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FLORIDA HOUSING
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

VALOR PRESERVE, LLLP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-093VW
Application No. 2020-453CS

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.002(96), F.A.C. (7/11/19) AND THE 2019 QAP AND FOR BOARD APPROVAL PURSUANT TO RULE 67-48.004(3)(b), 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 the provisions of the 2019 Qualified Allocation Plan ("2019 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (July 11, 2019), such that Petitioner may return its 2020 Housing Credit Allocation now as opposed to waiting until the last quarter of 2022. While Petitioner has expended approximately $611,781 to diligently progress the development, delays related to negotiating a development agreement with the City of Seminole will prevent Petitioner from receiving the permit approval and/or permit-ready letter – prerequisites for closing – until after the December 18, 2021 deadline for satisfaction of the 10% test, construction commencement, and closing of the tax credit partnership. Because one of the Developer's principals retired, and another passed away, Petitioner also seeks Board approval to change the Developer's principals pursuant to Rule 67-48.004(3)(b), F.A.C. (July 11, 2019).

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:

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Valor Preserve LLLP
11479 Ulmerton Road
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Telephone: (727)443-7684
Fax: N/A
Email: RBooker@pinellahousing.com

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

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B. DEVELOPMENT BACKGROUND

3. The following information pertains to 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 and Pinellas Property Management Company, Inc.
- Number of Units: 64 new construction
- Type: Quadraplexes

- 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; and a Pinellas County SHIP Loan in the amount of $650,000.

Pinellas County Housing Authority 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. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULES FROM WHICH WAIVER IS REQUESTED AND BOARD APPROVAL IS SOUGHT.

5. Petitioner requests a waiver of Rule 67-48.002(96), effective July 11, 2019, which provides in pertinent part:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2019 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from http://www.flrules.org/Gateway/reference.asp?No=Ref-10769.

6. Subsection II.K. of the 2019 QAP, provides as follows:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it

> is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs. A Development located in a HUD designated DDA or QCT at the time of original allocation may retain its designation as such.

7. The process found in the 2019 QAP allows an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service. The tax credit exchange request may only be approved by the Executive Director of Florida Housing under the conditions identified in the 2019 QAP.

8. Petitioner also seeks Board approval to change the Developer's principals pursuant to Rule 67-48.004(3)(b), F.A.C. (July 11, 2019), which provides:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
>
> **
>
> (b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the Principals of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation;

E. STATUTES IMPLEMENTED BY THE RULES AND THE 2019 QAP.

9. The Rules implement 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").[1] The Act designates FHFC as the State of Florida's housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). *See* § 420.5099(1) and (2), Fla. Stat. Accordingly, the, Rules implement, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. *Id*.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND BOARD APPROVAL.

10. 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).

11. 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.

12. Florida Housing staff executed a 2020 Carryover Allocation Agreement ("CAA") on or about December 15, 2020 for the allocation of its Tax Credits. The CAA required Petitioner to incur at least ten percent of the reasonably expected basis of the Development (the "10% Test") on or before June 30, 2021. This deadline was later extended to December 18,

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

2021. Petitioner was also required under the CAA to commence construction and close its tax credit partnership by September 30, 2021, which deadline was likewise extended to December 18, 2021. Failure to comply with the foregoing CAA deadlines (collectively, the "CAA Deadlines") will cause the Housing Credits allocated within the CAA to be deemed returned to Florida Housing under 26 U.S.C. § 42(h)(3)(C).

13. Pursuant to 26 U.S.C. § 42(h)(1)(E)(i), the Development must be placed in service no later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally-mandated placed-in-service date would be December 31, 2022.

14. 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 seek additional funding sources, as well as an extension of the loan closing deadline to January 17, 2022. 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, FHFC's Board approved this additional subordinate debt SHIP Loan. Petitioner anticipates satisfying the loan closing deadline by closing on or before January 17, 2022.

15. However, Petitioner does not anticipate satisfying the CAA Deadlines. 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 is necessary because Petitioner must obtain approval for necessary deviations from the City's land development code, such as variances related to parking, berming and frontage. The Development Agreement imposes several time-consuming exterior design element and site

improvement requirements, such as fencing, landscape buffers, and specified construction materials and finishes. Petitioner cannot receive final approval of the Development Agreement and the incorporated variances until the second reading, which is scheduled for December 7, 2021. Only after this final approval may Petitioner pursue a permit approval and/or a permit-ready letter. Because the permit-ready letter is a condition of closing, Petitioner cannot close on its financing until it issues. Accordingly, Petitioner does not believe is will be able to satisfy the 10% Test, commence construction, and/or close its tax credit partnership prior to the CAA Deadline (*i.e.*, December 18, 2021).

16. Because Petitioner knows that circumstances outside of its control will prevent it from satisfying the CAA Deadlines, Petitioner respectfully requests a waiver of the 2019 QAP to permit Florida Housing to approve the tax credit exchange now as opposed to waiting until the last quarter of 2022. Petitioner has used its best efforts to move the Development forward, but cannot take any further action until the City approves the Development Agreement.

