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By Hand Delivery

To: Members of Town Council

CC: The Honorable Danielle H. Moore, Mayor

***Re: 226 Pendleton Ave.
Code Enforcement Case No.: CE 16-1116***

Dear Council Members:

This firm represents Susan Gibson, the owner of the property referenced above. At its meeting on May 19, 2002, the Town's Code Enforcement Board rendered a decision to recommend that Town Council proceed with foreclosure on Ms. Gibson's home.

Below for your consideration is a memorandum of law in opposition to foreclosure. Also enclosed herewith is a copy of a supporting affidavit executed by Ms. Gibson.

Memorandum of Law Regarding 226 Pendleton Ave.

I. Code Enforcement Liens on Homestead Property

Florida's constitutional homestead exemption provides:

There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, ..., the following property owned by a natural person:

(1) a homestead....

Fla. Const. Art. X, § 4(a)(1). Section 4 further expressly provides for only three exceptions to the homestead protection from creditor claims: (1) payment of taxes and assessments; (2) obligations contracted for the purchase, improvement or repair of the homestead; or (3) obligations contracted for labor performed on the realty.

Florida courts emphasize the liberal application of the homestead exemption in the interest of protecting the family home. *E.g., Yost-Rudge v. A to Z Properties, Inc.*, 263 So. 3d 95, 97 (Fla. 4th DCA 2019). Florida law demands that exceptions to homestead protection be read narrowly, strictly construed, and interpreted in favor of the homeowner. *See Pelecanos v. City of Hallandale Beach*, 914 So. 2d 1044, 1046 (Fla. 4th DCA 2005). A municipal lien for code violations is NOT one of the specified exceptions. *Id.*

Additionally, if there were any doubt on this point, Florida Statute § 162.09(3) expressly provides that any lien created pursuant to code enforcement administrative fine (i.e., precisely the lien at issue here) may not be foreclosed on homestead real property. In fact, the protection afforded to homestead property by the Florida Constitution “goes much farther [than Florida statute 162.09(3)]: No such lien *exists* as to such homestead property.” *See Demura v. County of Volusia* 618 So.2d 754, 756 (Fla. 5th DCA 1993) (emphasis in original); *see also Miskin v. City of Fort Lauderdale*, 661 So.2d 415, 416 (Fla. 4th DCA 1995). Thus, the Florida Constitution, Florida Statute § 162.09(3), and case law established by Florida appellate courts bar the foreclosure of a code enforcement lien on homestead property. Fla. Const. Art. X, § 4(a); Fla. Stat. § 162.09(3); *see Demura* 618 So.2d at 756; *see also Miskin*, 661 So.2d at 416.

II Intent to Return

Under Florida law, homestead property is exempt from the claims of creditors until it is abandoned. *See Marsh v. Hartley*, 109 So. 2d 34, 38 (Fla. 2nd DCA 1959). Consistent with the special status of Florida’s constitutional homestead, a finding of abandonment of homestead requires a strong showing of intent not to return to the homestead. *See Yost-Rudge v. A to Z Properties, Inc.*, 263 So. 3d 95 (Fla. 4th DCA 2019). The mere fact that the owner does not reside at the homestead property does not necessarily constitute abandonment of the homestead rights,

particularly when necessitated by health, financial, or familial concerns. *Monson v. First Nat. Bank of Bradenton*, 497 F.2d 135, 139 (5th Cir. 1974) (applying Florida law); *In re Minton*, 402 B.R. 380, 383 (Bankr. M.D. Fla. 2008) (finding that claimant did not abandon homestead property when leaving property to escape domestic violence). Whether a homestead has been abandoned is an issue of fact considered in light of the individual circumstances of each case. *See Marsh*, 109 So. 2d at 38.

