STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _2025-047VW
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 RULES 67-21.0025(1) & 67-21.026(10) (August 27, 2024)

Fort Myers Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver of, or variance from, the following: (1) Rule 67-21.026(1) F.A.C. (August 27, 2024), which requires a guaranteed maximum price construction contract (a "GMP Contract") for all of the rehabilitation work; and (2) Rule 67-21.0025(1) F.A.C. (August 27, 2024) (together with Rule 67-21.026(10) referred to herein as the "Rules"), which requires rehabilitation costs during any 24 month period with respect to the Housing Credit Program to equal or exceed an average of $40,000 in hard rehabilitation costs per unit. This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2025) and Chapter 28-104 of the Florida Administrative Code (2025). In support of its Petition, the Petitioner states:

A. PETITIONER AND DEVELOPMENT

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

Fort Myers Leased Housing Associates I, LLLP
2905 Northwest Boulevard, Suite 150
Plymouth, MN 55441
Attention: Banks Collier
Telephone: (404) 205-8095
Email: Banks.Collier@dominiuminc.com

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

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 a Non-Competitive Application Form ("NCA") to the Corporation for an issuance of multifamily housing revenue bonds and Non-Competitive housing credits ("4% HCs") to be used to finance the rehabilitation of that certain - 320 unit multifamily housing development known as Aria Landings, located the City of Fort Myers, Florida (the "Development").

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULES FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.026(10), F.A.C. (2024) which requires the Petitioner to enter into a GMP Contract for the intended rehabilitation work for the

Development that is acceptable to the Corporation. The specific provisions of the rule from which Petitioner is seeking a waiver is as follows:

> Rule 67-21.026(10), F.A.C. (2024), which provides in relevant part:
>
> > (10) The Corporation's assigned Credit Underwriter **shall require a guaranteed maximum price construction contract, acceptable to the Corporation**, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a CNA for rehabilitation units and review the Development's costs.
>
> (emphasis added)

6. Petitioner requests a waiver from, or a variance from, Rule 67-21.0025(1), F.A.C. (2024), in order to include additional construction costs that incurred outside of the construction contract to meet the minimum $40,000 per unit requirement. The specific provision of the rule which Petitioner is seeking a waiver is as follows:

> Rule 67-21.0025(1), F.A.C. (2024), which provides in relevant part:
>
> > (1) A minimum rehabilitation investment is required to assure meaningful, rather than simply cosmetic, rehabilitation of properties. In addition to the alteration, improvement or modification of an existing structure, Rehabilitation or Preservation costs during any **24-month period with respect to the Housing Credit Program must equal or exceed an average of $40,000 in hard rehabilitation costs per unit** and are in addition to the 20% of the property's adjusted basis requirements and minimum qualified basis per low income unit set forth in Section 42(e)(3)(A)(ii) of the IRC. For purposes of this subsection, "hard rehabilitation costs" include site improvements, off-site improvements, rehabilitation costs for physical improvements to the property, and construction contingency and do not include general contractor fees or overhead, general requirements, architect and engineering fees, permit fees, financing or soft costs, or developer fees.
>
> (emphasis added)

D. STATUTES IMPLEMENTED BY THE RULES

7. 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.* (2024) (the "Statute").

8. 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 OF THE RULES

9. Petitioner is seeking a waiver from the Rules, which require (1) the Petitioner to enter into a GMP Contract for the intended rehabilitation work for the Development that is acceptable to the Corporation; and (2) the Petitioner to have rehabilitation costs during any 24 month period with respect to the Housing Credit Program to equal or exceed an average of $40,000 in hard rehabilitation costs per unit.

10. Petitioner closed on its acquisition of the Development in July of 2022 and its resyndication in December of 2023. At the time of the acquisition, the Petitioner was subject to a variable interest loan. The 10-year U.S. Treasury Rate was at or around 2.13% at the time of

the acquisition; however, between the acquisition and the closing of the resyndication, the Petitioner's interest rates on its loan increased by approximately 200 basis points. During this same time period, due to market volatility, the Petitioner also saw significant increases in its operating costs, such as increases in its insurance and utility costs. Such increases in interest and operating costs caused Petitioner to have an approximate $2,000,000 short fall in its projects, which needed to be addressed prior to Development's resyndication closing. To cover the shortfall, Petitioner looked for additional financing from the Corporation and from the local governments surrounding the Development. The Petitioner either did not qualify for the available funding sources or such funding was not available to Petitioner at the time. As such the Petitioner's partners funded the $2,000,000 shortfall in order for the Petitioner to close on its resyndication financing.

11. Given the challenges above, on November 10, 2023, the Petitioner entered into its GMP Contract assuming rehabilitation costs to equal approximately $34,744 in hard rehabilitation costs per unit. After the Petitioner entered into its GMP Contract and shortly before closing, the Petitioner realized that the GMP Contract was short of the Rule 67-21.0025(1) F.A.C. (2024), requirement that the Development's rehabilitation costs during any 24 month period with respect to the Housing Credit Program to equal or exceed an average of $40,000 in hard rehabilitation costs per unit.

