STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Valor Preserve, LLLP. FHFC Case No.: 2021-093VW

/

ORDER GRANTING WAIVER FROM RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on December 10, 2021. On November 19, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition 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) (the "Petition") from Valor Preserve, LLLP (the "Petitioner"). Notice of the Petition was published on November 22, 2021, in Volume 47, Number 226, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for competitive housing credits, Extremely Low Income ("ELI") funding, and State Apartment Incentive Loan ("SAIL") funding in RFA 2020-106 to assist in the construction of a 64-unit

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 12/13/2021

affordable housing development named Valor Preserve at Lake Seminole to be located in Pinellas County, Florida (the "Development").

3. Rule 67-48.002(96) Fla. Admin. Code (2019), adopts and incorporates the 2019 QAP.

4. Subsection II.K of the 2019 QAP states:

> 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.

5. Rule 67-48.004(3) Fla. Admin. Code (2019), in relevant part, states:

> (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

6. Petitioner requests a waiver of the timing provision in the QAP for the return and exchange of housing credits to permit an exchange of credits now instead of waiting until the last quarter of 2022 as well as Board approval to change the Developer's Principals. After accepting an invitation to credit underwriting, Petitioner entered into a Carryover Allocation Agreement ("Carryover Agreement") with Florida Housing on December 18, 2020. Pursuant to the Carryover Agreement, Petitioner must demonstrate site control and meet the 10% Test on or before June 30, 2021. This deadline was later extended to December 18, 2021 at Petitioner's request.

7. The Carryover Agreement also required Petitioner to close its tax credit partnership and commence construction by September 30, 2021. At Petitioner's request that deadline was extended to December 18, 2021. The federally mandated placed-in-service deadline is December 31, 2022. On June 21, 2021, a firm commitment was issued giving Petitioner a loan closing deadline of October 19, 2021.

8. Due to labor and supply chain issues associated with the COVID-19 pandemic, Petitioner experienced unforeseen price increases and was forced to seek additional funding sources as well as an extension of the loan closing deadline to January 17, 2022. To mitigate the cost increases and associated delay, Petitioner secured a SHIP loan from Pinellas County. On October 22, 2021, the Board approved this additional subordinate SHIP debt. Petitioner anticipates satisfying the loan closing deadline on or before January 17, 2021. However, Petitioner does not expect to satisfy the other deadlines in the Carryover Agreement.

9. Petitioner experienced delays beyond its control in relation to negotiating and satisfying requirements of a Development Agreement with the City of Seminole. Petitioner asserts that the Development Agreement is necessary for deviations from the City's land development and variances related to parking, berming, and frontage. Petitioner states that the

Development Agreement imposes several time-consuming exterior design element and site improvement requirements such as fencing, landscape buffers, and certain construction materials and finishes. According to Petitioner, only after a second reading, which is scheduled for December 7, 2021, can the Redevelopment Agreement and associated variances be approved.

10. Petitioner states that it used its best efforts to move the Development forward and has expended over $610,000 on the Development to date.

11. Petitioner does not expect to satisfy the 10% Test, commence construction, and close the tax credit partnership prior to the December 18, 2021 deadline. Petitioner requests to exchange its 2020 Housing Credits for an allocation of 2021 Housing Credits now rather than wait until the last quarter of 2022 and, thereby, extend the placed-in-service deadline to December 31, 2023.

12. Petitioner also requests Board approval to make two changes to the Developer's Principals, one of which is due to the passing of the Executive Director of the Pinellas County Housing Authority ("PCHA"), Debra Johnson. Regina Booker will serve as Interim Executive Director for PCHA. Additionally, Petitioner asserts that Gary Silver retired from his position as an

officer/director of Nordev, Inc. (but remains in his position at Donatello Corporation). Petitioner states that no one is replacing Mr. Silver. Richard Higgins met the General Development Experience requirement of the RFA and will remain a Principal of the co-Developer.

13. Section 120.542(2), Florida Statutes, provides in pertinent part:

> 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.

14. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

15. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

16. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rule 67-48.002(96), Fla. Admin. Code (2019) and the timing

provisions of Subsection II.K of the 2019 QAP is hereby **GRANTED** to allow Petitioner to exchange its 2020 housing credits for an allocation of 2021 housing credits and thereby extend the associated deadlines. Additionally, Petitioner's request for Board approval under Rule 67-48.004(3) Fla. Admin. Code (2019), is hereby **GRANTED** to allow Petitioner to change the Developer's Principals as outlined in the Petition.

DONE and ORDERED this 10th day of December 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Brian J. McDonough, Esq.
bmcdonough@stearnsweaver.com

Hugh R. Brown, General Counsel
Marisa Button, Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.