STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2023-029VW
APPLICATION NO. 2022-521C

HOMESTEAD PORTFOLIO LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) AND 67-21.003(8)(l)

HOMESTEAD PORTFOLIO LP, a Florida limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the "**Corporation**") for a waiver of the Corporation's rule which requires that, for Non-Competitive Housing Credits (the "**4 Percent HC**") only, to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Authority established pursuant to Section 159.604, Florida Statues (2022), the Non-Competitive Application Form (the "**Application**") be submitted anywhere from the time the Applicant completes Credit Underwriting for the Bonds up until the last Corporation business day of December of the year the Development is placed in service (the "**Timing Requirement**"), per the Non-Competitive Application Package (REV. 04-2022) (the "**NCA**") adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2022); and that the Application include an executed Applicant Certification and Acknowledgement in the form included in the NCA without supplementation, per Rule 67-21.003(8)(l), Florida

Administrative Code (2022) and the NCA adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2022). Petitioner further petitions the Corporation for a waiver of the prohibition against changing the structure of Petitioner set forth in Petitioner's Principal Disclosure Form prior to the issuance of a Preliminary Determination (as defined by Rule 67-21.002(84), F.A.C. (2022)) or after such issuance but before a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued, per the NCA adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2022) (the "**Structure Requirement**"). This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2022) and Chapter 28-104 of the Florida Administrative Code (2022). In support of its Petition, the Petitioner states:

A. PETITIONER AND DEVELOPMENT

1. The address, telephone number, facsimile number and email address of the Petitioner are:

Homestead Portfolio LP
2711 N. Sepulveda Boulevard #526
Manhattan Beach, California 90266
Attn: Sydne Garchik
Email: sgarchik@mrkpartners.com

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

Hollie A. Croft, Esq.
Nelson Mullins Riley & Scarborough
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: hollie.croft@nelsonmullins.com

3. Petitioner previously submitted an application to the Housing Finance Authority of Miami-Dade County, Florida for an issuance of multifamily housing revenue bonds (the "**Bonds**") to be used for the rehabilitation of that certain 233-unit multifamily housing development commonly known as Gardens of Homestead, located in Homestead, Florida (the "**Development**"). Petitioner has also submitted an Application to the Corporation for an allocation of 4 Percent HC to fund a portion of the acquisition and rehabilitation of the Development.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.003(8)(l), F.A.C. (2022) which requires the Petitioner to execute an Applicant Certification and Acknowledgement in the form attached to the NCA without supplementation in connection with the Application and 67-21.003(1)(b), F.A.C. (2022) which adopts and incorporates the NCA (collectively, the "**Rule**"). More specifically, Petitioner requests waiver of the requirement in Applicant Certification and Acknowledgement emphasized below. The specific provisions of the Rule from which Petitioner is seeking a waiver are as follows:

6. Rule 67-21.003(8)(l), F.A.C (2022), which provides in relevant part:

> "(8) 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…
>
> (l) **The Applicant must execute the Applicant certification and acknowledgement form included in the NCA**."

(emphasis added).

7. Rule 67-21.003(1)(b), F.A.C. (2022), which provides in relevant part:

"**(b) If the NC Award will not be 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. 04-2022) is adopted and incorporated herein by reference…**"

(emphasis added).

8. Section A.16 of the NCA, which provides, in relevant part:

"The Applicant Certification and Acknowledgement Form included in the Application form must be executed by the Authorized Principal Representative to indicate the Applicant's certification and acknowledgement of the provisions and requirements of this Application."

9. Applicant Certification and Acknowledgement Form Section 16.p. of the NCA, which provides, in relevant part:

"The Applicant certifies and acknowledges that…

p. The Applicant, the Developer **and all Principals are in good standing among all other state agencies and have not been prohibited from applying for funding.**"

(emphasis added).

10. The NCA, which provides, in pertinent part:

"Non-Competitive Housing Credits (4 Percent HC) only, to be used for a Tax-Exempt Bond Financed Development where the bonds are issued by a County Housing Finance Authority (HFA) established pursuant to Section 159.604, F.S. **The Non-Competitive Application Form can be submitted anywhere from the time the Applicant completes Credit Underwriting for the Bonds up until the last Corporation business day of December of the year the Development is placed in service**;"

(emphasis added).

