STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

BRANDON PRESERVE, LTD.,
a Florida limited partnership,

Petitioner,

CASE NO. 2020-068VW

vs.

Application No. 2020-416BS

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE TO IMPLEMENT SELF-SOURCED FINANCING INITIATIVE

Petitioner Brandon Preserve, Ltd., a Florida limited partnership (the "Petitioner"), hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-21.013, F.A.C and certain related RFA requirements to allow Petitioner to implement the self-sourced financing permitted under RFA 2019-116. These waivers arise directly from Petitioner's principals agreement to commit their own funding to a proposed development through the Corporation's self-sourced financing initiative set forth in RFA 2019-116 (the "Self-Sourced Financing Initiative"). RFA 2019-116 was the first RFA issued by the Corporation incorporating the Self Sourced Financing Initiative, which considerably reduces the maximum amount of per-unit SAIL funding, freeing up SAIL funds to be used for other affordable housing developments. The implementation of the Self-Sourced Financing Initiative introduces various hardships requiring a waiver, including, among other things, the inability of the Petitioner's principals to purchase the Corporation's tax-exempt bonds because they are not Qualified

Institutional Buyers as required under Rule 67-21.013. Accordingly, Petitioner requests the present waivers to implement the Self-Sourced Financing Initiative, which would effectuate the Corporation's goal of increasing the volume of affordable family units in Florida. In support, of this petition, Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner's application:

Brandon Preserve, Ltd.
Attention: James R. Hoover
3030 Hartley Road, Suite 310
Jacksonville, FL 32257
Tel: (904) 288-7822
Fax: (904) 260-9031
E-mail: rhoover@vestcor.com

2. For purposes of this Petition, the address, telephone number, facsimile number, and email address of the Petitioner's attorney are:

Terry M. Lovell, Esquire
Bilzin Sumberg Baena Price & Axelrod, L.P.
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Tel: (305) 374-7580
Fax: (305) 351-2126
E-mail: tlovell@bilzin.com

B. THE DEVELOPMENT AND ITS FINANCING

3. Petitioner timely submitted its Application No. 2020-416BS (the "Application") on December 30, 2019 in response to RFA 2019-116 for SAIL Financing of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bonds And Non-Competitive Housing Credits (the "RFA") for the development named "Brandon Preserve" (the "Development"). Petitioner elected to compete as a Self-Sourced Applicant, as

defined in the RFA. Self-Sourced Applicants (principals of the Applicant) are required to provide financing in an amount that is at least half of the Applicant's eligible SAIL Request Amount or $1,000,000. Essentially, Petitioner's principals are lending their own funds to the Development, which allows unallocated SAIL funds to be used for other affordable housing developments, thereby increasing the amount of affordable housing in Florida.

4. The self-source financing structure is a subordinate tranche of the Corporation's to-be-issued tax-exempt bonds, the Self-Sourced Bond Financing B Bonds (the "B Bonds") in the amount of $3,250,000, which would be purchased by principals of Petitioner. Petitioner's principals, however, are not Qualified Institutional Buyers (as defined under Rule 67-21.002) as required by Rule 67-21.013 but are "Accredited Investors" as such term is defined in Rule 501 of Regulation D.[1] Accordingly, Petitioner requests a rule waiver to allow Petitioner's principals to purchase the B Bonds, and, in doing so, implement the Self-Sourced Financing Initiative. The tranche "A Bonds", which will be the first mortgage bonds in the anticipated amount of $21,400,000 will be purchased by a designee of R4 Capital Funding, LLC that will be a Qualified Institutional Buyer.

5. Next, in connection with the purchase of the B Bonds by Petitioner's principals, bond counsel has advised that the current members of the Petitioner's general partner, Brandon Preserve GP, LLC, a Florida limited liability company (the "General Partner") need to be changed as set forth in Exhibit "A" attached hereto and made a part hereof. The General Partner changes are necessary, prior to or at closing, in order to meet the tax-exempt bond requirements. Management and control of the General Partner will not change. Lastly, Petitioner requests that the funding of the B Bonds be draw-down instead of fully funded at closing so that the B Bonds

[1] *Cf.* 17 CFR § 230.501.

will be funded pro-rata with the Development's other financing; otherwise, the increased construction loan interest would be an unnecessary construction expense to the Development.

6. The requested waivers will not adversely affect the Development. However, a denial of this Petition: (a) will result in substantial economic hardship to the Petitioner, (b) could deprive Hillsborough County of desperately needed affordable housing units, (c) would prevent the implementation of the Corporation's Self-Sourced Financing Initiative, and (d) would violate the principles of fairness.[2]

C. RULE AND RFA REQUIREMENTS FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-21.013 and certain RFA related requirements.

8. Rule 67-21.013, F.A.C., provides in relevant part:

> "Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender."

9. RFA 2019-116, Section Four, A.3.a.(1)(b), provides in relevant part:

> "Self-sourced financing will be funded at closing of the SAIL loan via escrow account controlled by the SAIL loan servicer and will be dispersed pro rata along with SAIL funding."

10. RFA 2019-116, Section Four, A.3.c.(3), provides in relevant part:

> "The Applicant entity … cannot be changed in any way (material or non-material) until after the closing of the loan(s)."

D. STATUTES IMPLEMENTED BY THE RULE

11. The Rule is implementing, among other sections of the Florida Housing Finance Corporations Act, the statute that grants Florida Housing the power to issue revenue bonds. *See* Section 420.509, Fla. Stat.

