STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Goodlette Arms Preservation LP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO.
Application No. 2020-517C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULES 67-21.027(6), 67-21.003(1)(b) and 67-21.026(12)(b) F.A.C. (6/23/20) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (REV. 04-2020)

Petitioner, Goodlette Arms 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 its Petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-21.027(6), F.A.C., effective 6/23/20 (the "Rule"). On June 1, 2023, before the project was completed, the General Contractor disappeared and the developer had to step in and complete the rehabilitation with no help from the surety. Petitioner learned that the General Contractor had discontinued its business, is in litigation over a surety bond (*Frankenmuth Mutual Ins. Co. v. J4 Development, Inc., et al.*, Case No. 3:23-cv-1440-L, filed in the Northern District of Texas on 6/28/23), and that its natural person principals declared bankruptcy (*In re: John C. Darby and Nancy Michele Darby*, Case No. 23-31991-swe7, filed in the Northern District of Texas on 9/7/23). The General Contractor has not responded to Petitioner's inquiries and Petitioner is not able to verify that it has a complete list of development costs. Petitioner believes it will not be able to secure the GC's signature on the

GCCC nor will the GC's accounting firm finalize the certified public accountant ("CPA") opinion letter without the GC's cooperation. Petitioner has no control over the GC's accounting firm and cannot force it to provide the opinion letter and/or audit report required by the Rule. Accordingly, Petitioner seeks a Rule waiver to allow the Final Cost Certification Application Package to contain only a CPA agreed upon procedures ("AUP") report approved by the Corporation, instead of an opinion letter and audit. If this Petition is granted, and Petitioner submits an AUP, Petitioner will not be required to submit a GCCC. Regardless of whether the Petition is granted, Petitioner will submit the unqualified CPA opinion letter and unmodified audit report for the Development Final Cost Certification ("DFCC").

Petitioner also seeks a waiver of the prohibition under Rules 67-21.003(1)(b) and 67-21.026(12)(b), Florida Administrative Code ("F.A.C.") (6/23/20) and the incorporated Non-Competitive Application Instructions (collectively, the "Rules") against exceeding the General Contractor's fee maximum of 14% of actual construction cost. While the information available for the AUP reflects that the 14% cap was exceeded by 7.81%, claims filed with the surety suggest that additional costs exist that would have increased the actual construction cost (thereby decreasing the percentage of the GC's fee). Because these costs cannot be substantiated, they were not included in the AUP report. If the waiver is granted, Petitioner agrees that any amount of the GC Fee (overall) in excess of 14% will be paid as a subset of the Developer Fee and reflected as such in the Development Final Cost Certification ("DFCC"); *i.e.*, the amount exceeding 14% will be ineligible and not subject to a developer fee.

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:

Bryan Hartnett
Goodlette Arms Preservation LP
250 W 55th Street, 35th Floor
New York, NY 10019
Telephone: (704)575-1268
Fax: N/A
Email: BHartnett@ahidevelopment.com

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

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
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B. The Development.

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

- Development Name: Goodlette Arms Apartments
- Developer: Goodlette Arms Developer LLC
- Address: 950 Goodlette-Frank Road N, Naples, FL 34102
- County: Collier
- Number of Units: 250 (Acquisition and Rehabilitation)
- Type: Mid-Rise, 4-stories
- Set Asides: 100% at or below 60%
- Demographics: Elderly, Non-ALF
- Funding Request: 4% Non-Competitive Housing Credit allocation in an annual amount of $3,572,112

C. Rules from which Waiver is Sought.

4. Petitioner seeks a waiver of Rule 67-21.027(6), F.A.C. (6/23/20), which provides:

> The Final Cost Certification Application Package (Form FCCAP) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in rule 67-21.026, F.A.C. Such form package shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files of the Microsoft Excel spreadsheets for the HC Development Final Cost Certification (DFCC) and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries if requested by the Corporation, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter for both the DFCC and GCCC, an unmodified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit Allocation will not be issued until such time as all required items are received and processed by the Corporation. The Final Cost Certification Application Package (Form FCCAP) is adopted and incorporated herein by reference, effective 04-2020, and is available on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-12017, or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1321.

See Rule 67-21.027(6), F.A.C. (6/23/20).

5. Petitioner also requests a waiver of Rule 67-21.026(12)(b), F.A.C. (6/23/20), which states:

> The Developer Fee and General Contractor fee shall be limited to: . . . The General Contractor's fee shall be limited to a maximum of 14 percent of the actual construction costs. For the purpose of any necessity to prepare a HUD subsidy layering review, if there exists an Identity of Interest as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements.

