STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Kelsey Cove, Ltd FHFC CASE NO.: 2021-054VW

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ORDER GRANTING WAIVER OF RULE 67-48.0075(3)(a)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 10, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 20, 2021, from Kelsey Cove, Ltd ("Petitioner"). Notice of the Petition was published on August 23, 2021, in Volume 47, Number 163, 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 2020-202, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties to assist in the construction of a 108-unit family development in Hillsborough County called Kelsey Cove. The site control documentation submitted

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
Ann Mamon DATE: 9/29/2021

with its application indicated that the purchase price of the property was $3,240,000, and Petitioner asserts that this is the price actually paid for the property. During credit underwriting, an appraisal was conducted in accordance with Rule 67-48.0072(10), and the appraised value of the property was $2,160,000.

3. Rule 67-48.0075(3)(a), Fla. Admin. Code (2020) provides in relevant part:

> (3) Total Development Cost includes the following:
> (a) The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties, of which the total cost cannot exceed the appraised value of the real property as determined in the credit underwriting process.

4. Petitioner seeks a waiver of the above-cited requirement that Total Development Cost for the cost of acquiring real property cannot exceed the appraised value of the real property. Petitioner seeks to have the Total Development Cost include the cost of acquiring the real property at the full purchase price.

5. RFA 2020-202 had a funding goal to fund one Family Development that qualifies for the Geographic Areas of Opportunity/SADDA Funding Goal in Hillsborough County. Petitioner asserts that the negotiated purchase price reflects the value that the market placed on the Property due in large part to the limited number of properties in Hillsborough County that satisfy the Geographic Areas of Opportunity/SADDA funding criteria. Petitioner has not requested a new appraisal or requested a review of the appraisal.

6. Rule 67-48.0072(10) provides in relevant part:

> (10) For Competitive HC, SAIL, and HOME Applicants, an appraisal report conforming to the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and development type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the development property's financial feasibility.

7. Petitioner asserts that the appraised value does not reflect the market value of the property, but Petitioner does not allege that the appraisal report did not conform to the Unform Standards of Professional Appraisal Practice or otherwise did not meet the requirements of Rule 67-48.0072(10), Fla. Admin. Code. Petitioner also asserts that because there are several different ways that the ultimate allocation of tax credits can be calculated, the Corporation will not be prejudiced by the grant of this Petition.

8. Section 42(m) of the Internal Revenue Code requires Florida Housing to provide no more housing credits than deemed necessary to ensure the project's financial feasibility throughout the 15-year compliance period. The Code also requires Florida Housing to consider the reasonableness of the developmental cost of the project.

9. Florida Housing administers its 42(m), I.R.C. obligation through Rule 67-48.0072(28)(e), Fla. Admin. Code, which provides in relevant part:

(e) If the Credit Underwriter is to recommend a Competitive Housing Credit Allocation, the recommendation will be the lesser of:

1. The qualified basis calculation result,
2. The gap calculation result[1], or
3. The Housing Credit award considered in the Application.

10. Petitioner is correct that if the actual purchase price of the land is considered in the Total Development Cost instead of the appraised value of the land, the gap calculation result will be higher than the result if appraised value is used. Under this scenario, the credit allocation based on the gap calculation would be higher than that of the qualified basis calculation and the Housing Credit award considered in the Application; therefore, the credit allocation would be determined by one of these two methods and not the gap calculation. Conversely, if the appraised value is considered in the Total Development Cost, based on preliminary numbers, the gap calculation would be the lowest of the three tests, showing that the Petitioner needs less credits than applied for to make the Development financially feasible, and would therefore return the excess credits to Florida Housing for re-allocation.

11. Petitioner argues that the Corporation has a safeguard in the above referenced test; however, the result risks the potential of developments receiving more credits than necessary to be economically feasible, with the consequence that

[1] The gap calculation result is the difference between the project's Total Development Cost and the financing (other than equity raised through the housing credits and deferred developer fee.)

public funds end up being de facto used to compensate for land purchase price above appraised value. Waiving the Rule could have the effect, intended or not, of weakening Florida Housing's ability to guard against the intentional inflation of land costs at taxpayer expense.

12. The Board finds that granting the waiver without the conditions set forth below could impact other participants in funding programs administered by Florida Housing, and could have a detrimental impact on Florida Housing and the public.

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. Notwithstanding the above concerns, Petitioner has demonstrated that compliance with the above Rules under these circumstances would constitute a substantial hardship. Petitioner has demonstrated that the purpose of the underlying statute, which is to "establish procedures necessary for proper allocation and distribution of low-income housing tax credits" and to "ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted subject to the specific conditions below.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.0075(3)(a), Fla. Admin. Code (2020) is hereby **GRANTED** so that Petitioner may use the actual purchase price of the property when determining Total Development Cost, subject to the following conditions being met during underwriting and final cost certification:

1. The cost of acquiring real property and any buildings thereon, including payment for options, deposits, or contracts to purchase properties that exceeds the appraised value for the property will be included as a line-item development cost and included in the Total Development Cost Per Unit calculation, and the inclusive total cost amount is subject to the applicable Total Development Cost Per Unit limitation process;

2. The development remains a 9% Competitive Housing Credit Award without any other corporation allocated resources associated with the Housing Credit Development; and

3. The Applicant and Developer must provide verified affidavits that there is no affiliation between any principals or affiliates of the principals of the Applicant and Developer and the seller or any affiliate of the seller of the subject property as well as no agreements, other than the purchase contract, between the Applicant and Developer and the seller or any affiliate of the seller of the subject property.

DONE and ORDERED this 28th day of September, 2021.

Florida Housing Finance Corporation

By: _____
Chair

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.