STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

TIMSHEL MULTIFAMILY 2, LLC
a Florida limited liability company,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2024-042VW
FHFC APPLICATION NO. 2024-124C

PETITION FOR WAIVER OF RULE 67-48.004(3)(j)
FLORIDA ADMINISTRATIVE CODE
FOR A CHANGE IN TOTAL SET-ASIDE PERCENTAGE

TIMSHEL MULTIFAMILY 2, LLC, a Florida limited liability company ("Petitioner"), by and through its undersigned counsel, and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C.") (2023), hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.004(3)(j) (the "Rule"). The waiver sought is to decrease the Total Set-Aside Percentage designated by Petitioner in its Application (as defined herein) from 100% to 97.6% based on the addition of two (2) additional units. Notably, Petitioner does not seek to reduce the absolute set-aside unit count of 82 units designated in its Application. Rather the decrease in the Total Set-Aside Percentage would result from the addition of two (2) market rate units. In support, Petitioner states the following:

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Timshel Multifamily 2, LLC
1000 Bryn Mawr St.
Orlando, FL 32804

Attn: Todd Wind
Telephone: (917) 497-8520
Email: twind@timsheldevelopment.com
Facsimile: (904) 456-8948

Attn: Brian Waterfield
Telephone: (407) 461-4651
Email: bwaterfield@timsheldevelopment.com
Facsimile: (904) 456-8948

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

Coleman Talley LLP
1 Independent Dr, Suite 3130
Jacksonville, FL 32202

Attn: Gregory Q. Clark, Esq.
Telephone: (904) 456-8960
Email: greg.clark@colemantalley.com
Facsimile: (904) 456-8948

Attn: Hannah Anderson, Esq.
Telephone: (904) 456-8962
Email: hannah.anderson@colemantalley.com
Facsimile: (904) 456-8948

3. On September 12, 2023, Petitioner timely submitted an application in response to RFA 2023-201 Housing Credit Financing For Affordable Housing Developments Located in Small and Medium Counties (the "Application") to finance the development and construction of an 82-unit multifamily residential apartment complex in unincorporated Bay County, to be commonly known as Tranquility at St. Andrews (the "Development").

4. Section 4.A.6(c)(2) of the Application required applicants to provide a minimum set-aside commitment for a proposed development. In the Application, Petitioner provided that 10% of the units (9 units) would be set-aside for residents at 40% AMI or below and 90% of the

units (73 units) would be set-aside for residents at 60% AMI or below. This resulted in the Total Set-Aside Percentage equaling 100%, or all 82 units in the Development.

5. The contracted architect for the Development has determined it necessary to include two (2) additional units in the Development, resulting in a total unit count of 84, or two (2) units greater than the unit count proposed in the Application (the "Additional Units"). Petitioner seeks to deliver the Additional Units at market rate, with no income or rent restrictions.

6. Petitioner has attached a revised proposed Total Set-Aside Commitment Breakdown Chart herein as Exhibit "A."

7. The Corporation awarded Petitioner $2,142,000 of 9% low-income housing tax credits.

8. Petitioner has not yet closed on its financing.

THE RULES FROM WHICH WAVIER IS SOUGHT

9. Petitioner requests a waiver of Rule 67-48.004(3)(j), F.A.C. (2023), which provides:

> **67-48.004 Selection Procedures for Developments.**
>
> ***
>
> (3) **For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:**
>
> ***
>
> (j) **For the** SAIL and **HC Programs, the Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application.** For the HOME Program, the total

> number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage, or total number of HOME-Assisted Units, as applicable, 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, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;
>
> (Emphasis added.)

10. For clarification, Petitioner is not seeking a waiver from Rule 67-48.004(3)(i), F.A.C. (2023) (the rule governing a change in the total number of units). Specifically, Petitioner is not seeking to decrease the total number of units. Rather, Petitioner is requesting Corporation staff to increase the total number of units in the Development, which is the mechanism set forth in Rule 67-48.004(3)(i) for Petitioner to request and increase in the total number of units.

STATUTE IMPLEMENTED BY THE RULE

11. The Rule implements, among other sections of the Florida Housing Finance Corporation Act ("Act"), the statute that created the Housing Tax Credit Program and authorizes the Corporation to establish procedures for allocating low-income housing tax credits. See § 420.5099, Fla. Stat.

JUSTIFICATION FOR GRANTING A WAIVER OF THE RULE

12. Petitioner requests a waiver of the Rule to decrease the Total Set-Aside Percentage for the Development from 100% to 97.6% resulting from the Additional Units.

13. Petitioner's request would not change the set-aside unit count from its Application: 9 units would still be set-aside at 40% AMI or below, and 73 units would still be set-aside at 60% AMI or below, and there would be 2 additional units at market rate.

14. Pursuant to Section 120.542 Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance 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, 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.

15. "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. Further, "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. See Fla. Stat. § 120.542(2).

