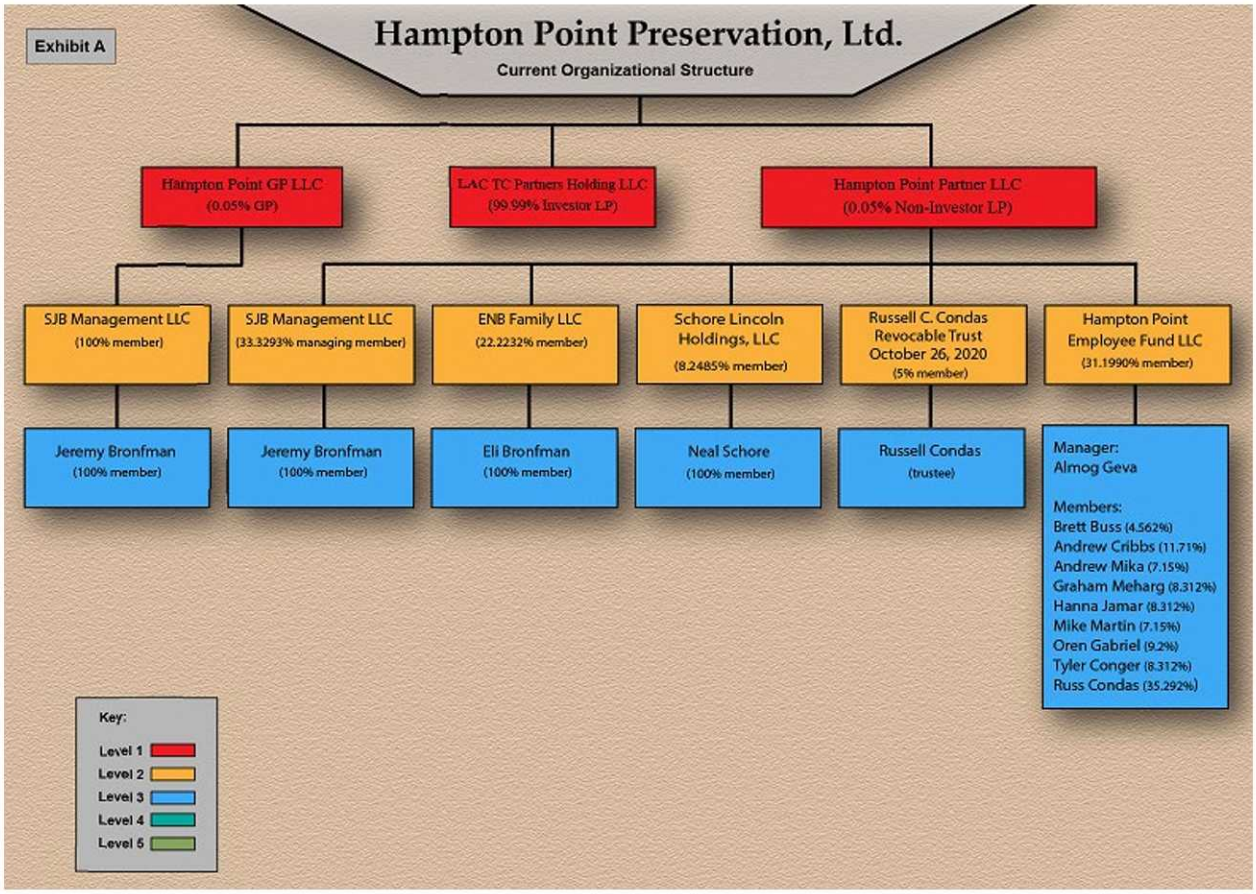


Exhibit B – Proposed Organizational Structure