6. Lastly, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (6/23/20), 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.
>
> ***
>
> (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. 04-2020) 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-12011, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. Rule 67-21.003(1)(b), F.A.C. (6/23/20) incorporates by reference the Non-Competitive Application Package (Rev. 04-2020) ("NCA"). The NCA includes the following requirement:

> General Contractor's fee is limited to 14% of actual construction cost (for Application purposes, this is represented by A1.1. Column 3), rounded down to nearest dollar. The General Contractor's fee must be disclosed. The General Contractor's fee includes General Conditions, Overhead, and Profit. A General Contractor's Cost Certification will need to be completed prior to the issuance of IRS form 8609 and that certification may further restrict the overall General Conractor's fee. It is advised to review that certification process as early as possible
> ***
> A1.2. General Contractor Fee see Note (3) (Max 14% of A1.1., column 3)

Id. at Note (3).

D. Statute Implemented.

7. The Rules implement, 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.

8. 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. Timeline.

- 6/1/23 - GC abandoned the site and became unresponsive
- 10/19/23 - Notice of Default sent to GC and Surety
- 10/24/23 - Surety responds to Notice/Bond claim, requesting significant production of records.
- 10/25/23 - Developer began providing the documents requested by Surety and coordinated with Surety regarding inspections.
- 11/09/23 -Notice of Termination sent to GC and Surety.
- 2/29/2024 -Developer sent Notice to Surety regarding its obligations and election under Performance bond
- The Developer and Surety counsel exchange several correspondences regarding need for GC project files. Surety Counsel is slow to respond, necessitating multiple follow ups.
- 4/8/2024 - Developer and counsel for Surety attend call to address GC's contractual obligations and ways to navigate the personal bankruptcy of the GC's owners.
- 04/16/2024 – Developer meets with Petitioner's CPA to discuss the documents needed to complete the AUP report
- 04/17/2024 – 4/22/2024 – Developer sends multiple requests to Surety Counsel requesting additional documentation.
- 4/9/2024 -5/2/2024 - Counsel for Surety is slow to respond to demands and informs Developer of difficulties obtaining cooperation from the GC's representatives.
- 5/2/24 – 5/30/24- Developer begins reaching out to all trade contractors to request they produce their records related to work performed under the GC. Trade contractors do not fully cooperate, fail to respond, refuse production unless payment is made, or state that they are no longer in possession of invoices/records.

- 5/9/2024 – Developer identifies and retains specialized Surety counsel. Counsel requires waiver from Surety which takes two weeks to procure.

- 5/31/2024 – Developer's Surety counsel sends a revised demand to Surety and GC, including demand to perform under the bond, complete audit requirements, and demand to pay subcontractor.

- 6/3/24 – 6/18/24 – Developer counsel contacts surety counsel to coordinate a meeting with Surety and GC representatives.

- 6/19/2024 – Developer attends meeting with surety counsel and GC. Surety counsel indicates that GC has entered into an agreement it his personal bankruptcy proceeding that includes his obligation to cooperate in good faith. Developer renews request for verified cost reports, account payable reports, Subcontractor status report, all final and partial lien waivers, and all supplier and subcontractor invoices.

- 6/24/2024 - Developer sends letter memorializing the parties' 6/19/2024 meeting and agreeing to grant Developer authority for J4's account to provide any records in its possession.

- 7/18/2024 – Developer reviews records provided by GC's accountant and identifies significant deficiencies. Developer sends letter to Surety outlining deficiencies and renews request for GC to provide the Project files for the Goodlette, Gould and Davie projects, including but not limited to, all invoices from subcontractor and suppliers. Developer further offers to review the records at GC's office, make copies of those records through a vendor and/or collect any hard files and return them upon completion of the cost certification process, whichever is more convenient to GC and Surety.

- 7/31/24 – Developer's counsel and Surety counsel hold meeting to discuss 7/18/2024 request. Counsel for Surety, for the first time, indicates that records no longer exist.

- 8/9/24 – Developer sends demand letter to Surety regarding the destruction of GC's project files, requesting GC's permission to renew GC's Pro-Core subscription to access any saved or recoverable project files. Developer further requests information regarding how GC typically maintained its project files and how GC's accounts payable and billing was processed.

