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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

IN RE: HOMESTEAD PORTFOLIO LP

FHFC CASE NO. 2023-088VW
Application No. 2022-521C

PETITION FOR WAIVER OF
FLORIDA ADMINISTRATIVE CODE RULE 67-21.026(13)(e)

Petitioner, Homestead Portfolio LP, as Applicant/Owner, pursuant to section 120.542, Florida Statutes, ("F.S.") and Chapter 28-104, Florida Administrative Code, ("F.A.C.") petitions Florida Housing Finance Corporation (Florida Housing) for a waiver permitting the General Contractor to self-perform work in excess of the $350,000 or 5 percent of the construction contract limitation identified in Rule 67-21.026(13)(e). In support of this Petition, Petitioner states:

A. Petitioner and the Development

1. The name, address, telephone, and email address for Petitioner are:

Homestead Portfolio LP
c/o MRK Partners, Inc.
2711 N Sepulveda Blvd #526
Manhattan Beach, CA 90266
Telephone: (424) 999-4582
Email: sgarchik@mrkpartners.com

Petitioner Homestead Portfolio LP is the Applicant/Owner.

2. The contact information for Petitioner's counsel is:

Lawrence E. Sellers, Jr.
Holland & Knight LLP
315 South Calhoun Street
Tallahassee, Florida 32301
Telephone: 850-425-5670
Email: larry.sellers@hklaw.com
On behalf of Homestead Portfolio LP

3. On May 11, 2023, Petitioner received an Invitation to Credit Underwriting.

4. Here is the requested background information regarding the Development:

Application Number:	2022-521C
Development Name:	Gardens of Homestead
Applicant/Borrower:	Homestead Portfolio LP
Developer/Principal:	MRK Partners, Inc. (Sydne Garchik)
Number of units:	233
County of Development:	Miami-Dade
Development/Type:	Garden Apartments
Set Asides:	73.4%(171 units) at 50%, 26.6% (62 units) at 80%
Demographics:	Family
Funding Amounts:	Annual Housing Credits of $2,964,946 (est).

B. Type of Waiver

5. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

6. Petitioner requests a waiver from Rule 67-21.026(13)(e), F.AC. (the "Rule"), which limits the type and amount of work a General Contractor may perform as follows:

> (e). Ensure that no construction or inspection work is performed by the General Contractor, with the following exceptions:
>
> 1. The General Contractor may perform its duties to manage and control the construction of the Development; and
> 2. The General Contractor may self-perform work of a de minimis amount, defined for purposes of this subparagraph as the lesser of $350,000 or 5 percent of the construction contract.

D. Statutes Implemented by the Rule

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, section 420.5099, F.S., relating to the allocation of Low-Income Housing Tax Credits.

E. Justification for Granting the Requested Waiver from the Rules

8. Under section 120.542(1), F.S., Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to

unreasonable, unfair, and unintended consequences in particular instances. Specifically, section 120.542(2) states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that ***the purpose of the underlying statute will be or has been achieved by other means*** by the person and when ***application of a rule would create a substantial hardship or would violate principles of fairness***. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "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.

9. Petitioner is the Applicant for the Gardens of Homestead ("Project") and is subject, along with its General Contractor, NEI General Contracting, Inc. ("NEI" or "General Contractor"), to the Rules.

10. The Rule allows a General Contractor to (1) "perform its duties to manage and control the construction of the Development," and (2) "self-perform work of a de minimis amount…[up to]…$350,000 or 5 percent of the construction contract." Based on the specific factual circumstances surrounding the present Project, Petitioner requests a waiver of the Rule to allow the General Contractor to self-perform work in excess of the $350,000 or 5 percent limitation.

11. This Petition is being filed proactively. As explained in more detail below, without the granting of said Petition, the General Contractor has advised that it is not financially feasible for NEI General Contracting to perform the work on this Project. As such, Petitioner will be forced to pay NEI General Contracting additional money, which would create a demonstrated substantial economic hardship on Petitioner. By granting this waiver, Florida Housing will recognize the goal of increasing the supply of affordable housing through private investment in persons of low-

income and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. See s. 420.5099(2), F.S.

