STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2023-061VW
APPLICATION NO.: _____

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FLORIDA HOUSING FINANCE CORPORATION

FORT MYERS LEASED HOUSING ASSOCIATES I, LLLP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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 per unit, but have since increased to $40,000 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. Petitioner had hoped to utilize the recently offered RRLP funding from the Corporation, but as an existing development, the Property was ineligible. 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.

9. 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

[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

purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

10. 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.

11. 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.

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.

- **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.

12. 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.

13. 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

14. 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 5th day of July, 2023.

Yisell Rodriguez, Esq.
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390 N. Orange Ave., Suite 1400
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 5th day of July, 2023.

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