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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MORRIS MANOR, LLLP,
a Florida limited liability limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

CASE NO. 2025-031VW

Application No. 2021-037C

RFA 2020-204

PETITION FOR WAIVER OF RULES
67-48.0072(12) AND 67-48.0072(17)(h) , F.A.C. (06/23/2020)

The petitioner, Morris Manor, LLLP, a Florida limited liability limited partnership (the "Petitioner"), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of (i) Rule 67-48.0072(12) of the Florida Administrative Code (effective June 23, 2020) pertaining to the requirement that there be a singular guaranteed maximum price construction contract governing the construction of the Development (the "Singular GMP Rule"); and (ii) Rule 67-48.0072(17)(h) of the Florida Administrative Code (effective June 23, 2020) pertaining to the requirement that no more than twenty percent (20%) of the aggregate construction costs for the Development (excluding only the General Contractor fee and any pass-through fees paid by the General Contractor) are not subcontracted to any one entity or group of related or affiliated entities (the "20% Limitation Rule"). Accordingly, pursuant to Section 120.542 of the Florida Statutes (2020) and Rules 28-104.001 through 28-104.006 of the Florida Administrative Code (2020), the Petitioner hereby requests a waiver of (i) the Singular GMP Rule to allow for certain construction work, in connection with the Development, to be performed and completed (and for the related construction costs accruing in connection with such certain construction work to be paid) outside the singular guaranteed maximum price construction contract governing the construction of the Development, and (ii) the 20% Limitation Rule to allow for Miles Electrical Contracting, Inc., a Florida corporation (the "Subcontractor"), to exceed the twenty percent (20%) construction costs

limitation in connection with certain electrical work for the Development, as detailed within this Petition.

In support of this Petition, the Petitioner states the following:

A. THE PETITIONER

1. The name, mailing address, telephone number and email address for the Petitioner and its qualified representative are:

Morris Manor, LLLP
Attention: Darren Smith
1100 N.W. 4th Avenue
Delray Beach, Florida 33444
Telephone: (561) 859-8520
E-mail: dsmith@smithhenzy.com

2. For purposes of this Petition, the name, mailing address, telephone number and email address of the Petitioner's attorney are:

Bilzin Sumberg Baena Price & Axelrod LLP
Attention: Terry M. Lovell, Esquire
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Telephone: (305) 350-2428
E-mail: tlovell@bilzin.com

B. THE DEVELOPMENT

3. The Petitioner timely submitted its Application No. 2021-037C (the "Application") on October 22, 2020 in response to the Corporation's RFA 2020-204 (Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments) issued on September 3, 2020 (the "RFA") for the development named Morris Manor (the "Development").

4. The Application was submitted by the Petitioner for competitive Housing Credits under the Corporation's Housing Credit Program (the "Housing Credits").

5. Equity raised from the Housing Credits were (and will continue to be) used by the Petitioner for the development, construction and operation of the Development.

6. The following information pertains to the Development:

- Development Name: Morris Manor
- Development Location: City of Jacksonville, Duval County, State of Florida
- Type of Construction: Acquisition/Preservation

- Number of Total Units: 168
- Number of Residential Buildings: 2
- Development Type: Garden Style (1 – 3 Stories)
- Demographics: Elderly
- Set-Asides: 20% (34 units) at or below 30% AMI, and 80% (134 units) at or below 60% AMI; plus 25% of ELI Units (9 units) for Persons with Special Needs
- Funding: 9% Housing Credits at an annual amount of $1,868,000

7. The Application was preliminarily selected for funding by the Corporation, the Petitioner was invited by the Corporation to enter into credit underwriting for the Development, the Petitioner accepted the invitation for credit underwriting, and the final Credit Underwriting Report for the Development was issued by AmeriNat Loan Services on July 20, 2022.

8. On December 9, 2021, the Petitioner engaged Auld & White Constructors, LLC to serve as the general contractor for the Development (the "General Contractor"). The Petitioner and the General Contractor executed a guaranteed maximum price construction contract governing the construction of the Development in the fixed amount of $15,275,900.69 (which includes the original contractual amount of 14,194,949.43, plus change orders that increased the original contractual amount by $1,080,951.26, collectively, the "GMP Contract").

9. The General Contractor engaged the Subcontractor to perform and complete the Electrical Work.

10. The Petitioner commenced construction of the Development on December 22, 2021.

11. The "Electrical Work" consists of replacing (i) lightning protection for the rooftop equipment of the Development; (ii) all electrical fixtures, in kind, within the residential units of the Development; (iii) rewiring and modernization of fire alarm system for all buildings within the Development; (iv) installation of whole building emergency generator; (v) electrical switchgear for the lift station; and (vi) three main switchgears within the Development.