12. The Gardens of Homestead is what is referred to in the construction industry as a "scattered site project." The present Project is a scattered site project as the Project consists of 233 units, in ***eighteen (18) separate properties (a total of 23 residential buildings)***, some of which are miles apart from each other. Although the General Contractor, NEI, has vast experience with scattered site projects, it has informed Petitioner that it has never had to confront one that is this spread-out and subject to the self-performance work limitations required by the Rules. Attached hereto as Exhibit "A" is a map demonstrating the scattered nature of the Project.

13. For example, the ten (10) units located at 186/194 NW 2nd Street are more than 1.2 miles away from the sixteen (16) units located at 1223 NE 1st Avenue. The same ten (10) units located at 186/194 NW 2nd Street are five (5) miles away from the twenty-eight (28) units located at 26800 SW 145th Street. Overall, forty-four percent (44%) of the eighteen (18) separate properties are one (1) mile or more apart.

14. To emphasize, this is not a project in which there are multiple buildings located at one address with simply different building designation (e.g., Building A, B C, etc.). If that were the case, the General Contractor would be allowed to pull one building permit and call in one set of inspections. On this Project, each of the eighteen (18) properties has a separate address and each building requires the Petitioner's General Contractor, NEI, *to pull a separate building permit*, as well as to obtain and pass separate inspections. Thus, unlike a normal project in which a general contractor will obtain one (1) building permit, eighteen (18) separate building permits are required to accomplish this work. Thus, while the construction work on these eighteen (18) separate

properties and locations (containing 23 buildings in total) are technically one project for "funding" purposes, in reality, this Project is essentially the equivalent to multiple scattered site projects.

15. For example and as evidenced on the table attached as Exhibit "B," the buildings located at (1) 110 NE 10th Street, (9) 55 NE 9th Court, (10) 960 NE 1st Avenue, (11) 67 NE 9th Court, (13) 925 North Krome Avenue and (18) 60 NE 9th Street (all identified in YELLOW) jointly equate to a single project with a total construction cost of $6,419,631. These six (6) buildings contain a combined eight-two (82) units and are spread out over multiple blocks, in what would be considered a standard "scattered site" project. The number of units and amount of construction costs associated with these six (6) buildings is the equivalent of many projects FHFC sees in the normal course of its administration. Applying the application of the 5 percent standard in Rule 67-21.026(13)(e), F.A.C. to these six (6) buildings, based on the above referenced construction costs, Petitioner's General Contractor would be allowed to self-perform $320,981.58 worth of work.

16. Similarly, as evidenced on Exhibit "B," the buildings located at (3) 155 NW 10th Street, (12) 906 NW 1st Avenue, (14) 929 NW 2nd Avenue, (15) 930 NW 1st Avenue and (16) NW 1st Avenue (all identified in BLUE) jointly equate to a single project with a total construction cost of $3,421,879. These five (5) buildings contain a combined forty-four (44) units and are also spread out over multiple blocks (separate and distinct from the six (6) buildings identified in paragraph 16 above), in what would be considered a standard "scattered site" project. Applying the application of the 5 percent standard in Rule 67-21.026(13)(e), F.A.C. to these five (5) buildings, based on the above referenced construction costs, Petitioner's General Contractor would be allowed to self-perform $171,093.97 worth of work.

17. As further identified on Exhibit "B," the buildings located at (4) 186 & 194 NW 2nd Street, (6) 460 NW 6th Street, (7) 480 NW 6th Street and 521 NW 5th Avenue (all identified in

GREEN) jointly equate to a project with a total construction cost of $1,511,790. These four (4) buildings contain a combined twenty (20) units, in what would be considered a standard "scattered site" project. Applying the application of the 5 percent standard in Rule 67-21.026(13)(e), F.A.C. to these four (4) buildings, based on the above referenced construction costs, Petitioner's General Contractor would be allowed to self-perform $75,589.53 worth of work.