11. Section A.6.b(1) of the NCA, which provides, in relevant part:

6. Principals Disclosure for the Applicant and for each Developer:

***

b. 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 Corporation 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.**

For Applicants requesting Non-Competitive Housing Credits only:

The Applicant entity shall be the recipient of the Housing Credits **and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any way (materially or non-materially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any material change in the ownership structure of the named Applicant will require Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require Corporation approval prior to the change.** The ownership structure of the Applicant entity may be changed without Corporation or Board approval after a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must still be notified in writing of the change. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapter 67-21, F.A.C. for the duration of the Compliance Period. **Changes to the ownership structure of the Applicant entity prior to the issuance of the Preliminary Determination or without Board approval or Corporation approval, as applicable, prior to the approval of the Final Housing Credit Allocation and issuance of the IRS Forms 8609 shall result in a disqualification from receiving funding and shall be deemed a material misrepresentation.** Changes prior to the issuance of the Preliminary Determination to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or 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, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval. Any allowable replacement to the natural person Principals of a Public Housing Authority or officers and/or directors of a non-profit entity will apply to all preliminarily awarded Applications and Applications pending final Board action that include the Public Housing Authority or non-profit entity.

D. STATUTES IMPLEMENTED BY THE RULE

12. The Rule is 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.* (2022) (the "**Statute**").

13. 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 RULE

14. Petitioner is seeking a waiver from Section A.16 of the NCA and more specifically Section 16(p) of the Applicant Certification and Acknowledgement Form, which requires the Petitioner to certify that all of the Principals, Applicant and Developer are in good standing with all other state agency and are not prohibited from applying for funding. However, Petitioner cannot make this certification as of Application submission as certain Principals and the Developer (the "**Affected Parties**") are currently prohibited from applying for funding in the State of Virginia for reasons that would not be the basis for a funding prohibition in the State of Florida (but that the Affected Parties are nevertheless working to remedy with Virginia Housing to return to good standing).

15. This situation has been previously disclosed by the Affected Parties to the Corporation in conjunction with a separate application filed with the Corporation and for which the Corporation has previously granted the waiver requested hereunder. For the Corporation's benefit however, we are reiterating the circumstances of the aforementioned prohibition herein. Said basis was additional design guidelines in connection with the rehabilitation of a project in Virginia (the "**VA Project**") which, while not necessary for issuance of 8609s, were nonetheless required by Virginia Housing. While it is true that some of the additional design guidelines were not reflected in the VA Project upon issuance of the 8609s, it was the Affected Parties understanding from its prior discussions with Virginia Housing that such matters would not be the basis for a prohibition on funding applications. Unfortunately, unlike the process in the State of Florida, application prohibitions do not need to go through prior board discussion or approval and, as such, as there is no delineated opportunity to correct or dispute perceived deficiencies in the State of Virginia prior to the issuance of a prohibition, the Affected Parties were placed out of good standing before steps could be taken to address Virginia Housing's concerns. This was a first-time offense by the Affected Parties and we do not think the issues in the VA Project rose to the level to warrant an immediate prohibition but, the Affected Parties continue to work to remediate the design deficiencies indicated by Virginia Housing to their satisfaction which should be completed in the near future, as the property is almost done with its inspections and several of the buildings have already been approved by Virginia Housing. Specifically, 6 of the 18 buildings that make up the Virginia project have already been approved by Virginia Housing, and the Affected Parties expect to have another 4 approved this month (with Virginia Housing approving roughly 4 buildings per month). The Affected Parties have requested that Virginia Housing increase the number of inspections per month but, currently the Affected Parties are

operating on the assumption that Virginia Housing will at most perform 4 inspections per month. As such, the Petitioner's expectation is that the Affected Parties will have complete sign off from Virginia Housing by sometime in the Summer of this year.

16. As such, for Petitioner to submit a NCA for 4 Percent HC for the Development and comply with Section A.16. thereof, it must be able to submit the Applicant Certification and Acknowledgement with Section 16(p) struck through. The basis for the Affected Parties' current prohibition in the State of Virginia would not have resulted in a similar prohibition in the State of Florida and, regardless the Affected Parties are working to resolve the current lack of good standing in the State of Virginia as quickly as possible. Further the Affected Parties have participated in a number of prior deals in the State of Florida, currently consisting of over 1,500 units throughout the State of Florida, (including, as previously mentioned a prior deal for which the requested waiver has been previously granted, over 1,000 of which have been recently renovated and are in the process of or have already received their 8609s, for which the Affected Parties remain in good standing in connection therewith.

17. Further Petitioner requests a waiver of the Timing Requirement, which requires that Petitioner complete the credit underwriting for the county bond transaction (the "Credit Underwriting") before submission of the Application. In order to complete the Credit Underwriting Report, Petitioner must confirm the Affected Parties are permissible in the ownership structure which it will not be able to do so until this Petition is granted. However, Petitioner cannot submit this Petition without first submitting an Application and cannot submit an Application until completing the Credit Underwriting and cannot complete Credit Underwriting and finalize its Credit Underwriting Report without first granting of this Petition. Consequently, Petitioner will need to submit the Application before completing Credit

Underwriting in order to address this issue in advance with the Corporation. Therefore, Petitioner is requesting a waiver of the requirement to submit a final Credit Underwriting Report with its Application in order to prevent any further delay to the closing and rehabilitation commencement of the Development.