12. Under the 20% Limitation Rule, the Electrical Work (performed and completed by the Subcontractor) cannot exceed twenty percent (20%) of the aggregate construction costs for the Development (excluding only the General Contractor fee and any pass-through fees paid by the General Contractor).

13. The Development required the Electrical Work in connection with the rehabilitation process, so the General Contractor engaged the Subcontractor to perform and complete the Electrical Work, as the Subcontractor has extensive experience performing and completing electrical work for affordable housing developments.

14. The total costs of the Electrical Work equal $2,899,695 (the "Electrical Work Costs Amount"), which amount is the equivalent of approximately 22.00% of the GMP Contract. Therefore, the Petitioner is requesting a waiver of the 20% Limitation Rule, in connection with the Development, in order (i) to remove the prohibition of the Subcontractor performing and completing the Electrical Work for the Electrical Work Costs Amount, and (ii) for the aggregate costs of the Electrical Work to be fully accounted for under the GMP Contract.

15. The endmost building within the Development achieved substantial completion on April 13, 2023. The Development received its last certificate of completion on July 18, 2023.

16. As of the date hereof, the Petitioner seeks and desires to complete and finalize the cost certification for the Development (the "Cost Certification").

17. Under the Singular GMP Rule, the construction work for the Development is required to be performed and completed (and the related construction costs accruing in connection with such construction work for the Development are required to be paid) under and pursuant to the GMP Contract.

18. The Petitioner had to perform and complete some construction work, in connection with the Development, outside the GMP Contract, including work related to repair of the lift station, replacement of several rooftop HVAC units, and associated electrical gear and site work repairs (the "Outside Contractual Work") in order to accommodate supply chain uncertainties and avoid delays; and therefore, the Petitioner is requesting a waiver of the Singular GMP Rule, in connection with the Development, in order for the related construction costs, accruing in connection with the Outside Contractual Work, to be paid outside the GMP Contract.

19. In order to complete and finalize the Cost Certification, the Petitioner needs to calculate and finalize the aggregate construction costs associated with, and arising from, the construction work completed for the Development, including those certain construction costs incurred and paid by the Petitioner for the Outside Contractual Work. The Corporation advised the Petitioner that the Outside Contractual Work was a violation of the Singular GMP Rule. As

such, the Corporation has invited the Petitioner to file this Petition with the Corporation in connection with the completion and finalization of the Cost Certification.

20. The requested waiver and relief set forth in this Petition will not adversely affect the Development or the Corporation because the Development has already achieved substantial completion and is occupied by residential tenants. However, a denial of this Petition: (i) would result in substantial hardship to the Petitioner,[1] (ii) would prevent or hinder the implementation of the Corporation's Housing Credit Program, and (iii) would violate principles of fairness.[2]

C. RULES FROM WHICH WAIVER IS REQUESTED

21. The Petitioner hereby requests a waiver from the 20% Limitation Rule.

22. Rule 67-48.0072(17(h) of the Florida Administrative Code (effective as of June 23, 2020) provides for the following:

> The General Contractor must meet the following conditions: [. . .] (h) For Developments with a Development category of Rehabilitation or Substantial Rehabilitation, unless otherwise approved by the Board for a specific Development, ensure that not more than 20 percent of the construction cost, not to include the General Contractor fee or pass-through fees paid by the General Contractor, is subcontracted to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor, with the exception of a subcontractor (or any group of entities that have common ownership or are Affiliates of any other subcontractor) contracted to perform work on both the HVAC and electrical components of a building of at least seven (7) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Board for a specific Development. For purposes of this paragraph, "Affiliate" has the meaning given in subsection 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "subcontractor"; and, (i) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

23. The Petitioner hereby requests a waiver from the Singular GMP Rule.

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[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. *See* Section 120.542(2) of the Florida Statutes (2020).

[2] "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. *See* Section 120.542(2) of the Florida Statutes (2020).

24. Rule 67-48.0072(12) of the Florida Administrative Code (effective June 23, 2020) provides for the following:

> For Competitive HC, SAIL, and HOME, the Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units and a CNA for rehabilitation units and review the Development's costs. If an EHCL Development has a General Contractor, the preceding requirement will also apply to the EHCL Development.

D. STATUTES IMPLEMENTED BY THE RULES

25. The Singular GMP Rule and the 20% Limitation Rule are implementing the Florida Housing Finance Corporation Act (the "Act"),[3] the statute that designates the Corporation as the administrator of the Housing Credit Program for the purposes of providing equity financing to sponsors (including the Petitioner) to promote and support affordable housing to low-income persons throughout the State of Florida. Accordingly, the Corporation is responsible for, and is authorized by statutory law to establish and implement, the practices and procedures for the Housing Credit Program.