18. The building located at 30100 Old Dixie Highway (identified on Exhibit "B" in PINK) is the ***largest*** building on the entire Project, containing 43 units with a total construction cost of $3,002,391.51. Not only is this the largest building, it is multiple miles away from any other building on the Project. Applying the application of the 5 percent standard in Rule 67-21.026(13)(e), F.A.C. to this building, based on the above referenced construction costs, Petitioner's General Contractor would be allowed to self-perform $150,119.58 worth of work.

19. With respect to the building located at 26800 SW 145th Avenue (identified as building (17) in PURPLE on Exhibit "B"), this building is nowhere remotely in the vicinity of any of the other buildings on this Project, located approximately ***five (5) miles away***. Yet, this building contains the second most number of units (28 units) compared to any other building, with a total construction cost of $2,105,444.39. Applying the application of the 5 percent standard in Rule 67-21.026(13)(e), F.A.C. to this building, based on the above referenced construction costs, Petitioner's General Contractor would be allowed to self-perform $105,272.22 worth of work.[1]

20. In addition to the above, the nature of a scattered site project will inevitably drive up the cost of smaller scopes of work items. In order to control the schedule and to control the

[1] In addition to the seventeen (17) buildings identified above, there is one other building identified on Exhibit "B" ((2) 1223 NE 1st Avenue – in PINK) which is multiple blocks away from any other cluster of buildings. Applying the 5 percent standard in Rule 67-21.026(13)(e), F.A.C. to this building, based on $1,236,653 of construction costs, Petitioner's General Contractor would be allowed to self-perform $61,832.66 worth of work.

overall cost of the Project that Petitioner is responsible for, it is necessary to have the General Contractor self-perform these smaller scopes items, which include, but are not limited to: drywall, finish carpentry, rough carpentry, carpet demolition, cleaning, labor, material handling, safety inspection, wire shelving installation, and bathroom accessories. Petitioner's General contractor is unaware of any one subcontractor that will perform all of these trades. In addition, the scope of these smaller scope items is not currently known in many cases. As a specific example, the General Contractor is responsible for demolition of carpet in up to 25% of the Units. It does not know which Units or how many Units in the end will actually require carpet demolition. It is not feasible, practical or economical to the Petitioner or the General Contractor to enter a Unit, determine the carpet needs to be demoed, and then attempt to hire and/or schedule a subcontractor to come out in the future to perform the work. If the General Contractor has laborers on staff and available, the carpet can be removed that same day and then the laborer can go on with other necessary tasks (e.g., clean up, etc.) preventing the wasting of time and resources. Similarly, the General Contractor is contractually responsible for deep cleaning 30% of the flooring. Neither the Petitioner, nor the General Contractor, know in advance which Units will require this deep cleaning until the tenants are vacated and the ultimate condition of the Units can be reviewed. As Units are completed at different stages, it is not practical (schedule-wise or economically), to hire a subcontractor to repeatedly mobilize to the site to clean a Unit's flooring when required. The same unknown circumstances pertain to replacement of 50% of the toilet accessories across all the Units. It is not practical to "bid" a scope of work that is not fully determined and get a reasonable price. This is especially true for the present Project due to the unusual nature of the scattered property sites, which is the underlying basis of the present waiver request. In addition to the specific examples set forth above, Petitioner advises of the following:

a. **General Labor:** Part or all of the work on this Project will be performed in an occupied setting. This requires the availability of general labor to clean up, remove trash, perform generic punch items within units, etc. Because of the scattered nature of this Project, the General Contractor has advised that these tasks will required two (2) fulltime laborers in order to maintain clean and safe units, properties and a Project. The General Contractor is estimating a laborer of this nature will be paid $25/hour (which is low in today's market), which equates to a weekly cost for one laborer of approximately $1,350.