18. Finally, Petitioner requests a waiver of the Structure Requirement, which prohibits making changes to the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form prior to the issuance of the Preliminary Determination or subsequent to the issuance of the Preliminary Determination, but before a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued. As part of Petitioner's incoming lender's requirements, Petitioner will need to include a special purpose entity (the "**SPE**") in the ownership structure of the Petitioner's general partner (the "**SPE Structure**"). However, due to Petitioner's current financing, Petitioner cannot implement this structure change until the closing of the incoming financing occurs. Despite this change, but for the inclusion of a special purpose entity as the new general partner, that is 100% owned by the current general partner, the SPE Structure will be identical to the current ownership structure and inclusion of the SPE will not impact Petitioner's ability to disclose all natural person principals by the 3rd entity level (4th entity level in the case of a trust), as it currently discloses all natural person principals by the 2nd entity level (3rd in the case of the trust in the ownership structure), and no new natural persons will be added into the ownership structure in connection with the SPE Structure. Petitioner requests consent to change its ownership structure now so it can satisfy the principal disclosure requirements of the NCA and move forward with the submission of its Application in accordance with the other waivers discussed by this Petition.

19. A waiver of the Rule will permit Petitioner to apply for non-competitive tax credits to finance a portion of the acquisition and rehabilitation of the Development. Without this additional source of investor equity, the Petitioner will not have enough funds to rehabilitate these much needed 233 affordable units in Homestead, Florida.

20. In this instance, Petitioner meets the standards for a waiver of the Rule. 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. Unless the Rule is waived to allow the Petitioner to apply for non-competitive housing credits with its current ownership structure, certain unreasonable, unfair and unintended results will occur, resulting in a substantial hardship to the Petitioner and the Development. Specifically, the purpose of the Rule was for the Corporation to certify to specific matters in its Application prevent perpetual bad actors in other states from participating in its programs and for the Corporation to know who is participating in its programs. However, strict application of the Rule would lead to the unintended result that parties with extenuating circumstance and that have otherwise demonstrated their good intentions and prior competency are not able to participate in the Corporation's programs as the result of standards set in place by other state programs, as well as result in a substantial hardship to the Petitioner. In this specific instance, the Corporation's failure to grant the waiver requested will result in a substantial hardship to Petitioner, as Petitioner will not be able to apply for and obtain 4 Percent HC and, as such, will not be able to complete the much-needed construction of the Development. Further Petitioner requires the SPE Structure so that it can close its financing necessary for the Development. It would be unreasonable and unfair to, and impose substantial hardship upon, Petitioner to prohibit Petitioner from changing its organizational structure to the SPE Structure

so that Petitioner can satisfy its lender's special purpose entity requirement, when such structure would otherwise be permissible and in accordance with the Corporation's requirements if Petitioner was able to change its structure now. The Corporation will not be harmed by granting this Petition as the intent of the Rule will not be violated.

21. The requested waiver of the Rule 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 this waiver of the Corporation's rule which requires the Application include an executed Applicant Certification and Acknowledgement in the form included in the NCA without supplementation, Petitioner will be able to apply for non-competitive housing credits while the Affected Parties work to resolve the outstanding issues with the VA Project, as requested in this Petition, and the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low income. By granting the waiver of the Corporation's prohibition against revising the Petitioner's organizational structure after the submission of Petitioner's Application and before a Preliminary Determination, Petitioner will be able to finalize its desired organizational structure and obtain its required financing

F. ACTION REQUESTED

22. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of the Corporation's rule which requires the Application include an executed Applicant Certification and Acknowledgement in the form included in the NCA

without supplementation; (*ii*) grant the requested waiver of the Timing Requirement and Corporation's requirement that a final Credit Underwriting Report be included in the Application (*iii*) grant the Petition and all of the relief requested herein; (*iv*) grant the requested waiver of the Structure Requirement and the Corporation's prohibition of making changes to the ownership structure of Petitioner; and (*v*) grant such further relief as it may deem appropriate.

Respectfully submitted on the 22nd day of February, 2023.

Respectfully submitted,



Andrew Bennett, Esq.
Fla. Bar No. 0125189
Hollie A. Croft, Esq.
Fla. Bar No. 886181
NELSON MULLINS RILEY & SCARBOROUGH
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: drew.bennett@nelsonmullins.com
hollie.croft@nelsonmullins.com
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 22nd day of February, 2023.



Andrew Bennett, Esq.
Fla. Bar No. 0125189