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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2024-034VW
FHFC APPLICATION NO. 2021-105B/ 2021-557C

APOPKA LEASED HOUSING ASSOCIATES I, LLLP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(8)(i) TO DECREASE THE TOTAL SET-ASIDE PERCENTAGE

APOPKA LEASED HOUSING ASSOCIATES I, LLLP, a Florida limited liability limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver or variance from Rule 67-21.003(8)(i), Florida Administrative Code (May 18, 2021) (the "Rule"), to revise the Total Set-Aside Percentage reflected in the Application (as defined below) for the Multifamily Mortgage Revenue Bond ("MMRB") program (the "MMRB Program") from 100% of the total units at or below 60% of the area median income ("AMI") to 40% of the total units at or below 60% AMI so Petitioner may adopt the Average Income Test for the Development (as defined below). 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:

Apopka Leased Housing Associates I, LLLP
401 E Jackson St., Suite 3300
Tampa, Florida 33602
Attn: Devon Quist
Telephone: (813) 582-4261
Email: devon.quist@dominiuminc.com

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

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

B. THE DEVELOPMENT

3. Petitioner submitted a Non-Competitive Application (the "Application") for Corporate-issued MMRB Bonds and Non-Competitive Housing Credits seeking an MMRB loan in amount of $49,800,000.00 and non-competitive housing credits in the annual amount of $4,568,202 to finance the development, construction and operation of a 300-unit multifamily residential housing development in the City of Apopka, Orange County, Florida, known as "The Mira" (the "Development"). On September 15, 2022, the Corporation invited the Petitioner to enter into credit underwriting in which the Petitioner accepted on September 19, 2022. On August 23, 2023, the Petitioner requested that the Corporation increase its MMRB loan amount from $49,800,000 to an amount of up to $68,000,000 in order to meet the 50% test due to increased

costs of construction and increases in interest rates. The Corporation approved the Petitioner's request on September 1, 2023.

C. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-21.003(8)(i), F.A.C. (05/18/21), which provides:

67-21.003 – Application and Selection Process for Developments.

* * *

(8) Notwithstanding any other provision of these rules, **there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:**

* * *

(i) **The Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application; notwithstanding the foregoing, the Total Set-Aside Percentage may be increased after the Applicant has been invited to enter Credit Underwriting,** subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

(Emphasis added.)

D. STATUTES IMPLEMENTED BY THE RULE

5. The Rule is 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.

E. WAIVERS WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

6. Petitioner requests waivers of, or variances, from the Rule to permit a decrease of the total set-aside percentage committed to in the Application under the MMRB Program so Petitioner may elect the Average Income Test under the Housing Credit Program; and substitute an Average Income Test chart at Section 10(b)(2) of the Application in place of the chart at Section 10(b)(1) under the MMRB Program. The Non-Competitive Application Package (the "Application Package") requires applicants committing to the Average Income Test for the Housing Credit Program to complete the Average Income Test chart, which requires the Applicant to commit to the 40/60 set-aside under the MMRB Program (i.e., 40% of the units in the applicable development for rent to individuals whose income is at or below 60% AMI for the applicable county). If the Petitioner's request for waiver of the Set-Aside Rule is granted, 120 units in the Development will be rented to natural persons and families whose incomes are at or below 60% AMI for Orange County under the MMRB Program. Under the Housing Credit Program, if the Petitioner's request for waiver is granted, the Total Set-Aside Breakdown Chart provided in Section 10(b)(2) (i.e., the chart required to be completed by applicants committing to the average income test in 10(a) of the Application) will reflect the following: (a) 91 units to be rented to households at or below 50% AMI; (b) 134 units to be rent to households at or below 60% AMI; (c) 59 units to be rented to households at or below 70% AMI; and (d) 16 units to be rented to households at or below 80% AMI, for an average AMI of 60%.

7. Since Petitioner filed the Application, interest rates for financing and the costs of labor and for construction materials have substantially increased. The Petitioner realized that such increases created a financing shortfall and quickly sought to obtain local government funds to address the issue. The Petitioner was able to obtain financing from the Orange County Housing

Finance Authority ("OCHFA") in the form of American Rescue Plan Act funds and local housing trust funds in an amount up to $11,000,000 ("Local Subsidy"), which such funds require the Petitioner to set-aside 30% of the units in the Development to be rented to persons whose incomes are at or below 50% AMI (the "Local Subsidy Set-Aside").

8. Although such Local Subsidy alleviated the Petitioner shortfall issue, the Local Subsidy Set-Aside together with its current set-aside under the Application of 100% of the units in the Development at or below 60% AMI would significantly reduce the amount of rental income Petitioner expects and needs to operate the Development. Such reduction of rental income would make payments on projected financing tight or potentially difficult to make and severely dimmish the projected mortgage funding Petitioner needs to make the Development feasible.

9. Nevertheless, to mitigate the impact of the Local Subsidy Set-Aside and to successfully alleviate its shortfall issue, the Petitioner requests waiver of the Rule so that it can implement an average income test set-aside to off-set the Local Subsidy Set-Aside and receive the amount of rental income it needs to make the Development feasible. Such election will allow the Petitioner to rent to persons at rental incomes levels needed to receive rental income at the level needed to pay its projected debt service, its projected operating expenses, and to receive mortgage funding in the total amounts needed to successfully construct, develop, and operate the Development. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation 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.

10. The Petitioner's requested waivers, or variances, will not adversely impact the Development or the Corporation or provide Petitioner with an unfair advantage, as the selection of the Average Income Test was available to Petitioner at the time of the Application, and will ensure that the 300 unit affordable housing Development will be preserved and made available for the target population in Orange County. Further, if Petitioner is not granted the requested waivers, or variances, the Petitioner will suffer substantially economically as the financial viability of the Development could be severely compromised. The Petitioner has worked diligently to receive additional financing to solve its shortfall issue so that it could successfully construct the Development. Granting the request will allow the Petitioner to obtain such additional financing needed to alleviate its shortfall and will allow the Development to be rented to individuals in wider ranges of income bands. The average income test election would enable the Petitioner to offer decent, safe, sanitary, and affordable housing to low-income residents in Orange County that would otherwise be priced out of the 60% AMI limitation or would otherwise not be unable to afford to rent housing at market rental rates in the county.

11. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed to encourage private and public investment in facilities for persons of low-income. The purposes of the MMRP Program and Housing Credit Program are to stimulate and prioritize initiatives to increase the supply of affordable housing. Granting the requested waivers would

[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.

significantly advance this objective, as it allows the Petitioner to leverage innovative funding strategies without jeopardizing the project. Further, granting the Petitioner's requested waivers will also uphold the Corporation's mission by ensuring that a significant number of affordable housing units remain available and accessible to low-income families in Orange County, providing them with decent, safe, and sanitary living conditions. Alternatively, strict application of the Rule and a denial of such requests will result in substantial economic hardship for the Petitioner as it attempts to confront the pressures of rising interest rates and construction costs, all of which will endanger the viability of 300 affordable housing units in Apopka, Florida.

F. TYPE OF WAIVER

12. The waivers or variances being sought is permanent in nature.

G. ACTION REQUESTED

13. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of (or variance from) the Rule to allow the total set-aside commitment under the MMRB Program to be reduced from 100% of the total units of the Development at or below 60% AMI to 40% of the total units in the Development at or below 60% AMI, so Petitioner can elect the average income test under the Housing Credits Program; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted the 12th day of June, 2024.

Respectfully submitted,



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Orlando, Florida 32801
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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 12th day of June, 2024.

By: _____
Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356