b. **Driver Material Handler**: With this scattered site Project, there will also be increased costs associated with storing, handling and moving materials. Due to the distance between buildings, the central storage of material in any one location is simply not possible on this Project. The scattered nature of this Project will require the General Contractor to hire a person to shuttle material to and from the different buildings. The General Contractor has estimated that this person will likely cost approximately $2,700 per week.

c. **Miscellaneous small scopes** – This Project will have various small scopes of work scattered across all buildings. It would not be economical, and in many instances even feasible, to hire a subcontractor for these individual small scopes. In order to maintain the Project schedule and budget, the General Contractor believes it is necessary to hire at least three (3) working foreman/Carpenters. There is a benefit to the Project, the Developer and FHFC in allowing a General Contractor to self-perform these small scopes of work. The miscellaneous scopes of work are presently unknown, and many times are not known prior to the start of any

construction renovation Project. With that said, the FHFC administrative rules contemplate that a waiver will be requested in advance, and as it is not practical or possible to stop a construction project to seek a real-time waiver-- which takes multiple weeks, if not months-- it is imperative that General Contractors seek advance waivers, which requires a certain amount of reasonable estimation. For example, this is an occupied rehab construction project. The General Contractor is scheduled to replace kitchens in Units in one day so each resident can come back into their Unit that same night and cook dinner. If during the demolition of the cabinets damaged drywall is discovered, the General Contractor needs the ability to quickly patch and repair the drywall. Even if the General Contractor's drywall subcontractor were available, this work would be outside of a previously-agreed scope of work due to its unknown and concealed condition. Thus, a change order would need to be negotiated and agreed upon. Additionally, the General Contractor would have to hope that the subcontractor had the workers available to perform the work on that same day. Alternatively, if a labor only subcontractor was retained to be on "stand-by" (which is a cost in and of itself), the subcontractor would still need to price the work and a change order would need to be issued to this previously unknown condition. It is not practical in the construction industry, through the use of subcontractors, for this to be accomplished in one day. Allowing the General Contractor to use its own labor to do the miscellaneous work identified (i.e., drywall, finish carpentry, cabinetry, rough carpentry, cleaning, labor, material handling, safety inspection, wire shelving etc.) provides it the agility and the ability

to return residents to their units without inconvenience, without delay to the Project schedule, and without increased mark-up associated with utilizing subcontractors.

d. **Safety and Security:** Additionally, due to the location of the eighteen (18) separate properties, in order to safely renovate the buildings, the General Contractor will need almost fulltime safety inspections for worker and resident safety. The "safety and security" referenced herein was intended to be for safety and life safety inspections. As per the GCCC instructions, this is billable to the special construction line item as evidenced in the table set forth directly below:

Construction Cost Detail - Description of Trade Items

Trade Item	Description of line item
Trash Chute	Labor and material related to the installation of any permanent trash chute.
Specialties	Labor (unless included elsewhere) and material related to the installation of toilet and shower compartments; bathroom accessories including, but not limited to grab bars, towel bars, toilet paper holders, soap dishes, medicine cabinets, bathroom mirrors, etc.
Special Equipment	Labor and material related to the installation of washers, clothes dryers, laundry equipment, furnishings, equipment for offices, and any other type of equipment.
Special Construction	Labor and material related to the installation of fire places, safety and life safety inspections, green certification, and energy rating costs not covered elsewhere.
Miscellaneous (Labor and Materials)	Contractor to describe costs included in this Trade Item. Total labor costs and purchases of materials amounting to less than $1,000 may be included as a lump sum here.

OTHER FEES PAID BY GENERAL CONTRACTOR

Building Permit, Tap Fees and Impact Fees	Amounts paid for any type of permits, tap fees, and impact fees.
Construction Insurance (Builder's Risk Insurance)	Amounts paid for insurance during the construction period.
Bond Premium	Amounts paid for performance, payment and any other types of bonds.

