STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2021-004VW
APPLICATION NO.: _____

POINCIANA LEASED HOUSING ASSOCIATES I, LLLP

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) AND NON-COMPETITIVE APPLICATION PACKAGE (REV. 03-2021) AND RULE 67-21.0025(7)

Pursuant to section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, POINCIANA LEASED HOUSING ASSOCIATES I, LLLP, a Florida limited liability limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the "**Corporation**") for i) a waiver of the requirement, pursuant to Section A.6.a of the Non-Competitive Application Package (REV. 03-2021) (the "**Application Package**"), as such is incorporated into Rule 67-21.003(1)(b), Florida Administrative Code ("**F.A.C.**") (2021), that the Petitioner's Principal Disclosure Form (the "**Principal Disclosure Form**") must identify the Principals (as defined by Rule 67-21.002(86), F.A.C. (2021)) of the Applicant pursuant to Rule 67-21.0025(7), F.A.C. and ii) a waiver of the requirement identified by Rule 67-21.0025(7)(c), F.A.C. (2021) that only natural persons may be all Principals disclosed by or at the third principal disclosure level of the Principal Disclosure

Form. This Petition is filed pursuant to Section 120.542 of the Florida Statutes and Chapter 28-104, Florida Administrative Code. In support of this Petition, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and e-mail address of Petitioner are:

The Partnership, Inc.
2001 W. Blue Heron Blvd
Riviera Beach, FL 33404
Attention: Hugh Jacobs
Phone: (561) 655-6775
Email: Hjacobs@gotpi.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel are:

David F. Leon, Esq.
Nelson Mullins Riley and Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4276
Facsimile: (407) 650-0979
Email: david.leon@nelsonmullins.com

B. THE DEVELOPMENT

3. The Petitioner submitted a Multifamily Revenue Bond Program Application (the "**OCHFA Application**") to the Osceola County Housing Finance Authority (the "**Authority**") requesting a loan in the maximum principal amount of $60,000,000 (the "**Loan**"), financed by the proceeds of tax-exempt bonds (the "**Bonds**"), to provide for the financing of a portion of the costs of the acquisition, construction and equipping of a three hundred eighty-three (383) multifamily rental housing project for seniors, together with any functionally related and subordinate facilities, to be located at 151 N. Osprey Village Road, Kissimmee, Florida 34758, to be known as Osprey Village, f/k/a Poinciana Senior & Cottages (the "**Development**"). On or about July 15, 2021, the

Authority issued the bonds and disbursed the Loan. Petitioner also submitted an application to the Corporation (the "**Application**") for an allocation of 4% low-income housing tax credits ("**Housing Credits**") to fund a portion of the acquisition and construction of the Development.

C. THE RULES FROM WHICH WAIVER IS SOUGHT

4. Given the Application Package requires Petitioner to identify its principals in Petitioner's Principal Disclosure Form pursuant to subsection 67-21.0025(7), F.A.C., Petitioner is seeking a waiver of the relevant provision of the Application Package, as such is incorporated into Rule 67-21.003(1)(b), F.A.C. (2021) (the "**Application Rule**"). The relevant provision of Rule 67-21.003(1)(b), F.A.C. (2021) and the provision of the Application Package from which Petitioner is seeking a waiver, are as follows:

5. Specifically, Rule 67-21.003(1)(b), F.A.C. (2021) provides in pertinent part:

> "(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.
> …
> **(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.**"
>
> (emphasis added).

6. Specifically, Section A.6.a of the Application Package (the "**Section**"), provides in relevant part:

> "6. Principals Disclosure for the Applicant and for each Developer:
>
> > a. The Principals of the Applicant and Developer(s) Disclosure Form in effect at the time of Application submission ("Principal Disclosure Form"), must be submitted, in Excel format, as part of the Application package.
> >
> > **The Principal Disclosure Form must identify, pursuant to subsections** 67-21.002(86) and **67-21.0025(7)** and (8), F.A.C., **the Principals of the Applicant** and Developer(s).
> >
> > ***"
>
> (emphasis added).

