STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: HAMPTON POINT PRESERVATION, LTD.

FHFC Case No.: 2023-002VW

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ORDER GRANTING WAIVER OF RULE 67-21.003(1)(b), FLORIDA ADMINISTRATIVE CODE (05/18/2021) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (03/2021) AND FOR APPROVAL PURSUANT TO RULE 67-21.003(8)(b), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 27, 2023. Florida Housing Finance Corporation ("Florida Housing") received the Petition for Waiver of Rule 67-21.003(1)(b), F.A.C. (05/18/2021) and the Non-Competitive Application Instructions (03/2021) and for Board Approval Pursuant to Rule 67-21.003(8)(b), F.A.C. (05/18/2021) ("Petition") on January 11, 2023, from Hampton Point Preservation, Ltd., a Florida limited partnership ("Petitioner"). The Notice of the Petition was published on January 12, 2023, in Volume 49, Number 08, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors ("Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann McGlamory /DATE: 1/30/2023

2. Petitioner successfully applied for non-competitive housing tax credits and Multifamily Mortgage Revenue Bonds ("MMRB") via Application 2021-104B to assist in the in the acquisition and rehabilitation of Hampton Point Apartments, a 284-unit family rental development in Charlotte County, Florida (the "Development") in June 2021.

3. To change Petitioner's principals before the MMRB loan closing, Petitioner requests a waiver of Rule 67-21.003(1)(b), Florida Administrative Code (05/18/2021), which in relevant portion, states:

> (1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.
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> ...
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> (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.

4. Rule 67-21.003(1)(b), Florida Administrative Code (05/18/2021), incorporates by reference the Non-Competitive Application Package (Rev. 03/2021) (the "NCA") and a waiver of the NCA Instructions are also sought in order to change Petitioner's principals before the MMRB loan closing. The NCA Instructions 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. (emphasis added)

5. To change the Developer's principals after being invited to credit underwriting Petitioner respectfully requests Board approval pursuant to Rule 67-21.003(8)(b), Florida Administrative Code (05/18/2021), which in relevant portion, states:

> (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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> (b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the Principals of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation. Principals of a Public Housing Authority or officers and/or directors of a non-profit entity may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter Credit Underwriting. Any allowable replacement of a Principal that was identified as the experienced Developer in a competitive solicitation must meet the experience requirements met by the original Principal;

6. Petitioner respectfully requests a waiver of the Rule 67-21.003(1)(b), Florida Administrative Code (05/18/2021) and the NCA Instructions so that it may change its organizational structure prior to the MMRB Loan closing. Specifically, waiver is sought because the employee

members of one of Petitioner's principals *(i.e.,* Hampton Point Employee Fund LLC) have changed and the organizational structure must be updated to remove the old employees and add the new employees as principals/members. Additionally, because a member at the second level desires to make a change that would cause it to fall out of compliance with Rule 67-21.003(1)(b), Florida Administrative Code (05/18/2021), Petitioner seeks to replace that member with a special purpose entity *(i.e.,* Condas Lincoln Holdings FL, LLC). Petitioner states that the change in principals must occur now, as opposed to waiting until after the MMRB Loan closing because the 2022 tax returns must reflect the ownership entity structure that will in fact operate the Development. Petitioner also respectfully requests Board approval for the developer to change its organizational structure pursuant to Rule 67-21.003(8)(b), Florida Administrative Code (05/18/2021).

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

8. In support of its Petition, Petitioner states that a subsequently imposed investor requirement necessitates combining the general partner and the Hampton Point Partner entities. More specifically, the equity investor desired a more traditional GP/LP partnership structure and Petitioner made the change to secure KeyBank as an investor. Additionally, the proposed

traditional GP/LP partnership structure gives Petitioner the flexibility to make the seller note non-recourse if necessary to avoid capital account issues.

9. As a result of the investor requirement, 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. Pursuant to the NCA Instructions, changes to the limited partner of an investor limited partnership will not result in disqualification but must be reported to Florida Housing. Petitioner indicates that it is reporting the change limited partner to Florida Housing its via its Petition.

10. Petitioner states that after Hampton Point Partner LLC 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 and if the waiver is granted Hampton Point GP LLC would remain a general partner at the first level, but its interest would change from 0.05% to 0.001 %. Unrelatedly, several member employees left the Hampton Point Employee Fund LLC, and replacements were added, resulting in changes to the LLC's members.

11. If the Petition is granted, Petitioner states that the changes described above would have a ripple effect that would cause several entities to be removed and other entities to be added. The changes may add new names to the organizational structure, the natural person principals disclosed would be 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 member employees of the Hampton Point Employee Fund LLC.

12. Specifically, the following entities would be removed from the Current Applicant Organizational Structure:

a. At the first level: LAC TC Partners Holdings LLC (99.99% Investor LP) and Hampton Point Partner LLC (0.05% Non-Investor LP).

b. 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 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.

c. 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%), Graham Meharg (8.312%), Mike Martin (7.15%), and Oren Gabriel (9.2%), as well as Hampton Point Employee Fund LLC's manager (Almog Geva), will be removed. 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.

13. If the Petition is granted, the following entities would be added to the Proposed Applicant Organizational Structure:

a. At the first level: a to-be formed affiliate of Key Community Development Corporation (the placeholder prior to closing will be LAC TC Partners Holdings LLC) (99.99% Limited Partner) would be added.

b. 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), and Jeremy Bronfman (0% manager).

c. 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 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., Thom Amdur (3.086); Brandon Hodge (6.172%); James Riley (6.172%); Brandon Sand (9.2581%); Stacy Kaplowitz (3.086%); Michele Lindahl (3.086%); Rebecca Schulz (3.0860%); and Drew Sullivan (3.086%); and the manger would be Hanna Jamar (20.9893%);5 and (4) the sole member of Condas Lincoln Holdings FL, LLC would be Russell Condas.

14. Since the MMRB loan has not closed, Petitioner requested these waivers to make the foregoing proposed change to Petitioner's organizational structure.

15. If Rule 67-21.003(1)(b), Florida Administrative Code (05/18/2021) and the NCA Instructions are imposed, Petitioner argues that it

will be prevented from complying with an investor requirement, jeopardizing Petitioner's ability to acquire the property. Petitioner's principal, Hampton Point Employee Fund LLC, would likewise be unable to disassociate itself with employees that no longer work there, nor to name new employees as members.

16. In addition, Petitioner further argues that the natural persons exerting control over the Development were disclosed in the application and the changes sought are only to: the names of the entities through which those persons will act; the family member beneficiaries of the trusts; and the member employees of Hampton Point Employee Fund LLC. 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.

17. Section 120.542(2), *Florida Statutes*, provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

18. The Board finds that granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing.

19. The Board finds that Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted.

20. The Board finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-21.003(1)(b), Florida Administrative Code (05/18/2021) and of the NCA Instructions (03/2021) is hereby **GRANTED** so that Petitioner may change the organizational structure of the Applicant Entity prior to the MMRB Loan closing to remove old employees and add new employees as principals and members and to replace a member who will subsequently fall out of compliance with Rule 67-21.003(1)(b), Florida Administrative Code (05/18/2021) with a special purpose entity and the Petitioner's request to change the developer's organizational structure pursuant to Rule 67-21.003(8)(b), FAC (5/18/2021).

DONE and ORDERED this 27th day of January, 2023.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.