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STATE OF FLORIDA
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VALOR PRESERVE, LLLP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2022-066VW
Application No. 2020-453CS
Request for Applications: 2020-106

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(26) F.A.C. (7/11/19)

Petitioner Valor Preserve, LLLP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.0072(26), Florida Administrative Code ("F.A.C.") (July 11, 2019) so that it may extend the SAIL and ELI closing deadline of January 17, 2023. Petitioner experienced a series of delays beyond its control, as outlined in more detail below. Florida Housing recently advised that Petitioner must obtain approval from the U.S. Department of Housing and Urban Development ("HUD") to release the Construction Housing Inflation Response Program ("CHIRP") funds Petitioner added to the development, which is expected to push the closing date to the end of January, *i.e.*, beyond the closing deadline. Accordingly, Petitioner is requesting an additional six-month extension of the January 17, 2023 SAIL and ELI closing deadline in an abundance of caution. In support, Petitioner states as follows:

A. THE PETITIONER

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

Neil Thompson

Valor Preserve LLLP
11479 Ulmerton Road
Largo, FL 33778
Telephone: (727)443-7684
Fax: N/A
Email: nthompson@pinellashousing.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development (the "Development") underlying Petitioner's application:

- Development Name: Valor Preserve at Lake Seminole
- Development Address: Seminole Blvd, SE of the intersection of Seminole Blvd and Village Green Ave, Seminole
- County: Pinellas
- Developers: Norstar Development USA, LP, Newstar Development, LLC, and Pinellas Property Management Company, Inc.
- Number of Units: 64 new construction
- Type: Garden Apartments
- Set Asides: 85% of units (54 units) at or below 60% AMI and 15% (10 units) at or below 33%.
- Demographics: At least 50 percent (32 units), but less than 80 percent (52 units), of the total units will be set aside for Permanent Supportive Housing for persons

with a Disabling Condition as defined in Section 420.0004(7), F.S.; and at least 20 percent (13 units) of the total units will consist of Permanent Supportive Housing for individuals and families that meet the definition of Homeless as defined in Section 420.621(5), F.S., (which may be the same units set aside for persons with a Disabling Condition). Per the Pinellas County SHIP Application, the Development will have a preference for Veterans.

- Funding: 9% HC request of $1,700,000 annually; ELI Loan request of $270,400; SAIL request of $3,729,600; HOME-ARP Loan request of $2,750,000; and a Pinellas County SHIP Loan in the amount of $1,700,000.

PCHA will provide operating and management responsibilities for the Development and Boley Centers will serve as the service coordinator for the functions and management related to the disabling condition and homeless population.

C. <u>WAIVER IS PERMANENT</u>

4. The waiver being sought is permanent in nature.

D. <u>THE RULE FROM WHICH WAIVER IS REQUESTED.</u>

5. Petitioner seeks a waiver of Rule 67-48.0072(26),[1] effective July 11, 2019, which provides:

> (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,

[1] RFA 2020-106, Ex. C., § 4.g. states: "SAIL loans must close within the timeframes outlined in subsections 67-48.072(21) and 67-48.072(26), F.A.C. For all SAIL loans, a request for an extension of the deadline for closing the loan(s) may be considered by the Board for an extension term of up to 90 Calendar Days. The Corporation shall charge an extension fee of 1 percent of each Corporation loan amount if the Board approves the request to extend the loan closing(s)." *Id*. at p. 100.

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, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. 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.

E. STATUTES IMPLEMENTED BY THE RULE.

6. The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[2]

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

7. Petitioner timely submitted the Application for the Development on March 26, 2020 in response to RFA 2020-106 (Financing for the Development of Housing For Persons With a Disabling Condition or Developmental Disabilities) (the "RFA").

8. The Development received an allocation of the 2020 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986 as amended ("Tax Credits") and was invited to credit underwriting.

9. Florida Housing staff executed a 2020 Carryover Allocation Agreement ("CAA") on or about December 15, 2020 for the allocation of its Tax Credits.

10. On June 21, 2021, staff issued a firm commitment to Petitioner giving it a loan closing deadline of October 19, 2021. Due to labor and supply chain problems related to the COVID-19 pandemic, Petitioner experienced unforeseen pricing increases and was forced to

[2] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

seek additional funding sources, as well as an extension of the loan closing deadline to January 17, 2022, which was approved at the September 10, 2021 Florida Housing Board meeting. To cover the construction cost increases, and mitigate the associated delay, Petitioner took remedial action, such as securing a Pinellas County SHIP loan. On October 22, 2021, Florida Housing's Board approved an increase of the Total Development Cost and the additional funding provided by the Pinellas County SHIP Loan (*i.e.*, $650,000).

