STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _2024-048VW_____
FHFC APPLICATION NO. 2006-310HR

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FLORIDA HOUSING FINANCE CORPORATION

COCOA LEASED HOUSING ASSOCIATES I, LLLP,

Petitioner
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67ER06-34(17)

COCOA LEASED HOUSING ASSOCIATES I, LLLP, a Minnesota limited liability limited partnership, (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver or variance from Rule 67ER06-34(17), Florida Administrative Code ("F.A.C."), in effect as of July 5, 2006 (the "Rule"), in order to waive the requirement to pay down that certain RRLP Loan, as defined below, in connection with any refinancing. This Petition is filed pursuant to Section 120.542, Florida Statutes, 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 is:

Cocoa Leased Housing Associates I, LLLP
2905 Northwest Blvd, Suite 150
Plymouth, MN 55441
Attn: Katessa Archer
Telephone: (404) 806-5860

Email: katessa.archer@Dominiuminc.com

2. For purposes of this petition, the address, telephone number, facsimile number, and email address of Petitioner's counsel is:

David F. Leon, Esq.
Nelson Mullins Riley and Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4276
Email: david.leon@nelsonmullins.com

B. THE DEVELOPMENT

3. Petitioner is the owner of that certain development known as Oak Meadows Apartments (the "Development"). The Development was financed, in part, with that certain Rental Recovery Loan Program ("RRLP") loan from Florida Housing in the original aggregate principal amount of $10,070,000 (consisting of a base loan in the principal amount of $8,000,000 (comprised of an ELI Portion of $2,000,000 and a Non-ELI Portion of $6,000,000 (collectively the "Base Loan") and a supplemental loan in the principal amount of $2,070,000 (the "Supplemental Loan") (the "RRLP Loan"). Petitioner is currently seeking to resyndicate the Development and will be undergoing an acquisition and rehabilitation transaction which is scheduled to close this year. It is anticipated that Petitioner will transfer its ownership of the Development to an affiliate entity ("New Owner"). Such acquisition and rehabilitation work will be partially financed with Brevard County Housing Finance Authority bonds, in which the proceeds will be loaned from the Federal National Mortgage Association ("Fannie Mae") (the "New First Mortgage Loan") and serviced by Walker & Dunlop (the "New First Mortgagee").

4. In connection with the transfer of ownership, the New Owner will assume the RRLP Loan, the existing Extended Low-Income Housing Agreement recorded September 21,

2009 in O.R. Book 6029, Page 2498 (the "ELIHA"), the existing Land Use Restriction Agreement recorded December 31, 2007, in O.R. Book 5835, Page 4881, all in the Public Records of Brevard County, Florida (the "RRLP LURA," and together with the ELIHA, the "Regulatory Agreements"). The New First Mortgagee requires the RRLP Loan and the Regulatory Agreements to be subordinated to the New First Mortgage Loan. As such, since there will be a new mortgage in the first priority position, the Petitioner requests that Florida Housing approve the subordination of the RRLP Loan and Regulatory Agreements, and a waiver of the Rule to refinance without a required paydown.

C. <u>TYPE OF WAIVER</u>

5. The waiver being sought is permanent in nature.

D. <u>THE RULE FROM WHICH WAIVER IS SOUGHT</u>

6. Petitioner requests a waiver from Rule 67ER06-34(17), F.A.C., which provides:

67ER06-34 – Terms and Conditions of RRLP Loans.

* * *

(17) After accepting a preliminary commitment, the Applicant shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the RRLP mortgage without prior approval of the Corporation's Board of Directors. However, an Applicant may reduce the interest rate on any superior or inferior mortgage loan without the Board's permission, provided that no other terms of the loan are changed. The Corporation must be notified of any such change.

(a) The Board shall approve requests for mortgage loan refinancing only if Development Cash Flow is improved, the Development's economic viability is maintained, the security interest of the Corporation is not adversely affected, and the Credit Underwriter provides a positive recommendation.

(b) *The Board shall deny requests to increase the amount of any superior mortgage, unless the criteria outlined in this rule chapter*

are met, the original combined loan to value ratio for the superior mortgage and the RRLP mortgages is maintained or improved, and a proportionate amount of the increase in the superior mortgage is used to reduce the outstanding RRLP base loan balance. To calculate the proportionate amount of the increase in the superior mortgage which must be paid toward the reduction of the RRLP Loan balance, the following calculation shall be used: divide the amount of the original RRLP mortgage by the combined amount of the original RRLP mortgage and the original superior mortgage: then multiply the quotient by the amount of the increase in the superior mortgage after deducting refinancing costs.