16. Petitioner would suffer substantial economic hardship absent the rule waiver. Due to decreased tax credit equity pricing, rising insurance premiums, and inflated construction costs and interest rates, among other unforeseen circumstances related to the Development, Petitioner has determined that the Development would not be financially feasible if the Additional Units were set-aside at or below 60% AMI. More specifically, if the Additional Units were set aside at 60% AMI, with no additional corresponding tax credit equity, the addition of two (2) set-aside units would negatively impact the viability of the Development. On the other hand, adding the Additional Units as market rate units allows the Development to continue to be viable from a financial perspective.

17. Further, the contracted architect for the Development has determined that continuing without the Additional Units would create inefficiencies in the building design related

to roof structure, additional truss profiles, stacking of utilities (mechanical, electrical, and plumbing), routing of engineering systems, fire rating continuity, and waterproofing. The architect also noted that the inefficiencies will increase construction costs and could potentially lengthen the construction timeline.

18. A denial of the Rule waiver would violate principles of fairness as it would operate to deprive the citizens of Bay County of additional housing units at a time when the demand for both affordable and market rate housing continues to increase. Per Bay County's 2023 Housing Needs Assessment, "Recent years have presented significant challenges to the housing market in Bay County. Hurricane Michael, the COVID-19 Pandemic, and ongoing supply chain disruptions have all contributed to a tightening market. The damage or destruction of more than 60% of the county's housing stock by the hurricane is coupled with significant increases in demand and challenges for new construction."[1] The addition of two market rate units will be beneficial for the replenishment of Bay County's housing stock.

19. The purpose of the Act will be achieved if the rule waiver is granted. The Act was passed to encourage private and public investment in facilities for persons of low-income, and the purpose of the Housing Tax Credit Program is to stimulate and prioritize initiatives to increase the supply of affordable housing.

20. By granting the requested waiver, the Corporation would recognize the goal of providing persons of low-income with affordable housing through private investment and would ensure that the affordable housing units of the Development as applied for be preserved and made available for Bay County residents to obtain decent, safe, and sanitary housing. Further, Bay County's 2023 Housing Needs Assessment provided that an increase in housing supply, regardless of whether the units are market rate or rent restricted, will help control rent prices.

[1]Bay County Housing Needs Assessment Study, Pg. 4, Emerald Coast Regional Council, May 15, 2023.

21. In addition, the requested waiver would not adversely impact the Development or the Corporation, nor would it provide Petitioner with an unfair advantage.

22. Importantly, the requested waiver would not result in a decrease in the number of set-aside units that Petitioner submitted in its Application. Rather, the Total Set-Aside Percentage would decrease solely as a result of the Additional Units.

23. Petitioner's Application would not have been scored differently had Petitioner originally included the Additional Units in the Application. In other words, the waiver does not result in an unfair competitive advantage to Petitioner.

24. By granting this Petition for a waiver of the Rule, the Corporation would (1) recognize the economic realities of developing affordable rental housing, (2) encourage the development of mixed-income housing projects, and (3) enable Petitioner to meet the housing needs of Bay County residents. A waiver of the Rule would meet the Act's purpose of efficiently providing decent, safe, sanitary, and affordable housing through private investment.

TYPE OF WAIVER

25. The waivers or variances being sought are permanent in nature.

ACTION REQUESTED

26. For clarification purposes, the Petitioner respectfully requests the following:

a. Waiver of rule 67-48.004(3)(j) F.A.C, and specifically, a waiver of the rule for Petitioner to reduce the Total Set-Aside Percentage from 100% to 97.6%; and

b. Approval for the set-aside commitments in Purchaser's Application to reflect the following:

1. 9 units (10.7%) at 40% AMI; and
2. 73 units (86.9%) at 60 % AMI; and

3. 2 units (2.4%) at market rate.

27. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of the Rule to reduce the Total Set-Aside Percentage for the Development as specified in Petitioner's Application; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

28. A copy of the Petition has been provided to the Joint Administration Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399-1400, as required by § 120.542(5), Florida Statutes.

Respectfully submitted this 31st day of July 2024.

Hannah Anderson, Esq.
Fla. Bar No. 1003186
Counsel for Petitioner
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Jacksonville, FL 32202
Telephone: (904) 456-8962
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
japc@leg.state.fl.us

This 31st day of July 2024

By: _____
Hannah Anderson, Esq.
Fla. Bar No. 1003186

EXHIBIT "A"

Number of Residential Units	Percentage of Units	AMI Level, at or below:	Types of Units
0		25%	Housing Credit Units
0		28%	
0		30%	
0		33%	
0		35%	
9	10.7%	40%	
0		45%	
0		50%	
73	86.9%	60%	
2	2.4%	Above 60%	Market Rate Housing Units
82	97.62%		Total Qualifying HC Units
84	100.00%		Total Units