STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: _____
APPLICATION NO.: _____

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FLORIDA HOUSING
FINANCE CORPORATION

FORT MYERS LEASED HOUSING ASSOCIATES I, LLLP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

AMENDED PETITION FOR WAIVER OF RULES 67-48.009(5)(d), 67-48.018(1)(c), AND 67-48.023(1)(c)

FORT MYERS LEASED HOUSING ASSOCIATES I, LLLP, a Minnesota limited liability limited partnership authorized to conduct business in the State of Florida, (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of, or variance of the Corporation's prohibition against an applicant applying for SAIL program funding, HOME program funding, and/or Housing Credits if the proposed development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing unless a specified exception applies. *See Rule 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C. (2023)* (the "Rules"). In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is as follows:

FORT MYERS LEASED HOUSING ASSOCIATES I, LLLP
2905 Northwest Blvd. Suite 150
Plymouth, Minnesota 55441
Attention: Terry Sween
Phone: (202) 470-4909
Email: tsween@dominiuminc.com

2. The mailing address, telephone number and email of the Petitioner's legal counsel is as follows:

Yisell Rodriguez, Esq.
Nelson Mullins Riley & Scarborough LLP
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
407-669-4290 (Phone)
407-425-8377 (Fax)
Email: yisell.rodriguez@nelsonmullins.com

B. THE DEVELOPMENT

3. Petitioner acquired Aria Landings (formerly known as The Brittany Phase I and II), located in Lee County, in July of 2022 (the "Property"). The plan was always to rehabilitate the Property as it is over 20 years old (Phase I was built in 1999 and Phase II in 2001) with Corporation-issued bonds and 4% HC. Originally, the rehabilitation costs were approximately $30,000.00 per unit, but have since increased to $40,000.00 per unit due to property conditions and increasing construction costs. This project is seeking a tax-exempt bond request amount of $50,000,000.00; however, this project will still require additional funding sources to rehabilitate the Property at the end of this year. Due to the increased costs and ongoing market fluctuations, the Property originally had a $3,000,000.00 gap in funding. However, due to extensive damage from Hurricane Ian, that gap has now widened to $7,000,000.00.

C. TYPE OF WAIVER

4. The waiver being sought is permanent in nature.

D. THE RULES FROM WHICH WAIVER IS SOUGHT

5. The Petitioner requests a waiver of, or variance from, Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), Florida Administrative Code (effective June 28, 2023), which provide in part:

> Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for [SAIL program funding, HOME Program funding, or Competitive Housing Credits] if any of the following pertain [to the proposed Development]:
>
> The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following [exceptions] applies:
>
> 1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program, or
>
> 2. A LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the deadline to apply for the applicable [SAIL funding, HOME funding or Competitive Housing Credits], where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation [Moderate Rehabilitation/Substantial Rehabilitation], Acquisition and Rehabilitation [Moderate Rehabilitation/Substantial Rehabilitation], Preservation, or Acquisition and Preservation.

E. STATUTES IMPLEMENTED BY THE RULES

6. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation as the State of Florida's housing credit agency and authorizes the Corporation to establish procedures for allocating and distributing low-income housing tax credits. See Fla. Stat. § 420.5099.

F. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

7. Petitioner is seeking a waiver of the Rules for the reasons set forth below.

8. As stated above, this Property is over 20 years old and hasn't been renovated since its inception. Moreover, Hurricane Ian severely damaged the property. Out of 26 buildings, the hurricane affected the interior of 20, including the clubhouse. The storm caused interior issues such as leaks and shattered windows. Several units even required extensive repairs to the flooring and structure due to water damage, which involved wall cutting and carpet replacement. Externally, there were damages such as missing window screens, uprooted trees, damaged fencing, pool destruction, and significant roof damage. Further, power outages led to the need for generators, dramatically raising the Property's utility costs. So far, the hurricane damages have totaled approximately $690,540.30, and the costs are still rising as we discover more issues. Due to high immediate repair costs, several damages have been postponed until resyndication. For instance, only 11 buildings have had their roofs fixed, with the remaining 15 scheduled for repairs during resyndication.

9. Given the state of the Property, it urgently needs renovation. The developer plans to begin this rehabilitation by the end of the year. However, due to rising construction costs, the impacts of the hurricane, and market financial challenges, the financing gap for this project has more than doubled in size. Due to the significant financial shortfall in this project, the Petitioner

has tried various efforts to secure soft funds. However, several challenges hinder the project from qualifying for these funds, as described below. That said, the Petitioner believes that SAIL financing is one of the few viable soft funding options and respectfully asks for the proposed waiver to be considered.

10. RFA 2023-204 RRLP Financing to be Used for Rental Developments in Hurricane Ian and Hurricane Nicole Impacted Counties: On April 25, 2023, FHFC released an RFA to applicants proposing the construction of affordable housing utilizing Rental Recovery Loan Program funding for Development in Hurricane impacted counties. FHFC expected to offer an estimated $81,600,000.00 in funding appropriated by the 2022 Florida legislature to various counties ranked by impact criteria and FEMA data. Lee County was categorized as a Tier 1 County, making this funding opportunity extremely attractive to Aria Landings. However, as an existing development, the Property was ineligible. Petitioner submitted a comment to FHFC, requesting that rehabilitation projects be considered for funding, however this comment was unsuccessful.

11. SHIP Financing via Lee County and the City of Fort Myers: Given the Property was deemed ineligible for Hurricane Relief funding, Petitioner made efforts to apply for SHIP financing through Lee County and the City of Fort Myers. Per the 2022/2023 disbursement allocation list published by FHFC, Lee County was appropriated $4,689,680.00, while the City of Fort Myers was appropriated $877,347.00 and the City of Cape Coral appropriated $1,931,663.00 in SHIP funding.