(c) The Board shall deny requests for mortgage loan refinancing which require extension of the RRLP Loan term or otherwise adversely affect the security interest of the Corporation unless the criteria outlined in this rule chapter are met, the Credit Underwriter recommends that the approval of such a request is crucial to the economic survival of the Development or unless the Board determines that public policy will be better served by the extension as a result of the Applicant agreeing to further extend the Compliance Period or provide additional amenities or resident programs suitable for the resident population. Further, the Board shall limit any approved extension to a minimum term which makes the Development feasible and which does not exceed an industry standard term.

* * *

(Emphasis added.)

E. STATUTES IMPLEMENTED BY THE RULE

7. The Rule for which this waiver is requested are implementing the statute enacting Florida's response to housing disasters resulting from hurricanes in 2004 and 2005. Section 420.55, Fla. Stat. (2006). Florida Housing adopted emergency rules pursuant to Section 120.54, Fla. Stat. (2006), and the Legislature found "that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of Section 120.54(4)." In addition, the Legislature determined that, "such emergency rulemaking power is necessary for the preservation of rights

and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005." (Section 420.55, Fla. Stat. (2006)). As such Florida Housing authorized, approved and issued to the applicant's funds under the Rental Recovery Loan Program, authorized by Section 31, Chapter 2006-69, Laws of Florida, and governed by the rules of Florida Housing, as codified at Rules 67ER06-25 through 67ER06-36 F.A.C., in effect as of July 5, 2006. As such the Rule implements the provisions of Section 31 of Chapter 2006-69.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

8. Petitioner requests that Florida Housing approve the subordination of the RRLP Loan and Regulatory Agreements, and a waiver of the Rule to subordinate the RRLP Loan to the New First Mortgage Loan without a required paydown of the RRLP Loan.

9. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair, and unintended consequences in particular instances. A waiver or variance 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.

10. As stated above, Petitioner is currently in the process resyndicating the Development which is scheduled to close in 2024. The Development is currently fifteen (15) years old and in need of a rehabilitation. With the current market conditions, maintaining the full amount of the RRLP Loan outstanding will help to ensure there are sufficient sources of funds to perform a meaningful renovation of the Development with the extra proceeds going towards the rehabilitation of the Development. The assumption of the full amount of the RRLP Loan should permit the resyndication to qualify for acquisition credits that are necessary for the resyndication to be possible. The RRLP Loan comprises more than 50% of the acquisition costs of the Development and should cause each of the buildings to qualify for the exception to the 10-year hold requirement for a "state-assisted building" under Section 42(d)(6)(C)(ii) of the Internal Revenue Code. As such, denial of this waiver and strict application of the Rule would create a substantial hardship for the Petitioner as a denial could cause the resyndication to lose acquisition credits, which would in turn reduce the total financing available to Petitioner, and would potentially put the rehabilitation in jeopardy.

11. The requested waiver will not adversely impact the Development or Florida Housing, nor will it provide the Petitioner with an unfair advantage. Petitioner believes that a waiver of the Rules will serve the purposes of the Statute, which is implemented by the Rules. The Florida Housing Finance Corporation Act (Section 420.501, et. seq.) was passed to increase the supply of affordable rental housing and to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would further its goal of increasing the supply affordable housing for persons of low-income by allowing the Petitioner to rehabilitate and continue to make available to the residents of Brevard County, 120 decent, safe, and sanitary affordable housing units. Additionally, Petitioner will limit the first mortgage to

ensure Florida Housing remains in the same loan-to-value (LTV) position as when the loan was first executed. This assurance ensures that Florida Housing is not disadvantaged by the subordination of these loans without a paydown.

G. ACTION REQUESTED

12. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) approve the subordination of the RRLP Loan and Regulatory Agreements and grant the requested waiver of (or variance from) Rule 67ER06-34(17), F.A.C.; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted the 7th day of August, 2024.

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) 669-4276
Email: david.leon@nelsonmullins.com

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 7th day of August, 2024.

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