12. As discussed above, at the time of closing the Petitioner's partners funded $2,000,000 of their own funds to cover a shortfall in order for the Petitioner to close on its resyndication financing. At this time Petitioner did not have room in their budget to add additional work items to their scope of work in order to meet or exceed the $40,000 per unit hard rehabilitation costs requirement. As such, in order to meet the $40,000 per unit hard

rehabilitation cost requirement, Petitioner funded a reserve in the amount of $695,000 with the Housing Finance Authority of Lee County, Florida ("HFA"), to be used to pay for additional construction costs outside of the GMP Contract, which further benefit the residents of the Development. More specifically, the reserve was used to pay for the following additional construction costs:

a. Replacing the HVACs in the Development's units
b. Backflow repair;
c. Resurfacing the Pool Deck
d. Replace fire alarms
e. Repairs to fencing; and
f. Repairs to the Clubhouse and the laundry rooms (collectively the "Reserve Repair Work").

13. But for the Reserve Repairs Work being performed outside the purview of a GMP Contract, such Reserve Repairs Work constitute eligible rehabilitation costs that Petitioner could include in its basis for the Development. While the Reserve Repairs Work was not performed under a GMP Contract, there are a number of mitigating factors that should nonetheless adequately assure the Corporation that the Reserve Repair Work was otherwise performed in accordance with the Corporation's rules. Specifically, (i) Neither Petitioner, nor the general contractor under the GMP Contract or Developer, have common ownership with, nor is either an affiliate of, the contractors hired to perform the Reserve Repair Work; (ii) neither Petitioner, nor the general contractor under the GMP Contract or Developer, have directly performed any of the Reserve Repair Work; (iii) the costs incurred for the Reserve Repair Work, do not exceed the subcontractor limitations imposed by the Corporation; (iv) no additional fees

were charged or received by the Petitioner or Developer for the Reserve Repair Work; (v) Petitioner will submit both a General Contractor's Cost Certification and a Developer's Final Cost Certification, which will outline all costs and contractors and certifying same are, cumulatively with the rehabilitation work to be performed under the GMP Contract, in accordance with the Corporation rules, with regards to the Immediate Repair Work; and (vi) First Housing Development Corporation of Florida, the credit underwriter assigned to this Development.

14. The Petitioner respectfully requests waiver of the Rules to allow the Petitioner to incur costs outside of the GMP Contract and to allow Petitioner to have a GMP Contract, which has hard rehabilitation costs per unit less than $40,000; as such Reserve Repair Work done outside of the GMP Contract was done in good faith in order for Petitioner to meet the requirements of the Housing Tax Credit Program and the Corporations rule. If Petitioner is not granted a waiver of, or variance from, the Rules, Petitioner will suffer substantial hardship as such denial would otherwise cause the deal to fail as Petitioner would be unable to receive its form 8609s and extended use agreement required by Petitioner's tax credit investor under its partnership agreement. Therefore, by granting the requested waiver, or variance, the Corporation will prevent Petitioner from suffering substantial hardship that may occur should the waiver not be granted.

15. In this instance, Petitioner meets the standards for a waiver of the Rules. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. As discussed above, unless the Rule is waived, certain unreasonable, unfair and unintended results will occur, resulting in a substantial hardship to the

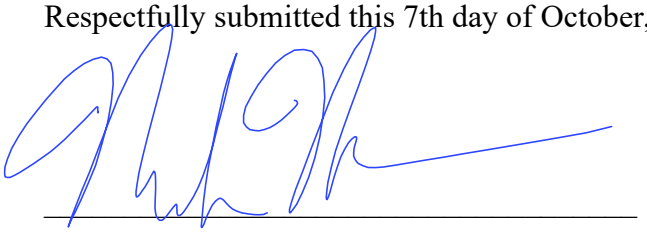
Petitioner and the Development. In this specific instance, the Corporation's failure to grant the waiver requested will result in a substantial hardship to Petitioner, as such denial would otherwise put the Development in significant jeopardy as Petitioner would be unable to receive its form 8609s and the extended use agreement required by Petitioner's tax credit investor under its partnership agreement; which would in turn trigger adjusters and other issues under the Petitioner's partnership agreement. The Corporation will not be harmed by granting this Petition as the intent of the Rule will not be violated. The Rules were implemented to allow the Corporation to ensure eligible basis costs were incurred in accordance with the Corporation's rules. The Petitioner is able to provide assurances to the Corporation that the costs of the Reserve Repair Work were reasonable and otherwise incurred in accordance with the Corporation's rules.

16. The requested waiver of the Rules serves the purpose of the Statute that is implemented by the Rule. 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 waiver of the Rules, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income and will ensure that 320 affordable units will be made available for individuals and families in Lee County, Florida.

F. ACTION REQUESTED

17. For the reasons set forth herein, Petitioner respectfully requests the Board (i) grant the requested waiver of the Corporation's Rules; (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted this 7th day of October, 2025,



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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

This 7th day of October, 2025.



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