STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Valor Preserve, LLLP FHFC Case No.: 2022-66VW

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ORDER GRANTING WAIVER OF RULE 67-48.0072(26), 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 9, 2022. On November 21, 2022, Florida Housing received a Petition for Waiver of Rule 67-48.0072(26), F.A.C. (7/11/19) (the "Petition") from Valor Preserve, LLLP (the "Petitioner") to allow Petitioner to extend the loan closing deadline for its SAIL and ELI loans. Notice of the Petition was published on November 23, 2022, in Volume 48, Number 228, 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, State Apartment Incentive Loan ("SAIL") and Extremely Low Income ("ELI") funding in RFA 2020-106 to assist in the construction of a 64-unit

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Ann McMurray /DATE: 12/9/2022

housing development for Persons with Disabling Conditions and Homeless named Valor Preserve at Lake Seminole in Pinellas County, Florida (the "Development"). Additionally, Petitioner applied for Construction Housing Inflation Response Program ("CHIRP") funds and, on September 16, 2022, was awarded HOME-ARP funds.

3. Rule 67-48.0072(26), (2019) Fla. Admin. Code, 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 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.

4. Petitioner requests a waiver of the above cited Rule to allow Petitioner to extend the loan closing deadline for its SAIL and ELI loans. On or about December 15, 2020, Florida Housing staff executed a 2020 Carryover Allocation Agreement for the allocation of the competitive housing credits. On June 21, 2021, Florida Housing staff issued a firm commitment to Petitioner giving it a loan closing deadline of October 19, 2021. Petitioner experienced labor problems, supply chain problems, and unforeseen pricing increases which necessitated additional funding resources as well as an extension of the loan closing deadline.

5. On September 10, 2021, Florida Housing's Board of Directors (the "Board") approved an extension of the loan closing deadline to January 17, 2022. Petitioner secured additional funding including a Pinellas County SHIP loan. On October 22, 2021, the Board approved an increase of the Total Development Cost and the additional funding provided by the Pinellas County SHIP Loan.

6. Petitioner states it experienced additional delays beyond its control in relation to securing the approval of the City Council of the City of Seminole with a Development Agreement which required Petitioner to request an additional extension of the loan closing deadline. On January 21, 2022,

the Board approved Petitioner's request for an extension to July 17, 2022. Petitioner states it worked diligently to develop a plan to eliminate the need for the Development Agreement. According to Petitioner, this required a significant amount of time and Petitioner sought an additional extension of the loan closing deadline. On June 17, 2022, the Board approved an additional extension of the loan closing deadline to January 17, 2023.

7. Petitioner's revised code-compliant plan was approved by the City of Seminole on June 13, 2022. However, according to Petitioner, the delay caused the Development to incur dramatic construction cost increases. Petitioner chose to request HOME-ARP funds through Florida Housing's Construction Housing Inflation Response Program ("CHIRP"), which was approved by the Board on September 16, 2022.

8. Petitioner states that it intended to close and commence construction in November of 2022 but received notice from Florida Housing's counsel in October of 2022 regarding the need to have an environmental review and HUD-approved Request for Release of Funds ("RROF") in order for Petitioner to utilize the HOME-ARP funds. Petitioner states that it has already performed an environmental review and received HUD approval of an RROF for the use of project-based vouchers at the Development, and Petitioner does not expect that an additional HUD RPOF approval to be

difficult to attain. However, Petitioner believes that this approval will likely delay the closing at least 30-60 days and Petitioner does not believe it will be able to satisfy the current loan closing deadline. Thus, Petitioner requests this fourth extension of the loan closing deadline to July 17, 2023.

9. Petitioner states that the waiver is necessary because the Development cannot move forward without these additional funding sources. According to Petitioner, denial of the waiver request would cause Pinellas County to lose the benefit of these 64 affordable units for persons with disabling conditions and those experiencing homelessness.

10. 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.

11. 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.

12. 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 were not granted.

13. 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 waiver of Rule 67-48.0072(26), Fla. Admin. Code (2019), is hereby **GRANTED** to allow Petitioner to extend its loan closing deadline from January 17, 2023 to July 17, 2023.

DONE and ORDERED this 9th day of December 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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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.