STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

HTG Gateway, LLC,
a Florida limited liability company,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2025-036VW
Application No. 2025-162BS
RFA 2024-215

PETITION FOR WAIVER OF RULE 67-21.003(8)(c), (11), F.A.C. (6/28/23) AND RULE 67-48.004(3)(C), F.A.C. (6/28/23)

HTG Gateway, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Corporation") for a waiver of Rule 67-21.003(8)(c), (11), and Rule 67-48.004(3)(c), Florida Administrative Code ("F.A.C.") (eff. 6/28/23) (collectively, the "Rules"), which provide that the withdrawal by Petitioner from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs; and that the program applied for cannot be revised, corrected or supplemented after the Application is deemed complete. Petitioner was awarded an allocation of $11,000,000 in State Apartment Incentive Loan ("SAIL") and $28,000,000 in Corporation-issued Multifamily Mortgage Revenue Bonds ("MMRB") from the Corporation in relation to RFA 2024-215 Live Local SAIL Financing for Developments Near Military Installations (the "RFA"). After accepting its invitation to enter credit underwriting, the Jacksonville Housing Finance Authority ("JHFA") made local gap funding available from which Petitioner was awarded $500,000 and for which Petitioner will submit subsequent applications. Petitioner also obtained $1.5 million from the Jacksonville Housing Community Development Division. Without this gap financing,

the financial feasibility of the development is at risk. However, a prerequisite for receiving funds from JHFA is having JHFA-issued tax exempt bonds. Petitioner therefore respectfully requests a waiver from the Rules so that Petitioner may withdraw from the Corporation-issued MMRB (to instead use the JHFA-issued tax-exempt bonds) without also withdrawing from the RFA. If granted, JHFA will issue the $28,000,000 in bonds, while preserving the Corporation's bond allocation to fund additional projects.

In further support of this request for waiver, Petitioner states as follows:

A. THE PETITIONER

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

Matthew A. Rieger
3225 Aviation Ave., 6th Floor
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Telephone: (305) 860-8188 ext 125
Fax: N/A
mattr@htgf.com

2. The address, telephone, and facsimile number and e-mail addresses of Petitioner's counsel are:

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B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. Petitioner provides the following information related to the development ("Development") underlying Application No. 2025-162BS ("Application"):

- Development Name: Normandy Cove
- Development Address: Old Middleburg Rd. N, Old Middleburg Rd. N and Sheldon Dr., Jacksonville, FL.
- County: Duval
- Developer: HTG Gateway Developer, LLC
- Number of Units: 144 (new construction)
- Type: 5 three-story garden style buildings,[1] and a stand-alone club house
- Set Asides: 15.278% (22 units) at or below 30% AMI, 38.888% (56 units) at or below 60% AMI, and 45.833% (66 units) at or below 70% AMI[2]
- Demographics: Family
- Funding: $11,000,000 in SAIL and $28,000,000 in Corporation-issued MMRB[3]

D. THE RULES FROM WHICH WAIVER IS REQUESTED

5. At the time of Petitioner's application, Rule 67-21.003 provided in relevant part: "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: . . . (c) Program(s) applied for." *See* Rule 67-21.003(8)(c), F.A.C. (6/28/23). Rule 67-21.003 also stated: "The withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs." *See* Rule 67-21.003(11), F.A.C. (6/28/23).

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[1] Petitioner's request to change its Development Type and set-asides was approved by Florida Housing staff on May 9, 2025.
[2] See Footnote 1, *supra.*
[3] Petitioner seeks by this waiver to swap the Corporation-issued MMRB to JHFA-issued bonds.

6. Similarly, Rule 67-48.004(3)(c), F.A.C. (6/28/23) provided: "For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below: . . . (c) Program(s) applied for . . . ."

E. STATUTE IMPLEMENTED BY THE RULES.

7. The Rules implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"): Section 420.5099, Allocation of the low-income housing tax credit; 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 420.5087, State Apartment Incentive Loan Program; and Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULES.

