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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Citrus Glen Preservation, Ltd.
a Florida limited partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2025-042VW
Application No. 2021-113B/2021-554C

PETITION FOR WAIVER OF RULES 67-21.003(1)(b) AND 67-21.014(2)(d) (05/18/2021) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (REV. 03-2021)

Citrus Glen Preservation, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the prohibition under Rule 67-21.003(1)(b), Florida Administrative Code ("F.A.C.") (05/18/2021) ("NCA Rule") and the Non-Competitive Application Instructions (Rev. 03-2021) ("NCA") against changing the ownership structure in any way (materially or non-materially) prior to Multifamily Mortgage Revenue Bond ("MMRB") loan closing. For tax and various other practical reasons, Petitioner determined that it must change the amount of interest held by two individuals in the Applicant's organizational structure. This change must occur now, as opposed to waiting until after MMRB loan closing because the 2025 tax returns must reflect the ownership entity structure that will in fact operate the Development. Since the change is requested prior to the MMRB Loan closing, Petitioner respectfully requests a waiver of the NCA Rule and NCA Instructions so that the original organizational chart, attached as Exhibit A, may be revised to reflect the structure depicted in Exhibit B, pursuant to the terms of the NCA (the "Org Change Rule").

Additionally, Petitioner seeks a waiver of Rule 67-21.014(2)(d), F.A.C. (05/18/2021) (the "PUPA Rule"), which requires the *greater* of $300 per unit per annum ("PUPA") or the amount identified in the plan and cost review *ordered by the Credit Underwriter* to be used to calculate the replacement reserve amount for rehabilitation developments. The replacement reserve table in the plan and cost review ordered by the Credit Underwriter requires a $913.00 PUPA. Put simply, for the Development to be financially feasible, Petitioner respectfully requests to provide an initial replacement reserve deposit in the amount of $250,000 waiving the PUPA Rule so that the amount to be deposited annually in the replacement reserve account is $425 PUPA.

In support of the foregoing, Petitioner states as follows:

A. <u>THE PETITIONER.</u>

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

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Phone: (720)615-4450
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2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel is:

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B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. The following information pertains to the development underlying this petition (the "Development"):

- Development Name: Citrus Glen Apartments
- Development Address: 5351 Limelight Cir., Orlando, FL 32839
- County: Orange County
- Developer: Citrus Glen Developer LP
- Number of Units: 272 occupied units (Acquisition and Rehabilitation)
- Type: garden apartments
- Set Asides: 100% at or below 60%
- Demographics: Family
- Funding: $42,900,000[1] Corporation-issued MMRB and $2,793,214 Non-Competitive Housing Credits (annual amount)

D. THE NCA RULE AND NCA PROVISIONS FROM WHICH WAIVER IS REQUESTED.

5. To change Petitioner's principals before the MMRB loan closing, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (05/18/21) 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

[1] Petitioner was induced for $42,900,000 in tax-exempt financing for the Development and recently submitted a request for an additional $8,500,000 in bonds.

funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

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(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. 03-2021) 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-13093, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

This NCA Rule incorporates by reference the NCA Package (Rev. 03-2021). The NCA Package includes the following requirement at Part A.6.b.(2):

(2) For Applicants requesting MMRB, with or without Non-Competitive Housing Credits:

The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form **cannot be changed in any way (materially or non-materially) until after the MMRB Loan closing**. After loan closing, (a) any material change in the ownership structure of the named Applicant will require review and approval of the Credit Underwriter, as well as Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require review and approval of the Corporation, as well as Board approval prior to 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 (material or non-material) prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to loan closing 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.

Id. at Part A Section 6.b.(2) (emphasis added); available at https://www.flrules.org/Gateway/reference.asp?No=Ref-13093

6. Petitioner is requesting the waiver so that it may amend its organizational structure from the current chart attached as Exhibit A to the proposed chart attached as Exhibit B.

E. THE PUPA RULE FROM WHICH WAIVER IS REQUESTED.

7. Rule 67-21.014(2)(d), F.A.C. (5/18/21) provides:

> (2) The Credit Underwriter shall in Credit Underwriting analyze and review all information in the Application, or any proposed changes made subsequent thereto, in order to make a recommendation to the Board of Directors on the feasibility of the Development, without taking into account the willingness of a Credit Enhancer to provide Credit Enhancement. Credit Underwriting services shall include a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, and the evidence of need for affordable housing in order to determine that the Development meets the MMRB Program requirements. The Credit Underwriter shall determine a recommended Bond amount that should be made to a Development, whether an initial loan or a refunding.
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> ***
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> (d) In addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves when calculating the final net operating income available to service the debt. A minimum amount of $300 per unit per annum must be deposited annually in the replacement reserve account for all Developments. In the case of rehabilitation, with or without acquisition, the **greater** of $300 per unit per annum **or the amount identified in the plan and cost review ordered by the Credit Underwriter will be used**.

Id. (emphasis added).

F. STATUTES IMPLEMENTED BY THE RULES.

8. 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.

9. 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.

G. JUSTIFICATION FOR GRANTING WAIVER OF THE NCA RULE AND NCA INSTRUCTIONS.

10. Petitioner submitted non-competitive application number 2021-113B/2021-554C (the "Application") for the Development on February 1, 2022, which was revised and subsequently finalized on April 6, 2022.

11. On June 11, 2024, Petitioner submitted a petition to waive the NCA Rule and NCA provisions, and sought Board approval pursuant to the Org Change Rule and NCA, in order to add two new limited liability companies and to change the interest held by certain limited liability companies.