The owner's intent is the determining factor of abandonment. *See Collins v. Collins*, 7 So. 2d 443, 444 (Fla. 1942). Temporary absence from a homestead will not deprive the property of its homestead character, provided the owner claiming homestead intends to return to the homestead. *See City of Jacksonville v. Bailey*, 30 So. 2d 529, 533 (Fla. 1947). Factual proof of the claimant's mental intent supports finding that the owner claiming homestead status never abandoned the homestead property. *See In re Lloyd*, 394 B.R. 605, 612 (Bankr. S.D. Fla. 2008). Examples of factual support includes voter registration, driver's license, tax receipts, receipt of mail, and carrying on of activities indicative of home life. *Id.*

In re Lloyd, the court held that a debtor did not abandon her Florida homestead by obtaining a California driver's license or a California voter's registration when the claimant did not intend to reside permanently in California. *Id.* The claimant told friends that she did not intend to give up her residence in Florida, frequently visited Florida to maintain the homestead property, and never surrendered her Florida driver's license or voter's registration card. *Id.* Note, furniture left at the homestead property was an indication of a debtor's intent to return. *Monson*, 497 F.2d at 139.

226 Pendleton Ave. is Susan Gibson's constitutional homestead. Ms. Gibson formed her intent to permanently reside and actually resided in 226 Pendleton beginning in the winter of 2004.

See In re Prestwood, 322 B.R. 463, 469 (Bankr. S.D. Fla. 2005). As described in her supporting affidavit, Ms. Gibson continues to maintain her intent to return to 226 Pendleton as her homestead. *See In re Lloyd*, 394 B.R. at 612. Her address on her driver's license, car registrations, voter's registration, Palm Beach Property Appraiser's mailing address for taxes, and utility accounts for FPL, City of West Palm Water, and Comcast/Xfinity all reflect 226 Pendleton Ave. *Id.* Additionally, her furniture and other belongings remain at 226 Pendleton. *See Monson*, 497 F.2d at 139. Ms. Gibson never filed a declaration of domicile for any other property. Ms. Gibson has never disposed of, alienated or surrendered 226 Pendleton Ave. Thus, Gibson's own actions demand concluding that she maintains and has not abandoned 226 Pendleton Ave. as her homestead for creditor protection.

The right to claim the homestead real estate tax exemption is not self-executing, and unlike the constitutional homestead protection from creditors, requires an application. *See Baldwin v. Henriquez*, 279 So. 3d 328, 332 (Fla. 2d DCA 2019). Ms. Gibson claimed and has been granted homestead for real estate tax exemption purposes and has continued to do so. Ms. Gibson's recognition of 226 Pendleton as her homestead for real estate tax exemption purposes simply supports finding 226 Pendleton as Ms. Gibson's constitutional homestead.

Ms. Gibson's personal health and family concerns necessitated she live temporarily at 240 Pendleton Ave., a few doors down from her homestead. *See In re Minton*, 402 B.R. at 380. Through a limited liability company, Ms. Gibson purchased 240 Pendleton in 2019 and in August of that year temporarily moved in. While repair construction proceeded at 226 Pendleton, as more fully described in her affidavit, Ms. Gibson underwent a liver transplant operation. Ms. Gibson faced a challenging recovery. The Covid pandemic raged, and given her transplant status, she was particularly vulnerable. In May of 2022, she returned to the hospital for treatment due to organ

transplant complications. Ms. Gibson needed to recover in a space without the disruption and constant stress of living amid a renovation. Throughout this time, Ms. Gibson also supported her mother in the last years of her mother's life. Ms. Gibson's health and the situation with her mother's demands on her time required that Ms. Gibson temporarily remain at 240 Pendleton Ave.

Ms. Gibson has consistently maintained her intent to return to 226 Pendleton Ave. once the renovation and repairs are complete. Considering the special status of Florida's constitutional homestead, Ms. Gibson temporarily residing in 240 Pendleton while improving 226 Pendleton Ave., recovering from a serious surgery, isolating because of the pandemic, and caring for her elderly and now deceased mother, the facts do not satisfy the requirements to prove Ms. Gibson abandoned her homestead at 226 Pendleton Ave. *See Yost-Rudge*, 263 So. 3d at 95.

Because 226 Pendleton Ave. is and continues to be Ms. Gibson's constitutional homestead, the Town cannot foreclose the code enforcement liens on 226 Pendleton Ave. *See Fla. Const. art. X, § 4(a); Fla. Stat. § 162.09(3); Demura v. County of Volusia* 618 So.2d 754, 756 (Fla. 5th DCA 1993); *see also Miskin v. City of Fort Lauderdale*, 661 So.2d 415, 416 (Fla. 4th DCA 1995); *Fong v. Town of Bay Harbor Islands*, 864 So.2d 77, 77 (Fla. 3d DCA 2003).

