

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

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NV HOMESTEAD APARTMENTS LP,  
a Florida Limited Partnership,

FLORIDA HOUSING  
FINANCE CORPORATION

**Petitioner**

FHFC CASE NO. 2021-039VW

v.

APPLICATION NO. \_\_\_\_\_

FLORIDA HOUSING FINANCE  
CORPORATION,

**Respondent.**

\_\_\_\_\_ /

**PETITION FOR WAIVER OF RULE 67-21.028(3)(a), F.A.C.**

NV Homestead Apartments LP, a Florida Limited Partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-21.028(3)(a), Florida Administrative Code (2019) (the “Rule”). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

In support of this Petition, the Petitioner states as follows:

**A. THE PETITIONER AND ATTORNEYS FOR THE PETITIONER**

1. The name, address, e-mail address, telephone number, and facsimile number of the Petitioner is:

NV Homestead Apartments LP  
Attn: Kenneth G. Weiss  
8895 North Military Trail  
Suite 201E  
Palm Beach Gardens, FL 33410  
Phone: 561-309-6501

Fax: 561-627-5116

E-Mail: [kgw.partners@gmail.com](mailto:kgw.partners@gmail.com)

2. The name, address, e-mail address, telephone number, and facsimile number of the Attorney for the Petitioner is:

Sarah Pape, Esq.

[spape@zkslawfirm.com](mailto:spape@zkslawfirm.com)

Jack Grygiel, Esq.

[jgrygiel@zkslawfirm.com](mailto:jgrygiel@zkslawfirm.com)

Zimmerman Kiser Sutcliffe PA

315 East Robinson St.

Suite 600

Orlando, FL 32801

Phone: (407) 425-7010

Fax: (407) 425-2747

## **B. THE DEVELOPMENT (BACKGROUND)**

3. On February 1, 2018, Petitioner closed on tax-exempt multi-family bonds (“Bonds”) issued by Capital Trust Agency in the amount of \$10,600,000.00 (the “Bond and Construction Closing”), which financing was used for the acquisition and rehabilitation of a 92 unit garden apartment development known as Coral Gardens located in the City of Homestead, Miami-Dade County (the “Development”).

4. The TEFRA Hearing relating to the Bonds was held on December 13, 2017.

5. On or about July 27, 2018, construction of the Development commenced. (*See Attached Exhibit A, approved Permit from City of Homestead*).

6. On April 20, 2020, the Development was placed in service.

7. On December 22, 2020, Petitioner submitted an Application to the Corporation for Non-Competitive Housing Credits (“Application”) pursuant to Chapter 67-21, Florida Administrative Code, requesting an annual amount of \$724,966.00 in 4% low-income housing tax

credits (“Credits”) to assist in financing the Development.

**C. RULE(S) FROM WHICH WAIVER IS SOUGHT**

8. Petitioner requests a waiver from the Rule, which provides, in pertinent part and with emphasis added:

(3) Tax-Exempt Bond-Financed Developments receiving bonds from another source other than the Corporation or a County Housing Finance Authority and not competing for Housing Credits under the state of Florida’s Allocation Authority shall:

(a) Make Application to the Corporation as required in this rule chapter, utilizing the Non-Competitive Application Package, for receipt by the Corporation once the Applicant has received affirmation that the tax-exempt multifamily bond allocation has been reserved or that the entity issuing the bonds has agreed to award the necessary allocation when available, *but no later than 14 days after the TEFRA Hearing, and in no event may the Application be submitted after commencement of Rehabilitation or construction;*

(Rule 67-21.028(3)(a), F.A.C., eff. 7/11/2019).

**D. STATUTE(S) IMPLEMENTED BY THE RULE(S)**

9. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that designated the Corporation as the housing credit agency and created the Housing Credit Tax Program. *See* § 420.5099, Fla. Stat.

**E. TYPE OF ACTION REQUESTED (PETITIONER’S REQUEST FOR WAIVER FROM THE RULE)**

10. Petitioner hereby requests a waiver of the Rule for the reasons set forth below.

11. Pursuant to Section 120.542, Fla. Stat., and Chapter 28.104, F.A.C., the Corporation has the power and authority to grant waivers to its rule requirements. In this regard, Section 120.542(2), Fla. Stat., provides that waivers *shall* be granted when the person subject to the rule demonstrates that (1) the purpose of the underlying statute will be or has been achieved by other means by the person, and (2) the application of the rule would (a) create a substantial

hardship<sup>1</sup> *or* (b) violate principles of fairness<sup>2</sup>.