- 8/10/24 – 9/12/2024- Developer's counsel and Surety counsel exchange various letters and email correspondence regarding subcontractor claims and complaints and discuss mediation.

F. Justification for the Requested Waiver.

7. Petitioner submitted its Non-Competitive Application Form, Application No. 2020-517C (the "Application"), to the Corporation on or about February 8, 2021.

8. J4 Development, Inc. (a Texas corporation f/k/a J4 Development, LP.), was disclosed in the Application as, and served as, the General Contractor ("GC") for the Development. The GC was created in February 2004 as a multifamily construction firm to specialize in large-scale asset renovation and repositioning, including Affordable Housing, Market rate, Historic, Student, Military and Senior Housing. At the time of the Application, J4 had built in excess of 15 LITHC multifamily developments in 14 states representing more than $400,000,000 in completed projects.

9. By June 1, 2023, before the renovation of the Development was complete, the GC abandoned the site and became nonresponsive. At that point, Developer had paid to the GC $12,613,774.74, which was the total amount due under the contract after setoff. In contrast, only the hard costs that could be substantiated were included in the GCCC, which total only $10,894,960. This inability to substantiate all hard costs in the contract caused the 14% GC cap to be exceeded by 7.81%, necessitating a Rule waiver.[1]

10. Developer is aware of claims made by subcontractors alleging that they have not been fully paid, but does not have access to the GC's documents to verify: (a) the amount the GC paid to each respective subcontractor, (b) any sums that may be outstanding, or (c) whether the GC had rights to set off or revised the scope of each subcontractor. For the subcontractors that alleged non-payment, Developer has provided the GC's payment applications to Developer and redacted bank records showing bank wires that match the amount billed in each payment

[1] Petitioner received AIAs from the GC through the construction process that tie to the contract. While the available information technically reflects GC fees exceeding the 14% cap, Petitioner believes, for the reasons set forth above, there are additional costs that have not been captured. If Petitioner had full access to the invoices, it believes cost overruns by the subcontractors would be disclosed, diluting the percentage of the GC's fee, decreasing their fee margins, in compliance with the 14% cap.

application. Those payment applications show each time that the respective subcontractor's line items were billed up to 100% of that line was billed, reflecting that Developer paid the GC for all work completed by the subcontractors.

11. The GC and the surety (Liberty Mutual) were sent notices of default on October 19, 2023, notice of termination on November 9, 2023, and a supplemental demand for relief under the bond and damages summary on or around June 11, 2024. The surety has not agreed to any settlement or to compensate the Developer for any losses.

12. Accordingly, Developer completed the work without involvement from the GC or surety.

13. Petitioner has no new business with the GC. The GC has not responded to Petitioner's communications and requests for documentation. Despite multiple requests, the GC has failed to provide the information necessary to satisfy all of the requirements for the FCCAP.

14. Pursuant to the Rule, Petitioner must submit the FCCAP to itemize the costs and expenses incurred with the Development. Because the Rule incorporates the FCCAP by reference, both the Rule and FCCAP require: (a) completion and inclusion of a GCCC and (b) a CPA opinion letter and audit report for the GCCC without any modifications.

15. The FCCAP provides the GCCC instructions, which identify the requirements and audit procedures for the GCCC audit.

16. The FCCAP also includes a form, entitled "General Contractor Costs Certification - GC Certification," that must be executed by the GC and the CPA ("GC Certification"). The GC Certification certifies the accuracy of the GC's costs.

17. Receipt by Petitioner of the remaining portion of the tax credit investor's capital contributions are dependent upon the issuance of the Form 8609. The Corporation cannot issue

Form 8609 until it has reviewed the FCCAP.

18. Despite numerous requests,[2] the GC has failed to execute the GC Certification, and other certificates and affidavits that must be provided to the CPA in order to enable the CPA to issue its opinion letter and audit report. Accordingly, the Corporation has not, and cannot, issue Form 8609.

