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STATE OF FLORIDA
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Federation Gardens Preservation LP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2024-007VW
Application No. 2018-102B; 2018-524C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(1)(b), F.A.C. (07/8/18) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (05/2018)

Petitioner, Federation Gardens Preservation LP, a Florida limited partnership (the "Petitioner") pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code ("F.A.C."), submits this petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-21.003(1)(b), F.A.C., effective 07/8/18 (the "Rule") and the Non-competitive Application Instructions (05/2018) ("NCA"). The Corporation is in the process of completing the final evaluation and determination of the Housing Credit Allocation. Petitioner respectfully seeks a waiver of the Rule and NCA such that the Corporation may release the IRS Form 8609 prior to final resolution of certain issues that have arisen regarding the current principals of Petitioner. In support of this Petition for Rule Waiver, Petitioner states as follows:

A. Petitioner.

1. The name, address, telephone, and facsimile numbers for Petitioner and its qualified representative are:

Jeffrey Goldberg

Federation Gardens Preservation, LP
250 W 55th Street, 35th Floor
New York, NY 10019
Telephone: (212) 798-4081
Fax: N/A
Email: Jeffrey.Goldberg@Fairstead.com

2. The name, address, telephone, and facsimile numbers of Petitioner's counsel are:

Brian J. McDonough
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B. The Development.

3. This Petition is submitted on behalf of the following development ("Development"):

- Development Name: Federation Gardens Apartments
- Developer: FA Developer LLC
- Address: 10905 SW 112 Ave, Miami, FL 33176
- County: Miami-Dade
- Number of Units: 161 (Acquisition and Rehabilitation)
- Type: Mid-Rise, 4-Stories
- Set Asides: 100% of units at 60% or lower AMI
- Demographics: Elderly, Non-ALF
- Funding Request: $39,050,000 corporation-issued MMRN and $1,475,345 annual 4% non-competitive LIHTC

C. Rule from which Waiver is Sought.

4. Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (07/08/18) which provides in pertinent part:

> (1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.
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> (b) If the NC Award will not be in conjunction with other Corporation funding 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 in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 05-2018) 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 http://www.flrules.org/Gateway/reference.asp?No=Ref-09576, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. The Rule incorporates by reference the Non-Competitive Application Package (Rev. 05-2018) ("NCA"). The NCA includes the following requirement:

> The name of the Applicant entity stated in the Application may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter Credit Underwriting.
>
> For purposes of (1) and (2) below, a material change shall mean 33.3 percent or more of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant, and a non-material change shall mean less than 33.3 percent of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant.
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> ***
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> (2) For Applicants requesting MMRB, with or without Non-Competitive Housing Credits:
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> The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and cannot be changed in any way (materially or non-materially) until after the MMRB Loan closing. After loan closing, any change (materially or non-materially) will require Board approval prior to the change. Changes to the Applicant entity prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes to the limited partner of an investor limited partnership or an investor member of a limited liability

company owning the syndicating interest therein will not result in disqualification.

Id. at Part A. 5. b. (2).

D. Statute Implemented.

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

Per Section 420.5099(1),(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

E. Justification for the Requested Waiver

6. Petitioner submitted to the Corporation Non-Competitive Application Form, Application Nos. 2018-102B/2018-524C (the "Application") in relation to the Development.

7. The renovation of the Development is now complete.

8. The Corporation is in the process of completing the final evaluation and determination of the Housing Credit Allocation amount.

9. The Extended Use Agreement has been executed.

10. The next step is for Petitioner to complete Form 8609.

11. Issues have arisen related to two of Petitioner's principals. Petitioner cannot change

its ownership structure until this dispute is resolved. To avoid any impact to the financial stability of the transaction, Petitioner respectfully requests that the Corporation release the Form 8609s before any material change to Petitioner's ownership structure is approved by the Corporation's Board subject to the condition that the ownership structure will be approved once the issues are resolved. Because the proposed change involves two minority non-controlling principals, whether the change occurs before or after issuance of the Form 8609 is inconsequential and will not prejudice the Development, nor the Corporation.

12. Petitioner would suffer a substantial hardship if this Petition is denied. Specifically, delays in the issuance of Form 8609 will cause a significant reduction in the tax credit equity financing available to the Development if the Petition is not granted. Further, the tax credit investor could require the Petitioner to repay all of the capital contributions previously made by the tax credit investor, with interest and penalties, thus causing the Development to fail and for the lenders to likely foreclose their security interests in the Development.

13. By granting this waiver, the Corporation would recognize the goal of increasing private investment and participation in increasing the supply of affordable housing and promote the principles of fundamental fairness in developing affordable rental housing. The purpose of the underlying statute, which is to "encourage development of low-income housing in the state" as identified in Section 420.5099(2), Fla. Stat., would still be achieved if the variance is granted. The requested waiver serves the purpose of the Statutes that are implemented by the Rule. The Florida Housing Finance Corporation Act, Section 420.501, *et seq*. ("Act") 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 is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver, the Corporation would

recognize the principles of fundamental fairness in the development of affordable housing.

14. The Corporation has jurisdiction to grant a waiver of the Rule and Petitioner meets the standard for a waiver of the Rule.

15. As demonstrated above, the requested waiver serves the purposes of Section 420.5099, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households.

16. A representative of Petitioner is available to answer any questions should the Corporation require additional information.

F. Type of Waiver.

17. The waiver being sought is permanent in nature.

G. Action Requested.

18. Petitioner respectfully requests that the Corporation:

a. Grant this Petition and all the relief requested therein;

b. Grant a waiver of Rule 67-21.003(1)(b), F.A.C., effective 07/08/2018 (the "Rule") and the Non-competitive Application Instructions (05/2018) such that the Corporation may release the IRS Form 8609 prior to final resolution of certain issues that have arisen regarding the current principals of Petitioner; and

c. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 28th day of February, 2024.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.