12. The petition was granted on June 28, 2024.

13. The changes to Petitioner's structure for which the waiver is requested are limited to, at the second level, decreasing the interest held by Lost Moose Holdings LLC from 10.00% to 6.950% and increasing the interest held by Reverb 94, LLC from 1.00% to 4.050%. No other changes to Petitioner's structure would occur. *Compare* Exhibit A (Applicant's Current Organizational Structure) with Exhibit B (Applicant's Proposed Organizational Structure).

14. The foregoing changes to the amount of interest held are being requested to reflect staffing changes for the Development. To ensure the best possible outcome for the Development, the project sponsor (Ulysses Development Group LLC) revised internal project

assignments to allocate staff to the Development that had more extensive experience in the state of Florida. As a result of the staffing change, the percentage of interest held by Reverb 94, LLC increased and the amount held by Lost Moose Holdings LLC decreased. These two LLCs are both single-member LLCs held by natural person principals who were disclosed in the Application. This change must occur now, as opposed to waiting until after MMRB loan closing because the 2025 tax returns must reflect the ownership entity structure that will in fact operate the Development.

15. If this request for waiver is denied, the project sponsor will not be able to assign staff to the Development that have the most experience in Florida. Additionally, if the proposed tax credit resyndication and rehab of the Development will have negative tax impacts to the sponsor, it will increase the costs of renovating this existing affordable housing community, as well as inhibit the sponsor's ability to continue pursuing its mission of the creation and preservation of affordable housing communities across the state of Florida and the County. If the Petition is granted, the natural person principals identified in the Application will remain the same. Neither Florida Housing nor the Development would be prejudiced by the non-material change in ownership interest held by the two single-member LLCs.

16. Upon information and belief, the purpose of the NCA Instructions prohibiting changes to Petitioner's structure prior to the MMRB Loan closing is to ensure full and fair consideration by Florida Housing of all natural persons that might exert control over, or financially benefit from, the Development. Here, the natural persons exerting control over the Development were disclosed in the Application and will not change if this petition is granted. The requested waiver should not, therefore, cause concern for Florida Housing. Since the same natural person principals disclosed in the Application will continue to exert control over the

Development if this request is granted, Florida Housing should have the same degree of comfort as if the amount of ownership interest was not changed. Accordingly, granting the Petition should not impact Florida Housing's confidence in the Development, Petitioner, or its principals.

H. JUSTIFICATION FOR GRANTING WAIVER OF THE PUPA RULE.

17. Pursuant to the PUPA Rule, the Credit Underwriter is required to calculate the amount that the Petitioner must annually deposit in the replacement reserve account by using $300 PUPA or the amount identified in the plan and cost review ordered by the Credit Underwriter – whichever is **greater**. Petitioner recently received a draft replacement reserve table from the plan and cost review ordered by the Credit Underwriter that will impose an unnecessarily large reserve requirement of $913 PUPA. With 272 units, the PUPA Rule would require Petitioner to deposit $248,336 **per year** into the replacement reserve account, equaling $3,725,040 over a 15-year period.

18. Petitioner respectfully submits that the plan and cost review ordered by its lender and equity provider, Wells Fargo, provided a reserve analysis that employs a PUPA of $302.14.

19. Florida Housing and the Credit Underwriter recognize the vast difference between the two plan and cost reviews and have reconciled the two to come to a PUPA that makes the development financial feasible while still providing adequate replacement reserves for future repairs. As part of reconciling the two different plan and cost reviews, the 15-year replacement schedule was used from the Credit Underwriter's plan and cost review using pricing estimates from Wells Fargo's plan and cost review. The Fannie Mae costing (and Freddie Mac as well) is an industry standard that has been agreed upon by the Agencies for underwriting purposes. The "industry standard" costing is derived from a combination of construction costs developed by construction resources such as RS Means, Marshall & Swift, and Partner Engineering and Science, Inc., past costing experience for similar projects, including costs for replacement of

items (material only, no soft costs or labor) on an extremely large scale. This industry standard for sizing replacement reserves has been applied consistently across thousands of affordable housing transactions across the country which are financed by Fannie Mae and Freddie Mac, and the standard has been widely successful in determining appropriate replacement reserve standards for affordable housing properties across the country.

20. The purpose of the PUPA Rule can still be satisfied if a waiver is granted such that the amount to be deposited in the replacement reserve is $425 PUPA with an initial deposit of $250,000 into a replacement reserve account. In essence, Petitioner seeks a waiver to allow the reconciliation of the two different plan and cost reviews ordered by the Credit Underwriter and Wells Fargo.

21. The requested waiver would allow the Development to remain financially feasible while still reserving a sufficient amount per year to meet replacement needs. The property was built in two phases, with the first in 1994 and the second in 1997. The property renovation will include replacement of certain outdated building elements that are reaching the end of their useful lives, and bring meaningful upgrades to the property that will enhance the resident living experience. The total rehab construction costs identified under the executed AIA GMP construction contract with Legacy Construction Services is $14,791,585.00 or $54,380.83 per unit.

I. CONCLUSION.

22. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., Florida Housing 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,[2] 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.

23. As set forth above, granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rules.

24. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

25. The requested waiver will not adversely impact the Development or Florida Housing.

J. ACTION REQUESTED.

26. For the reasons set forth herein, Petitioner respectfully requests that Florida Housing: (i) grant the requested permanent waiver of Rule 67-21.003(1)(b) and the applicable NCA provisions, such that Petitioner may change its organizational structure to reflect the attached Exhibit B prior to the MMRB loan closing; (ii) grant the requested permanent waiver of Rule 67-21.014(2)(d) such that Petitioner may deposit $425 per unit per annum in the replacement reserve account with an initial deposit of $250,000 into a replacement reserve account; (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

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[2] "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.

Respectfully submitted,

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By: */s/ Brian J. McDonough*
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CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of September, 2025.

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

Exhibit A - Current Petitioner Organizational Chart



Exhibit B – Proposed Petitioner Organizational Structure