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. In fact, approximately $611,781 has been expended to date in relation to the Development.

18. If the Petition is denied, the Development cannot move forward because Petitioner will not have sufficient time to satisfy the CAA Deadlines and will lose the allocated Housing Credits. Without this funding source, Pinellas County will lose these 64 affordable housing units.

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.

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,[2] 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.

21. In this instance, Petitioner meets the standards for a waiver of the Rule and the 2019 QAP. 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 2019 QAP would prevent Petitioner from completing the swap now and will create a substantial hardship for Petitioner because it cannot – due to no fault of its own – meet the CAA Deadlines. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, and further ensuring the development of 64 affordable housing units in Pinellas County, Florida Housing would

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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. *See* § 120.542(2), Fla. Stat.

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. The requested waiver should be granted because, as demonstrated above, the delay was caused by circumstances beyond Petitioner's control, due diligence was employed in an attempt to resolve those circumstances, the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

24. Petitioner also seeks Board approval to make two changes to the Developer's principals. Sadly, the Executive Director of the Pinellas County Housing Authority ("PCHA"), Ms. Debra Johnson, passed away. Regina Booker will serve as the Interim Executive Director for PCHA. Additionally, Gary Silver retired from his position as an officer/director of Nordev, Inc.[3] No one is being replaced in his stead. Current and proposed organizational structures are attached as Exhibits A and B.

25. 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>

26. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to permit the requested credit exchange, immediate return of Petitioner's 2020 Housing Credit Allocation, and an immediate allocation of new Housing Credits; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further

[3] Mr. Silver did not retire from his position at Donatello Corporation.

relief as it may deem appropriate. Petitioner also seeks Board approval to change the Developer's principals as described above.

Respectfully submitted,

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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 19th day of November, 2021.

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

Exhibit A

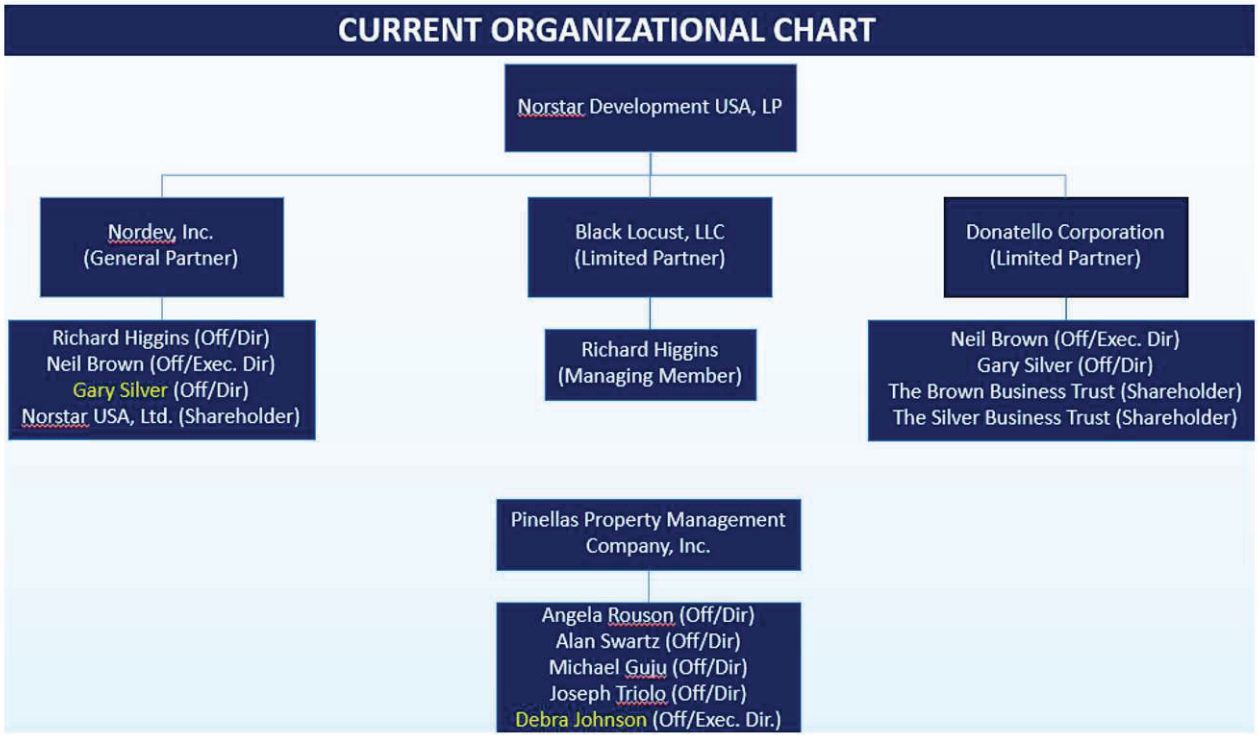


Exhibit B