While the labor costs for the above scopes of work have been estimated based on the General Contracting's industry experience, the waiver that is being requested is a "not-to-exceed" amount. Thus, the amount of the waiver that is being requested is ***not*** associated with a change order and ***does not*** act as any increase to the amount of the Contract or the cost of the work. This is a Cost Plus Contract with a Guaranteed Maximum Price. If the General Contractor's cost of the work is increased because of being forced to use subcontractors to perform a multitude of miscellaneous and minor scopes of work, the best interests of the Petitioner, FHFC and the public

are not being served. Conversely, if the General Contractor has the potential to perform the work at a reduced price, as well as recognize significant efficiencies and greater control of the day-to-day work and schedule, while not guaranteed, the possibility of costs savings is available.

21. The combination of the unconventional nature of this scattered site Project, combined with the fact that the full scope of the specific work, *and* the timing of said work, identified above is presently unknown, precludes the Petitioner's General Contractor from obtaining bids and hiring one (1) subcontractor in advance of the need for the work to be performed. As explained above, the Petitioner, nor the General Contractor, know in advance which Units will require which specific work. As Units are completed at different stages, it is not practical (schedule-wise or economically), to hire a subcontractor to repeatedly mobilize to the site to perform limited work when required. Petitioner's General Contractor is unaware of any one subcontractor that will perform all of the trades potentially required. Allowing the General Contractor to use its own labor to do the work identified (i.e., drywall, finish carpentry, cabinetry, rough carpentry, cleaning, labor, material handling, safety inspection, wire shelving, etc.) provides it the agility and the ability to return residents to their units without inconvenience, without delay to the Project schedule, and without increased mark-up associated with utilizing subcontractors.

22. Based on the totality of the above, Petitioner request FHFC treat the six (6) buildings/groups of buildings identified on Exhibit "B" as separate "projects" when applying the 5% calculation set forth in Rule 67-21.026(13)(e), F.AC. The table attached hereto as Exhibit "B" sets forth the *actual construction costs* (exclusive of any General Contractor fee). Applying the five percent (5%) standard identified in the Rule to the specific breakdown of "projects" as identified on Exhibit "B" and in paragraphs 16 to 20 above would result in the General Contractor being permitted to perform $884,889.52 of self-performed work. Based on these costs, Petitioner

requests that FHFC either (1) increase the $350,000 threshold to $884,889.52 or (2) treat this *uniquely situated* scattered site Project as six (6) separate projects for purposes of applying the five percent (5%) standard as calculated in Exhibit "B." As demonstrated in Exhibit "B," by granting a waiver limited to applying the Rule to the buildings/groups of buildings as requested on this *uniquely situated* scattered site Project, FHFC can maintain the integrity of the Rule, while providing Petitioner the required relief.

22. Under section 120.542(1), F.S., and Chapter 28-104, F.A.C., Florida Housing has the 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: (l) create a substantial hardship 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. § 120.542(2), F.S. (2018).

23. In this instance, Petitioner meets the standards for a waiver of the Rule for this specific Project. While scattered site projects are not uncommon, the present Project is uniquely situated as it consists of eighteen (18) separate properties, each with a different address, and each requiring a separate building permit as if each building were in fact a separate project. These facts, coupled with the geographic distance between certain buildings (one of which is five (5) miles away from the other buildings), makes this Project distinguishable from a standard scattered site project. Thus, strict application of Rule 67-21.026(13)(e) will create a substantial hardship for Petitioner because it will significantly increase the cost of the Project.

25. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Moreover, the Statute was enacted, in part, to encourage private and public investment

in facilities for persons of low-income. By granting this waiver, Florida Housing will recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income and recognize the economic realities and principles of fundamental fairness in developing affordable housing. See s. 420.5099(2), F.S.

F. Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver of Rule 67-21.026(13)(e) for the amount identified herein;

(ii) Grant this Petition and all of the relief requested herein; and

(iii) Grant such further relief as may be deemed appropriate.

