STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

GROVE MANOR APARTMENTS, LLLP,
a Florida limited liability limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

CASE NO. 2025-025VW

Application No. 2021-038C

RFA 2020-204

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.0072(12), F.A.C. (06/23/2020)

The petitioner, Grove Manor Apartments, LLLP, a Florida limited liability limited partnership (the "Petitioner"), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of 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"). 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 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.

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

A. <u>THE PETITIONER</u>

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

Grove Manor Apartments, 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. 2021-038C (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 Grove Manor Apartments d/b/a The Hudson at Grove 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: Grove Manor Apartments d/b/a The Hudson at Grove Manor
- Development Location: City of Winter Haven, Polk County, State of Florida
- Type of Construction: Acquisition/Preservation/New Construction
- Number of Total Units: 84
- Number of Residential Buildings: 14
- Development Type: Garden Style (1 – 3 Stories)
- Demographics: Elderly

- Set-Asides: 20% (17 units) at or below 40% AMI, and 80% (67 units) at or below 60% AMI; plus 25% of ELI Units (5 units) for Persons with Special Needs
- Funding: 9% Housing Credits at an annual amount of $1,560,000

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 December 12, 2022.

8. On November 7, 2022, the Petitioner engaged Marmer Construction, Inc. to serve as the General Contractor for the Development (the "GC"). The Petitioner and the GC executed a guaranteed maximum price construction contract governing the construction of the Development in the fixed amount of $13,405,493.00 (the "GMP Contract").

9. The Petitioner commenced construction of the Development on June 29, 2023. The endmost building within the Development achieved substantial completion on December 16, 2024. The Development received its last certificate of occupancy on January 17, 2025.

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

11. 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.

12. The Petitioner had to perform and complete some construction work, in connection with the Development, outside the GMP Contract, including work related to the installation of a porte-cochere (the "Outside Contractual Work"); 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.

13. 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. 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.

14. 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

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

16. 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

17. The Singular GMP Rule is 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.

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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).

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

E. JUSTIFICATION FOR GRANTING THE REQUESTED WAIVER

18. 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.

19. 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.

20. 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.

21. After substantial completion and placement-in-service of the Development, the Petitioner had to perform and complete a limited amount of additional construction-related work, in the amount of $59,028.25, outside of the GMP Contract; and in connection therewith, the Petitioner and the GC agreed to employ a change order in the amount of $59,028.25 under the GMP Contract (the "Change Order").

22. The Petitioner and the GC 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 GC (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, as the Development already attained substantial completion and placement-in-service.

23. As such, the GC continued to remain responsible for performance and completion of the Outside Contractual Work by the GC engaging and hiring subcontractors to perform and complete the Outside Contractual Work. The Short Form Construction Contract reflects a change to form of the GC's obligations with respect to the Development, but the Short Form Construction Contract does not reflect a change to substance of the GC's obligations with respect to the Development (given that the GC remained responsible for performance and completion of the Outside Contractual Work by the GC engaging and hiring subcontractors to perform and complete the Outside Contractual Work). As of the date hereof, the GC 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 GC under and pursuant to the GMP Contract (as modified for the Change Order) and the Short Form Construction Contract.

24. To be more specific, the fixed amount of the GMP Contract ($13,405,493.00) equals (i) the amounts paid by the Petitioner to the GC under and pursuant to the GMP Contract (as modified for the Change Order) ($13,346,464.75), plus (ii) the amounts paid by the Petitioner to the GC under and pursuant to the Short Form Construction Contract ($59,028.25).

25. 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 avoid delays to issuance of the certificates of occupancy by the local governmental authority for, and occupancy of, the Development (as the Outside Contractual Work arose after substantial completion and placement-in-service of the Development).

26. 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 GC, under and pursuant to the Short Form Construction Contract, within the Cost Certification.

27. As demonstrated above, the Petitioner meets the standards for a waiver of the Singular GMP 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 Winter Haven, Polk County.

28. 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 $59,028.25 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.[4]

29. 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

30. The waiver being sought is permanent in nature.

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[4] 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).

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 Singular GMP Rule such that the Petitioner is permitted to include $59,028.25 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

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

Respectfully submitted,

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1450 Brickell Avenue, 23rd Floor
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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