7. To allow legal entities, rather than natural persons, to appear beyond Petitioner's second principal disclosure level, Petitioner requests a waiver of Rule 67-21.0025(7)(c), F.A.C. (2021) (the "**Principal Disclosure Rule**" and, together with the Application Rule, collectively the "**Rules**") which provides as follows:

> "(7) Disclosure of the Principals of the Applicant must comply with the following:
>
> ***
>
> (c) **The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above** (third principal disclosure level). **Unless the entity is a trust, all of the Principals must be natural persons**; and
>
> ***"
>
> (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULES

8. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* §§ 420.509, 420.5099, *Fla. Stat.* (the "**Statute**").

9. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), *Fla. Stat.*

E. JUSTIFICATION FOR GRANTING THE WAIVER

10. Petitioner requests a waiver or variance from i) the requirement that the Principal Disclosure Form to identify the Principals of the Petitioner pursuant to subsections 67-21.002(86) and 67-21.0025(7), F.A.C., pursuant to Section A.6.a of the Application, as such is incorporated by Rule 67-21.003(1)(b), F.A.C. (the "**Disclosure Section**") and ii) the requirement that only natural persons may be Principals at the third principal disclosure level pursuant to Rule 67-21.0025(7)(c), F.A.C. so Petitioner may submit the Principal Disclosure Form with an accurate organizational structure of Petitioner showing all six (6) tiers of the organizational structure of the Petitioner and, in the process, make the required and related principal disclosures.

11. The Development is in a qualified opportunity zone. Petitioner's principals (the "**Dominium**") are experienced in conducting business in qualified opportunity zones and, on the advice of tax counsel and certified public accountants, have developed and utilize an organizational structure with multiple limited liability companies that reflect natural person owners

by the sixth tier in order to correspond with Dominium's broader portfolio and to streamline internal accounting practices. This six-tier structure is used across Dominium's broader portfolio. The ultimate owners and principals of Petitioner are reflected by the sixth tier. As such, the income that is generated across the Dominium portfolio typically runs through those additional entities in the structure (Dominium Holdings II, LLC, Dominium Holdings I, LLC, and Polaris Holdings I, LLC), which income is being used to fund the qualified opportunity zone investment on the Development. Given that the gains being used to invest in the opportunity zone for the Development is being generated under Dominium's multi-level structure, continuing the same multi-tier structure for the Development is necessary to prove out the gains in the qualified opportunity fund and to make Dominium's internal accounting manageable.

12. Moreover, the capital contributed to fund the Development, as an opportunity zone investment, was contributed at the closing of the financing for the Development. If Petitioner is not granted this waiver and needs to modify the structure now that the capital has been contributed, it would not only be costly to but could jeopardize the qualified opportunity fund investment and potentially incur additional tax penalties on the taxpayers. The financial hardships would affect the Petitioner's ability to construct the Development. Further, a denial of the requested waiver will also result in a denial of the Housing Credits, which Petitioner is relying on as an additional source of investor equity and without which Petitioner will not have sufficient funds to construct the Development. Conversely, if granted the waiver, Petitioner will be able to proceed with constructing the Development and, in turn, provide 383 much-needed affordable units in Osceola County.

13. The requested waiver will not adversely affect Petitioner, the Development, any other party or the Corporation.

14. The requested waivers serve the purpose of the Statute that is implemented by the Rules. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting the requested waiver, Petitioner will be able to proceed with construction of the Development and obtain the needed Housing Credits, as requested in this Petition, and the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

F. WAIVER IS PERMANENT

15. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver or variance of Section A.6.a of the Application, as such is incorporated by Rule 67-21.003(1)(b), F.A.C.; (*ii*) grant the requested waiver or variance of Rule 67-21.0025(7), F.A.C., (*iii*) grant the Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,

David F. Leon, Esq.
Fla. Bar No. 53929
Nelson Mullins Riley and Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4239
Facsimile: (407) 650-0979
Email: david.leon@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
CorporationClerk@floridahousing.org,

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

The 5th day of January, 2022.

By: _____
David F. Leon, Esq.
Fla. Bar No. 53929