**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

In Re: Innovare, LP FHFC CASE NO.: 2021-075VW

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**ORDER GRANTING WAIVER OF RULE 67-48.002(96)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 22, 2021. On October 5, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96), F.A.C. (7/11/19) and the 2019 QAP (the "Petition"), from Innovare, LP ("Petitioner"). Notice of the Petition was published on October 6, 2021, in Volume 47, Number 194, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

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

2. Petitioner was selected to receive competitive housing tax credits under RFA 2020-103, to assist in the construction of a 51-unit Homeless/Special Needs development in Pinellas County called Innovare. Petitioner received an award of 2020 tax credits and the carryover agreement was fully executed on November 13,

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 10/25/2021

2020. Under the terms of the agreement and federal regulations, Petitioner was required to (1) meet its 10% Test requirement by May 31, 2021, which was extended by FHFC to November 13, 2021, and (2) place the development in service by December 31, 2022.

3. Rule 67-48.002(96), Fla. Admin. Code (2019), defines and incorporates by reference the following provision of the 2019 QAP at Section II:

> K. ...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 Application for either the current year or the year after the year in which the Development was otherwise required to be placed in service...

4. Petitioner requests a waiver of the above Rule and the QAP provision above to permit it to exchange its tax credits now rather than in the last calendar quarter of 2022. Petitioner asserts that because of the dramatic increase in construction costs resulting from the COVID-19 pandemic it was required to seek additional funding through Pinellas County. In order to access those funds, Petitioner was required to place the land underlying the Development in a land trust. The additional time and expense of establishing the land trust prevented Petitioner

from closing on all of the financing, and since the land acquisition costs were no longer counted as part of the project, Petitioner was not able to meet the 10% threshold and site control requirements of the Carryover Agreement. Additionally, Florida Housing has approved Petitioner's request for an extension of the loan closing deadline to January 17, 2022. Petitioner therefore asserts that it will therefore not be able to meet the 10% deadline by November 13, 2021 nor complete construction by December 31, 2022.

5. Petitioner requests a waiver of the timing requirements found in the 2019 QAP to permit Florida Housing to approve a tax credit exchange now and to allow the allocation of 2021 tax credits pursuant to that exchange via a new carryover agreement. This will have the effect of requiring Petitioners to place the development in service in accordance with the provisions of the new carryover agreement, but no later than December 31, 2023.

6. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

7. 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.

8. Petitioner has demonstrated that the waiver is needed in order to efficiently serve Homeless and Special Needs persons. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

9. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

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 permit Petitioner to exchange its 2020 credits for an allocation of 2021 credits.

DONE and ORDERED this 22nd day of October, 2021.




Florida Housing Finance Corporation

By: _____
Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee
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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.**