

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2026-001VW
APPLICATION NO.: 2024-512C**

FORT MYERS 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) F.A.C.

Fort Myers Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (“**Petitioner**”), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the “**Corporation**”) for a waiver of the requirement that the total proposed equity amount be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (the “**15 percent criteria**”) per the Non-Competitive Application Package (Rev. 06-2024) (the “**NCA**”) adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (August 27, 2024) (the “**Rule**”). This Petition is filed pursuant to Section 120.542, Florida Statutes (2025), and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

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

Fort Myers Leased Housing Associates I, LLLP
2905 Northwest Boulevard, Suite 150
Plymouth, MN 55441
Attention: Terry Sween
Telephone: (202) 470-4909
Email: tsween@dominiuminc.com

2. The address and telephone number of Petitioner's counsel are:

Nicholas W. Heckman, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4241
Facsimile: (407) 425-8377
Email: nick.heckman@nelsonmullins.com

3. Petitioner has submitted its NCA to the Corporation for an issuance of Non-Competitive housing credits ("**4% HCs**") only, to be used for tax-exempt bond financing ("**Bonds**") to be issued by a County Housing Finance Authority ("**HFA**") in order to finance the rehabilitation of that certain 320-unit multifamily housing development known as Aria Landings, Located in the City of Fort Myers, Florida (the "**Development**").

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver of the NCA, adopted and incorporated by reference by the Rule. The Rule provides:

"If the NC Award will not be 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. The Non-Competitive Application Package or NCA (Rev. 06-2024) 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

*****.flrules.org/Gateway/reference.asp?No=Ref-16897, which shall be completed and submitted to the Corporation in accordance with this rule chapter.”

See Rule 67-21.003(1)(b), F.A.C. (2024) (emphasis added).

5. The NCA provides, in pertinent part:

Applicant Certification and Acknowledgement Form under
Section 16 of the NCA

"The Applicant certifies and acknowledges that:

k. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (the 15 percent criteria), subject to the following:

- (1) If syndicating/selling the Housing Credits, there are two exceptions to the preceding sentence. First, if there is a bridge loan proposal within the equity proposal that provides for bridge loan proceeds that equal at least 15 percent of the amount of total proposed equity to be provided to be made available prior to or simultaneous with closing of construction financing, the 15 percent criteria will be met. Second, if there is a separate bridge loan proposal from either the equity provider, any entity that is controlled directly or indirectly by the equity provider, or a subsidiary of the equity provider's parent holding company, and the proposal explicitly proposes an amount to be made available prior to or simultaneous with the closing of construction financing that equals at least 15 percent of the total proposed equity to be paid stated in the equity proposal, the 15 percent criteria is met. Bridge loan proposals that are not within the equity proposal, though, must meet the criteria previously stated for debt financing with the exception that evidence of ability to fund does not have to be provided. The Applicant may include the proposed amount of the bridge loan as equity proceeds on the Construction or Rehabilitation Analysis and on the Permanent Analysis (Note: this 15 percent criteria must be reflected in the limited partnership agreement or limited liability company operating agreement); or
- (2) If not syndicating/selling the Housing Credits, proceeds from a bridge loan will not count toward meeting the 15 percent criteria;"

See Section 16(k) of the Non-Competitive Application Form (Rev. 06-2024).

C. STATUTES IMPLEMENTED BY THE RULES

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “**Act**”), the statute that designated the Corporation as the housing credit agency and created the Housing Tax Credit Program. *See* § 420.5099, *Fla. Stat.*

7. 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.*

D. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

8. Petitioner hereby requests a waiver of the 15 Percent Criteria for the reasons set forth below.

9. On December 28, 2023, Petitioner closed on its equity and Bond financing (“**Closing**”), in which Petitioner’s investor limited partners agreed to contribute, over multiple installments, equity equal to \$26,711,862. At Closing, investor limited partners contributed \$3,260,163 as its first equity installment and Petitioner’s general partner (“**GP**”) contributed, as an equity contribution, \$2,106,843, which together made up of a total equity contribution by Petitioner’s partners equity to \$5,367,006 at Closing (20.1% of the total equity). At Closing the Petitioner believe that the combine equity contribution of \$5,367,006 meet and exceed the 15 Percent Criteria.

10. After Closing the Petitioner quickly and efficiently began rehabilitation work on the Development in order to timely complete construction. Sometime between January through

March of 2024, a member of the closing team that participated in the Closing informed Petitioner that the Development did not meet or exceed the 15 Percent Criteria needed at Closing; as the GP's contribution is not factored into such percentage calculation. As such, at Closing investor limited partners' first equity installment equaled only 12.3% of the total equity.

11. When Petitioner became aware of the issue it immediately worked to resolve the problem. Petitioner's investor limited partner immediately made an equity contribution to the Petitioner equal to \$751,224 to put the investor limited partner's equity contribution equal to an amount exceeding 15 percent of investor's total equity to be provided. The Petitioner's partners immediately thereafter entered into that certain First Amendment to Amended and Restated Agreement of Limited Liability Limited Partnership of Petitioner, dated effective as of December 1, 2023 (the "**First Amendment to Partnership Agreement**"), to memorialize the contribution.

12. At Closing, both Petitioner's GP and investor limited partners each contributed a substantial amount of equity to Petitioner showing their intention to actively participate, invest and be involved in the rehabilitation of the Development; however, this good intention indirectly lead to Petitioner's equity contribution at closing to be equal to 12.3% opposed to the collective 20.1% made by GP and the investors. When Petitioner's discovered the inadvertent error Petitioner's investors quickly contributed the additional amount needed to meet the 15 Percent Criteria and its partner's quickly amended their Partnership Agreement by entering into the First Amendment to Partnership Agreement. Petitioner will endure substantial hardship if this waiver request is denied as it would not be able to obtain the Housing Credits, and therefore lose a substantial portion of its anticipated financing. At the time of Closing, the Petitioner's investor limited partners contribution was less than the required amount; however, Petitioner's investors and partners quickly and

diligently worked to alleviate the issue and soon after Closing contributed the remaining amount needed to meet the 15 Percent Criteria. Although the 15 Percent Criteria was not initial meet, the Petitioner's partners quickly worked to correct the issue in order to complete the rehabilitation of the Development. Without the equity investment, the rehabilitation of the Development will not be completed, and the preservation of existing affordable units and creation of new affordable units will not occur.

13. 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. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship¹ *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. As demonstrated in this Petition, the strict application of the Rule would constitute a substantial hardship and violate the principles of fairness. Further, a waiver of this Rule will serve the purposes of Section 420.5099 and the Act that are implemented by Chapter 67-21 of the Florida Administrative Code, because one of the goals of the Corporation is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. Lastly, the requested waiver will not adversely impact the Development or the Corporation.

E. TYPE OF WAIVER

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.

14. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

15. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of Rule 67-21.003(1)(b), Fla. Admin. Code, waiving the requirement that 15% of the equity be paid at construction closing; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted this 7th day of January 2026.

Respectfully submitted,



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Fla. Bar No. 0127356
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Email: nick.heckman@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 7th day of January 2026.

By: _____

A handwritten signature in blue ink, appearing to read 'N. Heckman', is written over a horizontal line.

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356