19. Prior to the GC appearing to cease operations, Petitioner was able to obtain from the GC a cost schedule and invoices.[3] An independent CPA (*i.e.*, Dauby, O'Connor & Zaleski, LLC, "DOZ") tested the GC's schedule and invoices to satisfy the 40% testing requirement. However, because the GC appears to have discontinued its business and has become unresponsive,[4] DOZ was unable to fully complete the GCCC. Accordingly, while the information obtained from the GC is likely very close to complete, it cannot be *verified* as complete without confirmation from the GC. Additionally, the information provided by the GC has limited invoice detail and some questions for the GC related to classification, complete vendor names, etc. could

[2] For example, Petitioner: (1) emailed the GC's representatives, Ida Bustnes, J.D. Wilson, and Josh Gilot, on June 21, 2023 requesting confirmation of a wire sent for pay application #25; (2) called Ms. Bustnes, Mr. Wilson, and Mr. Gilot on their individual cell phones on June 20-21, 2023; (3) emailed Ms. Bustnes, Mr. Wilson, and Mr. Gilot on June 20, 2023 regarding a warranty claim for a roof leak; (4) texted Mr. Wilson on June 20, 2023 asking him to confirm that the GC received a wire for Draw #25; and (5) emailed Ms. Bustnes, Mr. Wilson, and Mr. Gilot June 14, 2023 related to amounts due to AJ Madison Appliances. The GC has not, to date, responded to the foregoing communications. Petitioner has subsequently made other attempts to contact the GC, as well as attempted to contact the GC through the GC's accounting firm, all to no avail.

[3] The entire contracted amount has been paid to the GC. While all of the subcontractors have not been paid to date, Petitioner is in the process of doing so. Petitioner has requested a statement of accounts from the subcontractors and is in communication with them. The total outstanding costs of the subcontractors exceeds the currently held retainage by approximately $400,000.

[4] DOZ sent multiple emails, and made several calls, to the GC that went unanswered. After many failed attempts to communicate with the GC, DOZ reached out to Petitioner who informed DOZ that Petitioner likewise had been unable to reach the GC.

not be verified. While we believe the total actual construction costs to be higher, the claims submitted to the surety that could not be substantiated were not included in the AUP, resulting in a GC fee overage of 7.81%. As set forth herein, the GC overage will be treated as a subset of the developer fee and be ineligible. Because the GC subsequently became unresponsive, DOZ cannot confirm the cost listing is complete. The percentages listed on Exhibit A of the AUP report are a percent of total actual construction costs which represent 59.16% of the total actual construction costs incurred (*i.e.*, 59.16% of $10,894,960).

20. The AUP report is based upon the draft GCCC attached thereto as Exhibit A. DOZ obtained the draft GCCC from the GC, recomputed the mathematical accuracy, and found no exceptions. The AUP report is also based upon a detailed listing of costs incurred by the Project as of November 30, 2022 that are included in the draft GCCC. Using a sampling method, DOZ vouched a sample of costs supporting evidence to verify that the costs were incurred by the Project and the amount, date, and classification of the cost were accurately recorded in the draft GCCC. DOZ's sample of costs vouched to supporting evidence represents over 40% of the total costs incurred by the Project as of November 30, 2022. DOZ found no exceptions. DOZ also selected the three largest subcontractors to send direct confirmations to verify that the costs were incurred by the Project and the amount, date, and classification of the cost were accurately recorded in the draft GCCC. DOZ's costs confirmed by the subcontractors represent 36.18% of the total costs incurred by the Project as of November 30, 2022, for which DOZ found no exceptions.

21. The draft GCCC attached to the AUP report states the following related to the three largest subcontractors: (a) Valle Del Sol Contracting, LLC - $1,681,883 total - $1,681,883 confirmed - 15.44% of total actual const. costs; (b) Arcor Electric, LLC - $1,209,517 total -

$1,209,517 confirmed - 11.10% of total actual const. costs; and (c) Roofing Painting by Hertzel, Inc. - $1,050,751 total - $1,050,751 confirmed - 9.64% of total actual const. costs.

22. The draft GCCC further states, in relation to "randomly selected subcontractors": (a) Innovative Comfort Solutions - $972,475 total - $499,544 verified - 4.59% of total actual const. costs; (b) Jetliner, LLC - $795,408 total - $612,568 verified - 5.62% of total actual const. costs; (c) AC Products, Inc. - $443,115 total - $393,743 verified - 3.61% of total actual const. costs; (d) Crowther Roofing & Sheet Metal of Florida, Inc. - $596,430 total - $561,835 verified - 5.16% of total actual const. costs; and (e) 4S Construction, Inc. - $718,531 total - $436,321 verified - 4.00% of total actual const. costs.

23. Per the draft GCCC: "The total of the three largest subcontractors confirmed and the randomly selected subcontractors detailed above account for 59.16% of total actual const. costs incurred."

