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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

IN RE: SP FOREST, LLC **FHFC CASE NO.: 2021-34VW**

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PETITION FOR WAIVER OF RULE 67-48.0072(26)
AND THE LOAN CLOSING TIMEFRAMES IN RFA 2018-116

Petitioner SP Forest LLC, a Florida limited liability company, pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions the Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-48.0072(26), Florida Administrative Code (2018), and the loan closing timeframes in RFA 2018-116. In support of this request, Petitioner states:

THE PETITIONER AND THE DEVELOPMENT

1. The name of the Petitioner is SP Forest LLC. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address are that of Petitioner's undersigned counsel.

2. Requested information regarding the Development:

Application Number:	2019-173BSN
RFA Number:	2018-116
Development name:	Jackson Forest
Applicant/Borrower	SP Forest LLC/SP Forest Manager LLC
Developer/Principal:	Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc./ J. David Page
Number of units:	105
County of development:	Leon County
Development/Type:	New Construction/Mid-Rise (4-Stories)
Set Asides:	90% @ 60% AMI, 10% @ 33% AMI, 3.81% @ 22% AMI

Demographic: Family

Funding:

- SAIL - $5,850,000
- ELI - $600,000
- NHTF - $872,000
- MMRB - $15,500,000
- Annual 4% HC - $863,278

3. On November 27, 2018, Petitioner submitted an application in response to RFA 2018-116 SAIL Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits to finance the construction of a multifamily apartment complex to be known as Jackson Forest in Tallahassee, Florida (the "Development"). The Development will serve low-income families in Leon County. The application was selected for funding and an invitation to credit underwriting was accepted on May 15, 2019.

4. The Corporation issued a firm commitment for the Loan to Petitioner on October 19, 2020. Petitioner's initial deadline to close the loan was April 19, 2021. On January 27, 2021, Petitioner requested a ninety (90) day extension of the initial deadline to close the Loan, pursuant to Rule 67-48.0072(26), F.A.C. (2018). At its meeting on March 12, 2021, the Board of Directors of the Corporation approved the requested extension of the initial deadline to July 19, 2021. Petitioner paid the $73,220 extension fee required by the Rule on or before March 23, 2021. The Petitioner requested this extension as they were waiting on building permit finalization. This was received just after the March 12th Board meeting, and preparation for closing commenced.

5. Subsequently, due to the recent extraordinary fluctuation and volatility in pricing for construction materials, Petitioner requested that the Corporation increase the amount of Multifamily Mortgage Revenue Bonds ("MMRB's") currently allocated to the Development so that Petitioner is still able to meet the 50% test required by the Internal

Revenue Code (and receive the 4% low-income housing tax credits associated with any potential increase in costs) should costs continue to increase. This request is being considered by the Board at its meeting on June 18, 2021. If approved, the increased MMRB allocation will then need to be approved by the State Board of Administration ("SBA"). Unfortunately, the next SBA meeting is not until August 10, 2021, which is after the current deadline to close of July 19, 2021.

6. Accordingly, Petitioner requests a waiver of the Rule 67-48.0072(26), F.A.C. and the loan closing timeframes incorporated by RFA 2018-116 and an extension of the Loan closing deadline until December 19, 2021.

THE RULE FOR WHICH THE WAIVER IS REQUESTED

7. Petitioner requests a waiver of Rule 67-48.0072(26), F.A.C. (the "Rule"), which provides, in relevant part, as follows:

> 67-48.0072 Credit Underwriting and Loan Procedures.
>
> (26) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, **these Corporation loans and other mortgage loans related to the Development must close** within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur **within 180 Calendar Days of the firm loan commitment(s).** Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. **Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days.** All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized,

> for profit Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. Non-Profit Applicants may request to pay the extension fee at the time of closing. Any such request must be made in writing to the Corporation. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

(Emphasis Added).

8. Petitioner also requests a waiver of the loan closing timeframes in RFA 2018-116 that reference this Rule, including: Exhibit D.6 ("The SAIL loan must close within the timeframe outlined in Rule Chapter 67-48, F.A.C."), Exhibit G.1.e. ("The ELI Loan must close by the deadlines outlined in Rule Chapter 67-48, F.A.C., for the SAIL loan."), and Exhibit H.1.e. (same).

STATUTES IMPLEMENTED BY THE RULE

9. The Rules implement, among other sections of the Florida Housing Finance Corporation Act, the statutes that created the State Apartment Incentive Loan (SAIL) Program, the HOME Investment Partnership Program and the Housing Tax Credit Program. *See* Sections 420.5087, 420.5089, 420.5099, Florida Statutes (the "Statutes").

PETITIONER REQUESTS A WAIVER FOR THE FOLLOWING REASONS

10. Petitioner was previously granted a 90-day extension of the closing of the Loan, extending the initial deadline to July 19, 2021. A further extension of the deadline to close the Loan requires a waiver of the Rule and the loan closing timeframes in RFA 2018-116.

11. Pursuant to Chapter 120.542(1), Florida Statutes, "[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation." Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the

authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "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.

12. Petitioner meets the standards for a waiver.

13. The Development has obtained all necessary financial, governmental and development approvals, including site plan approval and building permits. The Development's financial partners stand ready to close promptly upon issuance of a satisfactory fiscal determination by the SBA.

14. The Rule provides that the failure to close the Loan by the deadline will result in the firm loan commitment for the Loan being deemed null and void and the funds allocated for the Development will be de-obligated. If this Petition is denied and the Petitioner is not granted a further extension of the deadline, it would result in substantial economic hardship to the Petitioner, as it has incurred considerable costs to date in furtherance of completion of the Development. The denial of this Petition also would deprive Leon County of much needed affordable housing.

15. Consequently, the extension is necessary to avoid unfairness and substantial hardship to the Petitioner and the Development. By granting the requested extension, Petitioner will be able to move forward with the construction of the Development, providing

105 much needed affordable housing units in Leon County, Florida, including housing for low-income families, thereby assisting the Corporation in fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

16. Granting the requested waiver does not allow the Petitioner to gain any possible advantage over competitors. The requested rule waiver will not adversely affect the Development. However, a strict application of the Rule would cause a substantial hardship to Petitioner and violate the principles of fairness.

THE WAIVER WIL SERVE THE UNDERLYING PURPOSE OF THE STATUTES

17. The requested waiver of the Rule will serve the purpose of the Statutes that are implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was enacted in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program, the State Apartment Incentive Loan Program and the Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting the requested waiver, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in facilities for persons of low-income, while allowing the Development to adapt to market conditions and furthering the Corporation's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

TYPE OF WAIVER

18. The waiver being sought is permanent in nature.

ACTION REQUESTED

WHEREFORE, Petitioner respectfully requests that the Corporation:

A. Grant the Petition and all relief requested herein;

B. Grant a waiver of Rule 67-48.0072(26) F.A.C. and the loan closing timeframes in RFA 2018-116 and an extension of the loan closing deadline to December 19, 2021.

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted

/s/Lawrence E. Sellers, Jr.
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Attorneys for SP Forest, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing "Petition for Waiver of Rule 67-48.0072(26) and the Loan Closing Timeframes in RFA 2018-116" was filed by electronic mail with Ana McGlamory, Agency Clerk, CorporationClerk@floridahousing.org; and that a true and correct copy was provided by electronic mail to Hugh Brown, hugh.brown@floridahousing.org, General Counsel, both at Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and that a true and correct copy was provided by electronic mail to the Joint Administrative Procedures Committee, japc@leg.state.fl.us, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, all on this 1st day of June, 2021.

/s/Lawrence E. Sellers, Jr.
Lawrence E. Sellers, Jr.