12. As stated in this Petition, the purpose of the underlying statute will be or has been achieved by other means (Section G below) and application of the rule will create a substantial hardship and violate principles of fairness (Section F below). To qualify for a rule waiver, a petitioner need only show that application of the rule would create a substantial hardship *or* violate principles of fairness. In this case, application of the rule would both create a substantial hardship *and* violate principles of fairness. Thus, the Corporation must grant a waiver pursuant to Section 120.542(2), Fla. Stat.

**F. SPECIFIC FACTS THAT JUSTIFY A WAIVER OF THE RULE FOR THE PETITIONER (SUBSTANTIAL HARDSHIP OR VIOLATION OF PRINCIPLES OF FAIRNESS)**

13. The current Rule, which did not become effective until July 11, 2019, requires applicable developments to submit applications not later than 14 days after the TEFRA Hearing. The Rule further states that “in no event may the Application be submitted after commencement of Rehabilitation or construction.”

14. It would have been impossible for the Petitioner to comply with the current Rule because both the TEFRA Hearing and the commencement of construction occurred *before* the effective date of the current Rule. The TEFRA Hearing was on December 13, 2017 (over 19 months before the current rule became effective on July 11, 2019) and the commencement of construction was July 27, 2018 (nearly 1 year before the current rule became effective on July 11, 2019).

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<sup>1</sup> “Substantial hardship” means a demonstrated economic, technical, legal, or other type of hardship to the person requesting the variance or waiver.

<sup>2</sup> “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.



15. The prior version of the Rule, effective from its promulgation on July 16, 2013 until July 11, 2019, provided, in pertinent part and with emphasis added:

(3) Tax-Exempt Bond-Financed Developments receiving bonds from another source other than the Corporation or a County Housing Finance Authority and not competing for Housing Credits under the state of Florida's Allocation Authority shall:

(a) Make Application to the Corporation as required in this rule chapter, utilizing the Non-Competitive Application Package, for receipt by the Corporation once the Applicant has received affirmation that the tax-exempt multifamily bond allocation has been reserved or that the entity issuing the bonds has agreed to award the necessary allocation when available, ***but in no event may the Application be submitted later than the last Corporation business day of December of the year the Development is placed in service;***

(Rule 67-21.028(3)(a), F.A.C., eff. 7/16.2013).

16. Petitioner relied upon the Rule in effect when Petitioner closed on the bonds and commenced construction, which Rule allowed the noncompetitive application to be submitted no later than the last Corporation business day of December of the year the Development is placed in service.

17. Petitioner submitted its Application on December 22, 2020, which was prior to the last business day of the December of the year the Development was placed in service.

18. It would be a violation of principles of fairness to retroactively apply the 2019 version of the Rule to the Petitioner, because it would be impossible for the Petitioner to comply with the 2019 version of the Rule. The Petitioner had no way of knowing on July 27, 2018 (commencement of construction) that the Corporation would amend the Rule nearly a year later. When the 2019 version of the Rule became effective on July 11, 2019, there was no way for the Petitioner to go back in time and submit its application on July 27, 2018.

19. The Petitioners complied with the Rule that was in effect at the time the Bonds were issued and the construction of the Development commenced. Applying the 2019 version of the

Rule to the Petitioner retroactively would, in effect, be an unfair and unjust application of the Rule. *Bowen v. Georgetown University Hosp.*, 109 U.S. 204, 208 (1988) (“Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.”); *Toney v. Dept. of Env'tl. Protection*, 1999 WL 1483696 (Fla. DOAH Dec. 16, 1999).

20. A denial of this waiver would also violate the principles of fairness because, in reliance of the version of the Rule in effect at the time of construction of the Development, the Petitioner submitted its Application prior to the last Corporation business day of December in the year the Development was placed in service.

21. Moreover, Petitioner will endure substantial hardship if this waiver request is denied as it would not be able to obtain the Credits and will therefore lose a substantial portion of its financing, thereby suffering a demonstrated economic hardship. Without the requested waiver, Petitioner’s Application will fail. If the Petitioner’s Application fails, the Petitioner’s investor limited partner will not receive the tax credits for which it bargained, entitling the Petitioner’s investor limited partner to exercise various remedies, including, without limitation, (i) the right to withhold the remaining capital contributions upon which the Petitioner depends to complete the rehabilitation, (ii) the right to assert claims against the general partners, the developer, the Petitioner, and any tax credit guarantors, and (iii) the right to exit the transaction.