24. In the draft GCCC:

a. the percentage of costs to GC Costs and Fees were calculated to confirm it is at or below 14%;

b. the total construction cost in the contract cost schedule agrees to the original contract plus approved change order

c. all payments made by the owner to the contractor were tested as part of both the GCCC and DFCC

d. the last page outlines the confirmation procedures completed to obtain written confirmation of construction amounts from as many subcontractors as possible.

e. the last page outlines the invoice testing procedures completed to obtain other documentation of construction amounts for any remaining subcontractors not confirmed

f. the last page outlines the confirmation testing procedures completed to identify the three largest dollar amount subcontractors

g. includes a column for identifying any reported identity of interests, but none were listed because Petitioner was not made aware of any.

The procedures listed in the opinion state that the total costs confirmed/verified were at least 40% of the total construction costs.

25. Petitioner cannot verify that it has the subcontractor information necessary to provide a complete contractor cost certification. Since the GC did not respond to requests to provide access to its accounting records, the CPA was unable to prepare an audit of the GCCC. However, the information available will be presented in the Development Final Cost Certification ("DFCC") format.

26. The CPA cannot issue an audit opinion here since an audit entails more than simply verifying numbers (*e.g.*, testing internal controls, testing journal entries, performing cash disbursement tests, performing interviews with the GC for fraud and gaining an understanding of their accounting system, obtaining representations from the GC, etc.) and is not possible here since the development cost records are not complete. Accordingly, an audit report would violate professional standards and cannot be issued. The GCCC forms contain contractor trade categories that require a level of detail that is not available here.

27. Due to the GC's failure to provide the requested documentation and/or cooperate,

the CPA cannot issue an opinion letter or unmodified[5] audit report and Petitioner is unable to complete the GCCC, much less obtain the GC's signature on the GCCC or other requisite certificates and affidavits; thereby necessitating this Petition for Rule waiver.

28. Petitioner requests via this Petition that the Corporation waive the requirement that the FCCAP contain a GCCC and/or CPA opinion letter and audit report for the GCCC. By granting the Petition, Petitioner will be permitted to instead satisfy the Rule by providing the AUP report prepared by the CPA detailing the costs and expenses incurred by the GC, as presented in the schedule attached to the AUP report.

29. Under Section 120.542(1), Florida Statutes, 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.

The controlling statutes and the Corporation's Rules are designed to allow the flexibility necessary to provide relief when strict application, in particular circumstances, would lead to unreasonable,

[5] The AUP is being submitted in the place of the audit report. The only modification DOZ made is stating that, while DOZ was able to verify more than 40% of the construction contract, the listing cannot be entirely verified. Without the GC being available to sign a representation letter, answer questions and/or verify the completeness of the form, any report DOZ issued on the GCCC would require a modification of some type.

unfair, or unintended results. Granting the requested variance in this instance would allow Petitioner to finalize the cost certification process and pursue issuance of the housing credits.

30. Additionally, 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.

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

32. Petitioner would suffer a substantial hardship if this Petition is denied. Specifically, Petitioner will lose the opportunity to access a large portion of the tax credit equity financing available to the Development if the Petition is not granted. Further, Petitioner would be required to repay all of the capital contribution previously made by the tax credit investor, with interest and penalties, thus causing the Development to fail and for the lender to likely foreclose. Petitioner is unable, through no fault of its own, to obtain the information necessary to complete the FCCAP (*i.e.*, Petitioner cannot provide all of the information required by the GCCC nor obtain a CPA opinion letter without qualification or an unmodified audit report for the GCCC), much less obtain

the GC's execution of the GCCC. Accordingly, absent the Corporation granting this Petition, it cannot issue Form 8609 to Petitioner.

33. 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.

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

G. Type of Waiver.

35. The waiver being sought is permanent in nature.

H. Action Requested.

26. Petitioner respectfully requests that the Corporation:

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

b. Grant a waiver of Rule 67-21.027(6), F.A.C. (6/23/20) to permit submission of the Final Cost Certification Application Package with an Agreed Upon Procedures Report approved by the Corporation instead of: (i) the General Contractor Cost Certification; (ii) a certified public accountant opinion letter; and/or (iii) an audit report prepared by an independent certified public accountant;

c. Grant a waiver of Rules 67-21.003(1)(b) and 67-21.026(12)(b) F.A.C. (6/23/20) and the Non-Competitive Application Instructions (REV. 04-2020); and allow Petitioner to exceed the General Contractor's fee maximum of 14% of actual construction cost; and

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

Respectfully submitted,

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

CERTIFICATE OF SERVICE

This Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 4th of October, 2024.

s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.