On behalf of Ms. Gibson, individually and as the Personal Representative of her mother's estate, the undersigned respectfully submits that the Town should not proceed with an attempt to foreclose on 226 Pendleton Ave. to satisfy the code enforcement lien on the property. To do so would be contrary to well established Florida law.

Respectfully,

NELSON MULLINS RILEY & SCARBOROUGH LLP



Jacqueline S. Miller

Encls.

cc: John C. Randolph, Esq. (w/ encls.) (by email)

AFFIDAVIT OF SUSAN C. GIBSON

STATE OF WYOMING
COUNTY OF TETON

BEFORE ME, the undersigned authority, personally appeared SUSAN C. GIBSON, who after being duly sworn, deposes and says:

1. The home at 226 Pendleton Avenue is my constitutional homestead. I formed my intent to permanently reside and actually resided in 226 Pendleton beginning in the winter of 2004. Although I temporarily reside elsewhere, I have consistently maintained my intent to return to 226 Pendleton Ave. as my homestead.

2. My address on my driver's license, car registrations, voter's registration, Palm Beach Property Appraiser's mailing address for taxes, and utility accounts for FPL, City of West Palm Water, and Comcast/Xfinity all reflect 226 Pendleton Ave. as my home address. My furniture and other belongings remain at 226 Pendleton. I have never filed a declaration of domicile for or claimed a real estate homestead tax exemption for any other property. I have never disposed of, alienated or surrendered 226 Pendleton Ave. As soon as eligible, I claimed homestead for real estate tax exemption purposes for 2005 and have continued to do so. Simply put, I have never abandoned 226 Pendleton Ave. as my homestead.

3. My personal health and family concerns necessitated I live temporarily at 240 Pendleton Ave. In the spring of 2019, while performing "handyman" cosmetic work on the second story interior at 226 Pendleton, the handyman caused a leak to shower into the first floor front hall. That incident, compounded by other on-going interior improvements, rendered the structure largely uninhabitable. Through a limited liability company, I purchased 240 Pendleton in April 2019, hoping to use that property as an investment property. Because of the condition

of the home at 226, I decided to move into the home at 240 in August 2019, presuming it would be a temporary situation and never intending to make the house at 240 Pendleton my permanent home. Life events, however, intervened and required a change of plans.

4. While construction proceeded at 226 Pendleton, I underwent a liver transplant in October 2020 and remained hospitalized until December 2020. I could not reside at 226 upon my discharge because I could not use stairs and only the home at 240 has full first floor facilities. Given my transplant status, I was particularly vulnerable when covid struck. I needed to recover from my transplant and avoid the virus in a space without the disruption and constant stress of living among workmen in and out and the other discomforts associated with living in space undergoing repairs. I engaged a project manager, but securing contractors to complete the construction nevertheless has been a slow and painful process. My aging mother, living doors down, required more and more of my attention. As her sole surviving child, her declining health, final illness and death in October 2021 required that I shift significant attention to her care and thereafter to settling her affairs. In May of 2022, I returned to the hospital for treatment due to organ transplant complications. Through it all, 226 Pendleton has remained my intended homestead and permanent home.

5. Work remains on-going at my home at 226 Pendleton. Securing contractors to complete the construction has been a slow process, but considerable progress is being made. Some doors and window have been replaced already. The carport structure was repaired. The exterior was sandblasted and a new front entry cover installed.

6. Despite an inquiry prompted by a neighbor's report to the Palm Beach County Property Appraiser, the homestead related real estate tax exemption remains in place as far as I have been informed to date.

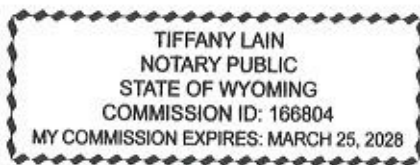
7. In sum, I maintain and have had no intention of abandoning 226 Pendleton as my homestead.


FURTHER AFFIANT SAYETH NOT.


SUSAN C. GIBSON

The foregoing instrument was acknowledged before me this 9th day of June, 2022 by Susan C. Gibson who is personally known to me or who has produced FL DRIVERS LICENSE as identification.

(SEAL)




Notary Public
Print Name: TIFFANY LAIN
Commission No. 166804
My Commission Expires: MARCH 25, 2028