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[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), Florida Statutes.

E. JUSTIFICATION FOR REQUESTED WAIVERS

12. Petitioner seeks waivers of the above referenced Rule and RFA requirements to effectively implement the Self-Sourced Financing Initiative.

13. 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 these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers shall be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Fla. Stat.

14. The following facts demonstrate the circumstances which justify Petitioner's requests for waiver:

a. Pursuant to the RFA requirements, the B Bonds must be purchased by Petitioner's Principals and pursuant to Rule 67-21.013, the purchasers of the B Bonds must be Qualified Institutional Buyers as defined under Rule 67-21.002. However, the Petitioner's principals are not Qualified Institutional Buyers but they are Accredited Investors. Petitioner's principals are lending their own funds to the Development by purchasing the B Bonds, and without the ability of Petitioner's principals to purchase the B Bonds, the Corporation's Self-Sourced Financing Initiative would be frustrated, the financing for the Development would be delayed and made significantly more costly and inefficient. The Corporation will not be harmed by granting this requested waiver because the tranche of A Bonds which are senior to the B Bonds and significantly more than the B Bonds will be purchased by a designee of R4 Capital Funding, LLC who shall be a Qualified Institutional Buyer.

b. Next, in order to comply with certain tax-exempt bond requirements relating to who may purchase the B Bonds and in order to receive the necessary bond counsel opinion at closing, Petitioner requests the ability to change the members of the General Partner as set forth herein. The requested changes to the General Partner's members will not change the management or control of the General Partner and will be made at or before closing. Lastly, Petitioner requests that the funding of the B Bonds be draw-down instead of fully funded at closing so that the B Bonds will be funded pro-rata with the Development's other financing to save on construction interest expense; otherwise, this extra interest expense would be an unnecessary construction expense to the Development.

15. If these requested waivers are not granted, Petitioner will suffer substantial and unnecessary hardship.

16. A waiver of the above referenced Rule and RFA requirements would serve the purposes of Section 420.509, Fla.Stat., the Act as a whole, and the Self-Sourced Financing Initiative because the waiver would implement a new financing option that would increase and continue to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to households of limited means.

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

F. PERMANENCY

18. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

Petitioner requests the following:

a. That the Corporation grant Petitioner a waiver from Rule 67-21.013, allowing principals of Petitioner to purchase the B Bonds;

b. That the Corporation grant Petitioner a waiver from the requirements of RFA 2019-116, allowing Petitioner to change the General Partner's members and use draw-down funding for the B Bonds;

c. Grant the Petition and all the relief requested therein; and

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

Respectfully submitted,

BILZIN SUMBERG BAENA PRICE & AXELROD, L.P.
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Tel: (305) 374-7580
Fax: (305) 351-2126
E-mail: tlovell@bilzin.com

/s/ Terry M. Lovell
TERRY M. LOVELL

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served electronically and by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400; (Joint.Admin.Procedures@leg.state.fl.us), this 16th day of November, 2020.

/s/Terry M. Lovell
TERRY M. LOVELL

EXHIBIT "A"

PROPOSED CHANGE TO GENERAL PARTNER'S MEMBERS

[SEE FOLLOWING ATTACHMENT]

VESTCOR

The Vestcor Companies, Inc.
3030 Hartley Road, Suite 310
Jacksonville, Florida 32257
T 904-260-3030
F 904-260-9031

September 22, 2020

Tim Kennedy
Assistant Director of Multifamily Programs
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, FL 32301

RE: Brandon Preserve (2020-416BS)

Dear Tim:

Please allow this letter to serve as approval request for changes to the members of the GP entity, Brandon Preserve GP, LLC, for the above project. Below is a summary of the org structure with the intended changes for a portion of the GP ownership Mr. Rood has assigned to the other Members identified below. Management and control of the General Partner by Mr. Rood will not change. These changes are necessary in order to meet the tax exempt bond requirements and will be made at closing.

Current Structure:	New Structure:
(99.99%) Limited Partner – John D. Rood (to be replaced with Investor LP)	*No change*
(00.01%) General Partner – Brandon Preserve GP, LLC	*No change*
Manager of the General Partner – Vestcor, Inc.	*No change*
Members of General Partner:	*Members of General Partner:*
(58.00%) – John D. Rood Revocable Trust u/a/d 1/26/88	(7.00%) – John D. Rood Revocable Trust u/a/d 1/26/88
(14.00%) – JDR WC1, LLC - (99% Jennifer R. Hoover / 1% John D. Rood)	(14.00%) – JDR WC1, LLC *(no change)*
(14.00%) – JDR WC2, LLC - (99% Christopher J. Rood / 1% John D. Rood)	(14.00%) – JDR WC2, LLC *(no change)*
(14.00%) – JDR WC3, LLC - (99% Holly R. Hepler / 1% John D. Rood)	(14.00%) – JDR WC3, LLC *(no change)*
	(17.00%) – Clarence S. Moore
	(14.20%) – James R. Hoover
	(5.65%) – Jason O. Floyd
	(8.50%) – Kevin L. Troup
	(5.65%) – Alexander G. Hepler

Please let me know if any additional information is required.

Sincerely,

Jason O. Floyd
Vice President of Vestcor, Inc.,
Manager of Brandon Preserve GP, LLC,
General Partner of Brandon Preserve, Ltd.