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

Petitioner,

FHFC CASE NO. 2022-001VW
Application No. 2020-453CS

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, 2022. Petitioner was on track to close before December 31, 2021 until it was suddenly and inexplicably derailed by a vote of the City of Seminole City Council to deny the Development Agreement. Petitioner needs an extension to develop an alternative approach with Norstar and the Pinellas County Housing Authority ("PCHA"). 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
Largo, FL 33778
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:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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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.

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. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED.

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, 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

[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.

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 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

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

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 in the amount of 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 is required 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 could not receive final approval of the Development Agreement and the incorporated variances until the second reading, which occurred on December 7, 2021. 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 Petitioner has not obtained final approval of the Development Agreement, Petitioner may not pursue permit approval and/or a permit-ready letter. Because the permit-ready letter is a condition of closing, Petitioner cannot close on its financing prior to the closing deadline.

13. 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. Thus, the closing deadline for the Development is January 17, 2022.

14. Petitioner cannot close by the January 17th deadline because it cannot obtain the permit-ready letter for the reasons outlined above. Petitioner is therefore in need of an extension to allow sufficient time to work with Norstar and PCHA to develop an alternate approach.

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

16. 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.

17. 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.

18. 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.

19. 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,[3] 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.

20. 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.

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

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

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[3] "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.

G. ACTION REQUESTED

23. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to extend the loan closing deadline 6 months (*i.e.*, through and including July 17, 2022); (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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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 5th day of January, 2022.

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