8. Petitioner submitted its Application in response to the RFA on September 4, 2024.

9. The Corporation awarded Petitioner an allocation of $11,000,000 in SAIL and $28,000,000 in Corporation-issued MMRB for a total award of $39,000,000. The Corporation invited Petitioner to enter credit underwriting on November 8, 2024, which Petitioner accepted on November 15, 2024. The Application identified a total development cost of $48,751,415 in Section 4.A.10, Development Cost Pro Forma. Petitioner must therefore apply for additional, local gap funding to help leverage the Corporation-awarded funding and secure the Development's financial feasibility.

10. In Section 4.A.10.a.(1)(c)(i) of its Application, Petitioner selected as its Basis Boost Qualifications that it was requesting Corporation-issued MMRB and intended to comply with this selection as it was unaware of any reason why it would forego the MMRB award.

Eleven weeks after Petitioner submitted its Application, and one week after accepting its invitation to enter credit underwriting,[4] JHFA released a Notice of Funding Availability ("NOFA 2024-3") that was due on January 3, 2025. A requirement of the NOFA 2024-3 funding was for applicants seeking gap financing to utilize JHFA-issued tax-exempt bonds. Petitioner applied for NOFA 2024-3 funding with the understanding that it could request to swap from Corporation-issued MMRB to JHFA-issued tax-exempt bonds. On January 8, 2025, the Applicant was officially awarded both an allocation of JHFA-issued tax-exempt bonds in the amount of $28,000,000 and a $500,000 gap loan in conjunction with NOFA 2024-3. The Jacksonville Housing Community Development Division notified Petitioner on May 7, 2025, that it was awarded another $1,500,000 from the City of Jacksonville's Revolving Loan Fund Program ("RLVP").

11. Petitioner has actively pursued local gap financing, resulting in two significant awards totaling $2 million, both vital for the Development's viability. To effectively incorporate the $1.5 million RLVP funding alongside the JHFA's $500,000 award (which itself mandates JHFA bonds), and thereby realize the full $2 million in necessary gap financing, the proposed swap to JHFA-issued bonds is instrumental. Accordingly, Petitioner requires this waiver from the Rules to withdraw from the Corporation-issued MMRB and proceed with the JHFA bond issuance, a step critical to structuring and finalizing the total gap financing.

12. If granted, the waiver will not only allow Petitioner to receive the NOFA 2024-3 funds, but will make Petitioner eligible to apply for future gap opportunities.

13. If the Petition is denied, the Development will be in jeopardy due to the lack of financial feasibility.

[4] JHFA released NOFA 2024-3 on November 21, 2024.

14. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., the Corporation 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: (1) create a substantial hardship or, violate principles of fairness,[5] 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.

15. Petitioner meets the standards for the requested waiver. The requested waiver will not adversely impact the Development, the Corporation, nor any other applicant, and will ensure that 144 affordable housing units will be preserved and made available for the target population in Duval County, Florida. If granted, Petitioner would utilize the local bond cap and preserve the Corporation's bond allocation to fund additional projects. 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 to households of limited means.

16. In contrast, if the requested waiver is not granted, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Specifically, denial of the waiver would restrict Petitioner's ability to obtain local gap financing sources, thereby placing in jeopardy the feasibility of constructing 144 new affordable units. In addition, it would result in less bond allocation for the Corporation that could be used to fund other developments. By

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[5] "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. § 120.542(2), Fla. Stat.

approving the request, the Corporation can ensure that bond allocation is being used as efficiently as possible to maximize the production and preservation of affordable housing, while ensuring Duval County has access to 144 new affordable housing units.

17. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. ACTION REQUESTED

18. For the reasons set forth herein, Petitioner respectfully requests the Corporation: (i) grant the requested permanent waiver and allow Petitioner to withdraw from the Corporation-issued bonds (to instead utilize the JHFA allocation) without withdrawing from the RFA award; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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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 Florida Housing Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 15th day of July, 2025.

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