**G. A WAIVER OF THE RULE WILL SERVE THE PURPOSES OF THE UNDERLYING STATUTE**

22. The waiver requested by the Petitioner will serve the purposes of Section 420.5099, Fla. Stat., and the Act because one of the responsibilities of the Corporation is to facilitate and encourage the development of safe housing for low-income persons in the state. If the waiver is granted, then the Development will proceed and provide low-income affordable housing in the

state. Additionally, the requested waiver will not adversely impact the Development or the Corporation. Notably, the waiver requested is with respect to a non-competitive application so no other parties will be adversely impacted.

**H. STATEMENT AS TO WHETHER THE VARIANCE IS PERMANENT OR TEMPORARY**

23. The waiver requested by the Petitioner is permanent.

**I. ACTION REQUESTED**

24. For the reasons set forth herein, Petitioner respectfully requests the Corporation: (1) grant the requested waiver of the Rule and approve the use of the stipulated sum contract form; (2) grant the Petition and all relief requested herein; and (3) grant such further relief as it may deem appropriate.

Respectfully submitted this 23<sup>rd</sup> day of June, 2021.

Respectfully Submitted,



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Florida Bar No.: 957631  
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315 East Robinson Street, Suite 600  
Orlando, FL 32801  
Phone: (407) 425-7010  
Fax: (407) 425-2747  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Petition is being served and filed by electronic mail delivery to the Corporation Clerk of the Florida Housing Finance Corporation at [CorporationClerk@Floridahousing.org](mailto:CorporationClerk@Floridahousing.org), pursuant to Rules 28-104.002 and 57-52.002 of the Florida Administrative Code. I further certify that pursuant to Rule 28-104.002, a copy is being served by overnight delivery to the Joint Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 23<sup>rd</sup> day of June, 2021.

By:  \_\_\_\_\_

Sarah Pape  
Florida Bar No. 0026398





**CITY OF HOMESTEAD**  
DEVELOPMENT SERVICES DEPARTMENT  
100 Civic Court, Homestead, FL 33030 (305) 224-4500

**WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU MAKING A DOUBLE PAYMENT FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.**

Permit#: 18020249 DATE: 07/27/18  
Master Permit#: Permit Type: ALTERATIONS & REPAIRS  
APN/Folio: 10-7814-000-1030  
Contractor: OPTIMAL CONSTRUCTION LLC Phone: 561-797-6287  
Permit Address: 32200 SW 187 AVE  
Subdivision: ACREAGE & UNREC PLATS LT: BLK:  
SQ FT: 0  
Owner: NV HOMESTEAD APARTMENTS LP Phone: 561-797-6287  
Address: 5910 NORTH OCEAN BLVD  
Permit Desc: ALTERATION LEVEL 2, DRYWALL REPLACEMENT, RE-ROOFING /MANSARD, ELEC, M  
PLMB, LIFE SAFETY SYSTEMS  
VALUATION: \$1868638 PERMIT FEE: \$39,796.39

SUB PERMITS:  
18070369 PLUMBING 786-255-5195 CASTELLON PLUMBING CORP.  
18070370 PLUMBING 786-255-5195 CASTELLON PLUMBING CORP.  
18070069 ELECTRICAL 954-882-2822 POWER POINT ELECTRIC

**24-HOUR NOTICE REQUIRED FOR INSPECTIONS AND RESULTS**

FOR INSPECTIONS: 305-224-4590 / www.cityofhomestead.com

This building permit hereby represents that all persons, firms, or corporations performing work under the permit hereby applied for have agreed to comply with and abide by each and every provision of the Florida Workmen's Compensation Act, Section 440, Florida Statutes, which may be applicable to the work to be performed under said permit.

A reinspection fee may be charged for each reinspection made due to the rejection of work, the work being incomplete at the time specified in the request for inspection, or failure to call for inspection. Payment of such fee must be made prior to the reinspection.

To transfer this permit, a notarized letter is required from the permit holder, and a completed application made by transferee as well as a Hold Harmless letter to the City of Homestead.

**POSTING OF PERMIT:** Work requiring a building permit shall not commence until the permit holder or his agent posts the building permit card in a conspicuous place on the front of the premises. The permit card shall be protected from the weather and located in such position by the permit holder until the Certificate of Occupancy is issued by the Building Official.

PURSUANT TO SECTION 166.033, FLORIDA STATUTES, as amended, Issuance of this building permit by the City of Homestead does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the City of Homestead for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

All applicable state and federal permits must be obtained before commencement of the development.

For further information contact the City of Homestead at the address below:

100 Civic Court • Homestead, Florida 33030 • (305) 224-4500