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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TIMBER SOUND PRESERVATION, L.P.,
a Florida limited partnership,

Petitioner,

CASE NO. 2022-022VW
Application No. 2015-110B

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-21.003(8)(j), F.A.C. (10-6-2015)

Timber Sound Preservation, L.P., a Florida limited partnership (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition on decreasing the "Total Set-Aside Percentage" as set forth in Rule 67-21.003(8)(j), F.A.C. (10-6-2015) (the "Rule"). Certain tenants (*i.e.*, 8.75% of the units), who were qualified under the original Extended Low-Income Housing Agreement ("ELIHA") thresholds when they moved into the development have – in the years leading up to the bond issuance – experienced income increases such that they are not qualified under the threshold imposed by the Land Use Restriction Agreement ("LURA") associated with the bond (which thresholds are imposed on the delivery date of the bonds as opposed to the tenants' initial move-in date). These tenants still qualify under Section 42 of the Internal Revenue Code to remain in the development as their incomes are less than the 140% AMI threshold for remaining. Petitioner does not wish to violate the Fair Housing Act, nor the Corporation's policy and goals, by forcing otherwise qualified tenants from their homes. Petitioner intends to replace these residents with income-qualified tenants through natural attrition, but cannot guarantee how quickly this will occur and will remain in noncompliance until that point. Petitioner therefore

respectfully requests a waiver to reduce the total set-aside percentage for the bonds only (the ELIHA set-aside percentages will remain unchanged as these thresholds, unlike the bond thresholds, are imposed on the tenants' initial move-in date, which allows Petitioner to ensure compliance). In support of this petition, Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative:

Russell Condas
Lincoln Avenue Capital
401 Wilshire Blvd., Suite 1070
Santa Monica, CA 90401
424-222-8396
rcondas@lincolnavecap.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorneys are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
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Bridget Smitha, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
106 E College Ave Suite 700
Tallahassee, Florida 32301
Telephone: 850-329-4852
Facsimile: 850-329-4864
E-mail: bsmitha@stearnsweaver.com

B. THE DEVELOPMENT

3. Petitioner submitted a Non-Competitive Application package requesting a tax exempt Multifamily Mortgage Revenue Bond ("MMRB") in the amount of $16,500,000 and an annual allocation of non-competitive Housing Credits in the amount of $975,157.

4. On October 21, 2016, Corporation staff issued an opportunity to Petitioner to begin credit underwriting at risk.

5. Timber Sound and Timber Sound II (collectively, the "Development") were already part of the Corporation's portfolio when Petitioner purchased it. Petitioner obtained the MMRB and Housing Credits to rehabilitate the Development. The Corporation approved subordination of the existing State Apartment Incentive Loan ("SAIL") LURA and Housing Credits ELIHA's to the new first mortgage.

6. The following information pertains to the Development:

- Development Name: Timber Sound Apartments
- Developers: Timber Sound Developer LLC
- County of Development: Orange
- Number of Units: 240
- Type: Garden Apartments; Acquisition & Rehabilitation
- Demographics: Family
- Set-Asides: 15% @ 35% Average Median Income ("AMI") and 85% @ 60% AMI (ELIHA); 15% @ 40% AMI and 85%[1] @ 60% AMI (MMRB LURA).
- Funding Amounts: $994,601 4% non-competitive housing credit annual allocation; $16,500,000 MMRB

C. RULE FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-21.003(8)(j), Florida Administrative Code (10-6-2015) (the "Rule"):

> (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

[1] If this Petition is granted, this percentage would be reduced to 40%; all other set-aside percentages would remain unchanged.

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;

D. STATUTES IMPLEMENTED BY THE RULE

8. The Rule implements Section 420.5099 of the Florida Housing Finance Corporation Act (Allocation of the low-income housing tax credit) as well as:

- Section 420.502 (Legislative findings)
- Section 420.507 (Powers of the corporation)
- Section 420.508 (Special powers; multifamily and single-family projects)
- Section 420.509 (Revenue bonds)

E. JUSTIFICATION FOR THE WAIVER

9. Prior to 2017, the Development was encumbered by two ELIHAs (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 a new Corporation MMRB LURA and a new Corporation ELIHA were recorded. The new MMRB LURA states in Section 3(a) that "Commencing on… the **delivery date of the Bonds**… **at least 40% of the Available Units in the Property shall be occupied persons and families with incomes equal to or less than 60%** of the median income for Orange County, Florida…." *Id.* (emphasis added). That section goes on to further restrict the Development such that at least 15% of units are rented to persons at 40% AMI and 85%[2] of units are rented to persons at 60% AMI.

[2] If the Petition is granted, this set-aside percentage would be reduced to 40%, but would nonetheless comply with the language quoted from MMRB LURA Section 3(a) and bolded in ¶ 9, above.

10. Petitioner cannot comply with the MMRB LURA set-aside requirements because certain tenants who were qualified under the original ELIHA thresholds (*i.e.*, 35% AMI and 60% AMI) at the time they moved into the Development, have experienced income increases over the years such that 21 units out of 240 (*i.e.*, 8.75%) do not satisfy the MMRB LURA thresholds that were imposed at the time the bonds issued. 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.

11. Though the new MMRB 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 Corporation's policies and goals by forcing these residents from their homes.

12. 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.

13. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., 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 results 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* § 120.542(2), Fla. Stat. "Substantial hardship" means a "demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver." *Id.*

14. If this Petition is denied, 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.

15. The purpose of the underlying statute (*i.e.*, increasing the supply of affordable housing through private investment) will still be achieved, even if the MMRB LURA set-aside is reduced from 85% at 60% AMI to 40% at 60% AMI. 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. Accordingly, a waiver of the Rule's restriction against changing the Total Set-Aside Percentage would serve the purposes of Section 420.5099, F.S., 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.

16. The requested waiver will not prejudice the Development or the Corporation.

17. 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.

F. PERMANENCY

18. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

Petitioner requests the following: (a) that the Corporation grant Petitioner a waiver from Rule 67-21.003(8)(j), F.A.C. (10-6-2015), allowing it to decrease the MMRB LURA set-aside

percentage from 85% at 60% AMI to 40% at 60% AMI; (b) grant the Petition and all the relief requested therein; and (c) grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
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By: *s/Brian J. McDonough*

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 16th of February, 2022.

s/Brian J. McDonough