Respectfully submitted this 10th day of November, 2023.

/s/Lawrence E. Sellers, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed on this 10th day of November, 2023 by electronic delivery to:

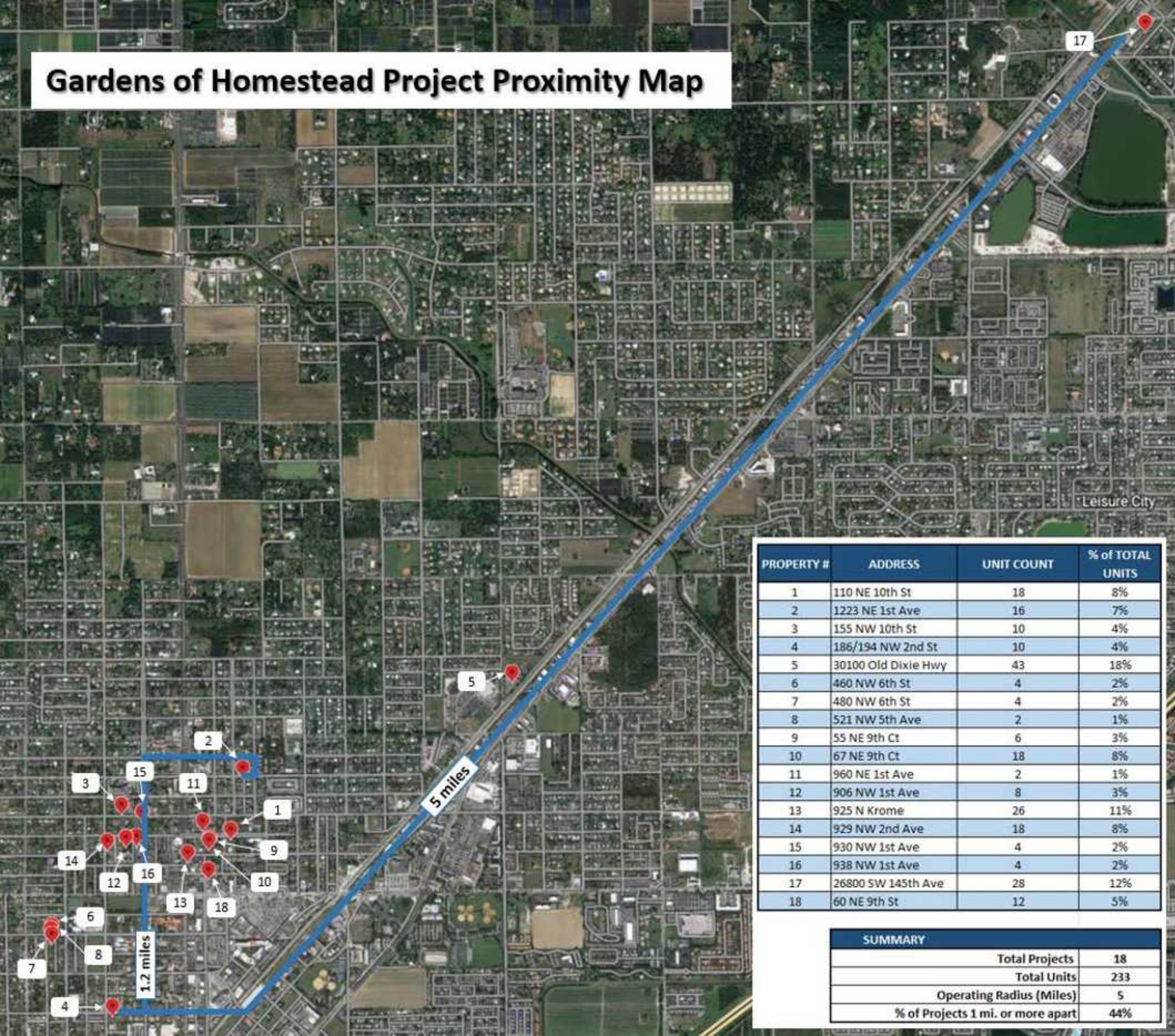
Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

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

/s/Lawrence E. Sellers, Jr.
Lawrence E. Sellers, Jr.