E. JUSTIFICATION FOR GRANTING THE REQUESTED WAIVER

26. Under Section 120.542(1) of the Florida Statutes (2020) and Chapter 28-104 of the Florida Administrative Code (2020), the Corporation has the power and authority to grant waivers to its rule requirements when strict application of such rules or requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Pursuant to Section 120.542(2) of the Florida Statutes (2020), a waiver shall be granted when: (i) the person subjected to the rule demonstrates that application of the rule would either create a substantial hardship or violate principles of fairness; and (ii) the purpose of the underlying statute has been, or otherwise will be, achieved by other means by the person.

27. Prior to today's date, the Petitioner has caused the Development to achieve substantial completion, receive its certificates of occupancy, and be placed-in-service. Thus, the Petitioner has commenced the Cost Certification process with the Corporation.

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[3] The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes (2020).

28. The Electrical Work Costs Amount marginally exceeds the twenty percent (20%) limitation threshold (exceeding by approximately 2.00%, signifying that the Electrical Work Costs Amount exceeds the twenty percent (20%) limitation threshold by approximately $266,497.00). The rationale for the Electrical Work Costs Amount exceeding twenty percent (20%) of the aggregate construction costs for the Development (excluding only the General Contractor fee and any pass-through fees paid by the General Contractor) is due to the fact that the rehabilitation of a high-rise building (which was originally constructed in 1980) is significant and expansive, and there is consistency and efficiency when having one electrical subcontractor (such as the Subcontractor) to perform and complete all of the Electrical Work for the Development rather than divide such Electrical Work between two unrelated and unaffiliated subcontractors in order to comply with the 20% Limitation Rule.

29. Additionally, the Subcontractor is not related to, and is not an affiliate of, the General Contractor, the Petitioner (which is the Applicant), the Developer of SHAG Morris Manor Developer, LLC, a Florida limited liability company, or any other subcontractor performing work for the Development under or pursuant to the GMP Contract.

30. Pursuant to the 20% Limitation Rule, the Electrical Work is to be performed and completed (and the related costs in connection with such Electrical Work are to be paid) under and pursuant to the GMP Contract, provided that such costs of such Electrical Work do not exceed twenty percent (20%) of the aggregate construction costs for the Development (excluding only the General Contractor fee and any pass-through fees paid by the General Contractor). Consequently, because the Electrical Work Costs Amount marginally exceeds the twenty percent (20%) limitation threshold, as detailed within this Petition, the Petitioner requests from the Corporation the relief set forth in this Petition.

31. As of today's date, the Petitioner has completed the rehabilitation process for the Development; and as such, in connection with completing the rehabilitation process for the Development, the Petitioner has paid the Electrical Work Costs Amount, in connection with the Electrical Work, to the Subcontractor (through the General Contractor) under and pursuant to the GMP Contract, and the Petitioner is asking the Corporation's approval for such payment of the Electrical Work Costs Amount given that the twenty percent (20%) limitation threshold has been exceeded by approximately 2.00%.

32. Pursuant to the Singular GMP Rule, the construction work for the Development is to be performed and completed (and the related construction costs in connection with such construction work for the Development are to be paid) under and pursuant to the GMP Contract. Consequently, construction costs paid by the Petitioner in connection with construction work for the Development which are paid outside the GMP Contract are not (and cannot) be included within the Cost Certification, unless the Petitioner's relief and requests set forth in this Petition are granted by the Corporation.

33. In order to accommodate supply chain uncertainties and avoid delays (such as a delay in the placement-in-service of the Development and occupancy of the Development by residential tenants), the Petitioner and the General Contractor agreed to employ a change order in the amount of $358,542.60 under the GMP Contract (the "Change Order").

34. The Petitioner and the General Contractor agreed that the construction work covered by the Change Order (representing the Outside Contractual Work) would then be memorialized by a short form construction contract executed between the Petitioner and the General Contractor (the "Short Form Construction Contract"). The Outside Contractual Work had to be placed into a Short Form Construction Contract because the Outside Contractual Work had to be completely removed from the GMP Contract in order for the local governmental authority to issue the certificates of occupancy for the Development and to permit occupancy of the Development by residential tenants.[4]

35. As such, the General Contractor continued to remain responsible for performance and completion of the Outside Contractual Work by the General Contractor engaging and hiring subcontractors to perform and complete the Outside Contractual Work. The Short Form Construction Contract reflects a change to form of the General Contractor's obligations with respect to the Development, but the Short Form Construction Contract does not reflect a change to substance of the General Contractor's obligations with respect to the Development (given that the General Contractor remained responsible for performance and completion of the Outside

[4] The City of Jacksonville refused to issue any certificate of occupancy, with respect to the Development, until all items within the GMP Contract were fully performed and completed. As such, certain items not required or necessary for tenant occupancy were removed from the GMP Contract (via the Change Order) and placed into the Short Form Construction Contract. Consequently, by placing certain items not required or necessary for tenant occupancy in a separate contract, outside the GMP Contract, the certificates of occupancy for the Development were issued by the City of Jacksonville and the Petitioner was able to begin occupancy of the Development by residential tenants without delay.