12. The Property is located within the city limits of Fort Myers, and therefore is under the City's jurisdiction. Unfortunately, this deems the project ineligible for SHIP funding through Lee County, as the program only allocates funding to projects located within unincorporated Lee County. In conversations with the County, this requirement will not be waived under any

circumstances. Please see the attached application for additional details and specific language surrounding this requirement. In addition, Lee County has provided information on their website, per the link below - https://www.leegov.com/dcd/planning/ship.

13. Because the Property is not located within unincorporated Lee County, SHIP funds allocated by the City of Fort Myers must be utilized. The Petitioner has conducted several discussions with the City of Fort Myers and was told the City of Fort Myers only allocates SHIP funds to single family rehabilitation, not multifamily rental properties. At this time, the City does not plan to allocate SHIP funds to this Property, despite countless efforts made by the Petitioner. Please use the link below to review additional details - https://www.cityftmyers.com/1550/Rental-Programs.

14. Community Development Block Grant – Disaster Recovery (CDBG-DR): HUD has allocated $1.1 Billion in CDBG-DR funding directly to Lee County to assist with the County's long-term recovery following Hurricane Ian. These disaster recovery funds must be used for necessary expenses related to disaster relief, long-term recover, restoration of infrastructure and housing, economic revitalization, mitigation, and planning. While this funding source could serve as a potential gap solution to the Property, the timeline for the allocation of these funds does not align with the closing timeline and ultimate rehabilitation. In addition, given the financing will be appropriated by HUD, various reviews will be required (i.e., environmental), which could extend closing by an additional 6 months after the project is awarded funds. To receive these funds from HUD, Lee County must complete a planning process that takes approximately six months. Throughout this process, Lee County is reviewing data and gathering input to determine unmet needs and designing eligible programs that address those needs. This information is then compiled into an Action Plan that must be submitted to and reviewed/approved by HUD. Upon HUD's

approval, Lee County can begin to deploy these funds. Lee County plans to submit this Action Plan for HUD's review in September of 2023 and anticipates launching the program in early 2024. Please see the attached CDBG-DR flyer, published by Lee County for additional details. In addition, Lee County has provided information on their website, per the link below - https://www.leegov.com/recovery/cdbg-dr. Unfortunately, the Property cannot afford to delay the timeline for these funds.

15. To carry out the essential rehabilitation, we're hopeful that SAIL funding can significantly bridge the funding shortfall. It is important to acknowledge that this property isn't located in a HUD-designated Qualified Census Tract ("QCT") or a Difficult to Develop Area ("DDA"), which restricts the amount of low-income housing tax credits available to fund project, as the 30% basis boost doesn't apply. Further, in reviewing the draft SAIL RFA and the Rule, the Property is precluded from applying for this funding because the Property is encumbered by an Existing Low-Income Housing Agreement ("ELIHA") on each phase of the development.

16. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and 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. A waiver 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[1] 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.

[1] "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.

17. As explained above, the Rules preclude Petitioner from applying for SAIL Funding because the Property is encumbered by an existing ELIHA. Accordingly, Petitioner is requesting a waiver from the Rules to allow it to apply for the necessary SAIL funding to complete the rehabilitation of the Property. The existing ELIHA is only in effect for two more years. Although not too long, Petitioner is unable to put this project on hold for two years and at this point, cannot move further without additional funding. The recent devastation caused by the hurricane coupled with the historically low amounts of affordable housing development in Fort Myers underscores the urgent need to preserve these units as soon as possible.

18. Further, the Property should be prioritized in light of the following property risk factors identified in the Board-approved Plan:

- **Aging Stock/Loss Due to Deteriorating Physical Condition**: The Property has been standing for over 20 years, without any rehabilitation. With this in mind, the imperative need to allocate resources for its upkeep and modernization and prevent further deterioration becomes increasingly urgent.
- **Demographic**: This Property is deemed a middle priority because it serves a general family occupancy, offering a variety of 1, 2, 3, and 4-bedroom units.
- **Lower Income Units**: With 35% of the units reserved for low-income tenants, as well as units restricted at 60% of Area Median Income (AMI), this factor is of utmost priority. Our goal is to preserve these units to uphold our commitment to providing affordable housing.
- **Importance of Property in the Community**: Given the scarcity of affordable housing, particularly in markets with high rental rates such as this, this Property's presence is paramount to the community. It addresses a significant need for affordable housing options in Fort Myers.

- **Location**: The Property's strategic location near amenities, transit options, schools, and job opportunities elevates its importance and, consequently, the priority level of managing related risks.
- **Owner Development and Management Performance**: Notwithstanding the challenges faced and described herein, the Petitioner has performed its ownership and management function. Further, the strong past performance of the Property owner and manager in maintaining and offering affordable housing is of great significance.

19. A waiver of the Rules will serve the underlying purposes of Section 420.5087 and the Act that are implemented by Chapter 67-48 of the Florida Administrative Code, because one of the goals is for the proceeds of Corporation financing to be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, et seq.) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households.

20. The requested waiver will not adversely affect Petitioner, any other party that applied to receive funding in the RFA, or the Corporation as stated above.

F. ACTION REQUESTED

21. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of, or variance from, Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C. (2023) to allow the Petitioner to apply for SAIL funding, despite the existing ELIHA on the Property.

Respectfully submitted on the 20th day of July, 2023.

Yisell Rodriguez, Esq.
Nelson Mullins Riley & Scarborough LLP
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Orlando, Florida 32801
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Email: yisell.rodriguez@nelsonmullins.com
COUNSEL FOR PETITIONER

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
Email: corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Email: joint.admin.procedures@leg.state.fl.us

This 20th day of July, 2023.

By: _____
Yisell Rodriguez, Esq.
Fla. Bar No. 117915