Exhibit A

Gardens of Homestead Project Proximity Map



PROPERTY #	ADDRESS	UNIT COUNT	% of TOTAL UNITS
1	110 NE 10th St	18	8%
2	1223 NE 1st Ave	16	7%
3	155 NW 10th St	10	4%
4	186/194 NW 2nd St	10	4%
5	30100 Old Dixie Hwy	43	18%
6	460 NW 6th St	4	2%
7	480 NW 6th St	4	2%
8	521 NW 5th Ave	2	1%
9	55 NE 9th Ct	6	3%
10	67 NE 9th Ct	18	8%
11	960 NE 1st Ave	2	1%
12	906 NW 1st Ave	8	3%
13	925 N Krome	26	11%
14	929 NW 2nd Ave	18	8%
15	930 NW 1st Ave	4	2%
16	938 NW 1st Ave	4	2%
17	26800 SW 145th Ave	28	12%
18	60 NE 9th St	12	5%

SUMMARY	
Total Projects	18
Total Units	233
Operating Radius (Miles)	5
% of Projects 1 mi. or more apart	44%

Exhibit B

NEI
built for good

Gardens of Homestead Apartments Rehabilitation

Homestead, FL

Property Number	Address	Unit Count	Construction Cost	Self Perform Work at 5%
1	110 NE 10th Street	18 Units	$ 1,346,853.96	$ 67,342.70
2	1223 NE 1st Avenue	16 Units	$ 1,236,653.15	$ 61,832.66
3	155 NW 10th Street	10 Units	$ 777,834.89	$ 38,891.74
4	186 & 194 NW 2nd Street	10 Units	$ 730,962.36	$ 36,548.12
5	30100 Old Dixie Hwy	43 Units	$ 3,002,391.51	$ 150,119.58
6	460 NW 6th Street	4 Units	$ 313,102.71	$ 15,655.14
7	480 NW 6th Street	4 Units	$ 306,271.41	$ 15,313.57
8	521 NW 5th Avenue	2 Units	$ 161,454.05	$ 8,072.70
9	55 NE 9th Court	6 Units	$ 477,433.54	$ 23,871.68
10	960 NE 1st Avenue	18 Units	$ 1,324,672.07	$ 66,233.60
11	67 NE 9th Court	2 Units	$ 267,398.51	$ 13,369.93
12	906 NW 1st Avenue	8 Units	$ 603,715.66	$ 30,185.78
13	925 North Krome Avenue	26 Units	$ 2,055,545.95	$ 102,777.30
14	929 NW 2nd Avenue	18 Units	$ 1,446,963.42	$ 72,348.17
15	930 NW 1st Avenue	4 Units	$ 296,682.72	$ 14,834.14
16	938 NW 1st Avenue	4 Units	$ 296,682.72	$ 14,834.14
17	26800 SW 145th Avenue	28 Units	$ 2,105,444.39	$ 105,272.22
18	60 NE 9th Street	12 Units	$ 947,727.44	$ 47,386.37
		233 Units	**$ 17,697,790.44**	**$ 884,889.52**

Project 1 - Shown in Yellow - Total Self perform 5% = $320,982
Project 2 - Shown in Green - Total Self Perform 5% = $75,590
Project 3 - Shown in Blue - Total Self perform 5% = $171,094
Project 4 - Shown in Pink - Total Self perfrom 5% = $61,833
Project 5 - Un-highlighted - Total Self Perform 5% = $150,119
Project 6 - Shown in purple - Total Self perform 5% - $105,272

Total allowed Self-perform labor should be $844,890