Contractual Work by the General Contractor engaging and hiring subcontractors to perform and complete the Outside Contractual Work). As of the date hereof, the General Contractor has fully performed and completed all of the construction work covered by the GMP Contract and the Short Form Construction Contract; and in connection therewith, the Petitioner incurred and paid all amounts due and owed to the General Contractor under and pursuant to the GMP Contract (as modified for the Change Order) and the Short Form Construction Contract.

36. To be more specific, the fixed amount of the GMP Contract ($15,275,900.69) equals (i) the amounts paid by the Petitioner to the General Contractor under and pursuant to the GMP Contract (as modified for the Change Order) ($14,917,358.09), plus (ii) the amounts paid by the Petitioner to the General Contractor under and pursuant to the Short Form Construction Contract ($358,542.60).

37. As outlined above, the Outside Contractual Work was removed from the GMP Contract (via the Change Order), and memorialized separately by the Short Form Construction Contract, in order to accommodate supply chain uncertainties and avoid delays to construction completion for, and occupancy of, the Development (such delays would have caused material economic losses to the Petitioner).

38. As of today's date, the Petitioner continues to progress through the Cost Certification process with the Corporation. Due to the fact that the Short Form Construction Contract could be considered a second guaranteed maximum price construction contract governing the construction of the Development, the Petitioner respectfully requests a waiver of the Singular GMP Rule so that the Petitioner is able to proceed with the Cost Certification process with the Corporation and include the construction costs incurred and paid by the Petitioner to the General Contractor, under and pursuant to the Short Form Construction Contract, within the Cost Certification.

39. As demonstrated above, the Petitioner meets the standards for a waiver of the Singular GMP Rule and the 20% Limitation Rule because the Petitioner has demonstrated hardships and other circumstances which justify the Petitioner's relief and requests set forth in this Petition. The granting of this Petition will not adversely impact the Development or the Corporation; and rather, the granting of this Petition will ensure that much needed affordable housing units remain available and preserved for low-income persons within the City of Jacksonville, Duval County.

40. If this Petition is not granted, then the Petitioner and the Development will suffer substantial and irrevocable hardship because the Petitioner will have incurred and paid $358,542.60 for certain construction work for the Development under and pursuant to the Short Form Construction Contract, yet such related construction costs will not be included within the Cost Certification (causing an economic loss to the Petitioner). Consequently, granting this Petition will (i) promote principles of fundamental fairness in the development of affordable housing, (ii) support the availability and preservation of affordable housing units via the Development, (iii) enable the Petitioner to properly account for the construction costs, incurred and paid through the current date, in connection with the Development during the Cost Certification process, (iv) allow the Petitioner to complete and finalize the Cost Certification in connection with the Development, and (v) promote the goal of increasing the supply of affordable housing through private investment through the Corporation's Housing Credit Program. As such, the granting of this Petition would serve the purposes of the Act and the RFA.[5]

41. Should the Corporation require any additional information, a representative of the Petitioner is available to answer questions and to provide information necessary for the Corporation's review and consideration of this Petition.

F. PERMANENCY OF WAIVER

42. The waiver being sought is permanent in nature.

G. ACTIONS REQUESTED

For the reasons set forth in this Petition, the Petitioner respectfully requests that the Corporation:

a. Grant this Petition and all of the relief requested herein;

b. Grant the waiver of the 20% Limitation Rule to remove the prohibition of the Subcontractor performing and completing the Electrical Work for the Electrical Work Costs Amount;

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[5] One of the primary goals of the Act is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income individuals and households by ensuring: "the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought." *See* Section 420.5099(2) of the Florida Statutes (2020).

c. Grant the waiver of the 20% Limitation Rule such that the Petitioner is permitted to pay the Electrical Work Costs Amount to the Subcontractor (through the General Contractor), under and pursuant to the GMP Contract, in connection with the Electrical Work;

d. Grant the waiver of the Singular GMP Rule such that the Petitioner is permitted to include $358,542.60 within the Cost Certification, representing certain construction costs incurred and paid by the Petitioner, under and pursuant to the Short Form Construction Contract, in connection with the Development; and

e. Award or grant such further relief as may be deemed appropriate.

Respectfully submitted,

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Miami, Florida 33131
Tel: (305) 350-2428
Fax: (305) 351-2126
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/s/ Terry M. Lovell

CERTIFICATE OF SERVICE

This Petition is being served via electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation (CorporationClerk@FloridaHousing.org), with a copy being served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, as of this 28th day of May, 2025.

/s/ Terry M. Lovell

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