11. Unfortunately, Petitioner experienced delays beyond its control in relation to negotiating and satisfying the requirements of a Development Agreement with the City of Seminole. The Development Agreement was initially required because Petitioner's plan contained deviations from the City's land development code that required approval, such as variances related to parking, berming and frontage. Although the City Council initially nearly unanimously approved the Development Agreement on November 16, 2021 by a vote of 6-1, it inexplicably voted 5-2 against approving the Development Agreement at its second reading on December 7, 2021.

12. Because the closing deadline was January 17, 2022,[3] and the Development Agreement was a necessary prerequisite for moving towards closing, Petitioner was forced to request an additional 6-month extension to and including July 17, 2022. Florida Housing's Board approved this request on January 21, 2022.

13. Petitioner worked diligently with Norstar and PCHA to develop a plan that eliminated the need for variances, and therefore eliminated the need for a Development Agreement. Redesigning the site to satisfy each of the City of Seminole's Code provisions

[3] Per Rule 67-48.0072(26), each loan related to the construction of the Development must close within 120 Calendar Days of the date of the firm loan commitment, unless an extension is granted allowing for an additional 90 Calendar Days.

required a significant amount of time. Because Petitioner needed additional time to comply with the Code requirement for the Development to have 75 feet of frontage, to negotiate with a neighboring property owner to purchase a strip of land along Seminole Boulevard, and to close on a purchase agreement, Petitioner sought an additional six-month extension to January 17, 2023, which was granted by Florida Housing's Board on June 17, 2022.

14. Petitioner's new code-compliant plan received City approval on June 13, 2022, resolving the only remaining necessary variance to the City Code. Unfortunately, the interim delays caused the Development to incur dramatic construction cost escalations. As a result, Petitioner chose to request HOME-ARP funds through Florida Housing's CHIRP program and the additional CHIRP funding was approved at the September 16, 2022 Florida Housing Board meeting.

15. Petitioner intended to close and start construction in November 2022, but received notice on October 21, 2022 from Florida Housing's counsel regarding the need to have an environmental review and HUD-approved Request for Release of Funds ("RROF") for Petitioner to utilize the HOME-ARP funds. Petitioner has already performed an environmental review and received HUD approval of an RROF for the use of project-based vouchers at the Development, so an additional HUD approval should not be very difficult to obtain. However, Petitioner still must go through the process of obtaining HUD's approval of the additional RROF, and this is likely to delay the closing at least 30-60 days. Accordingly, Petitioner does not believe it will be able to satisfy the current loan closing deadline.

16. A Rule waiver is necessary because this is Petitioner's fourth request for extension of the loan closing deadline.

17. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development towards construction.

18. If the Petition is denied, the preliminary commitment will be withdrawn per Rule 67-48.0072(26), F.A.C. Because the Development cannot move forward without this funding source, the denial would cause Pinellas County to lose these 64 affordable housing units for disabled and homeless veterans.

19. This Petition should be granted, as opposed to de-obligating the award, because Pinellas County is currently experiencing a shortage of affordable housing units for persons with special needs experiencing homelessness. Granting the Petition will result in the delivery of 64 affordable housing units much faster than would reallocating the funding to a new development because Petitioner's building plans are fully approved and all financing documents have been finalized by a third-party plan reviewer as required by the City.

20. 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,[4] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

[4] "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. *See* § 120.542(2), Fla. Stat.

21. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 64 affordable housing units will be preserved and made available for the target population in Pinellas County, Florida. The strict application of the Rule would cause the preliminary commitment to be withdrawn. Further, the waiver will serve the purposes of the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. By granting this waiver, and further ensuring the development of 64 affordable housing units in Pinellas County, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

22. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

23. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. <u>ACTION REQUESTED</u>

24. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to extend the loan closing deadline an additional 6 months (*i.e.*, through and including July 17, 2023); (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor

Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

Counsel for Petitioner

By:___*/s/ Brian J. McDonough*_____
BRIAN J. MCDONOUGH, ESQ.

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 a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 21st day of November, 2022.

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