STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Innovare, LP FHFC Case No.: 2022-004VW

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ORDER GRANTING WAIVER OF RULE 67-48.0072(16)(b), F.A.C., (2019) AND CERTAIN PROVISIONS OF RFA 2020-103

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on January 27, 2023. On January 11, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(16)(b) (eff. 7/11/19) and RFA 2020-103 Provisions (the "Petition") from Innovare, LP (the "Petitioner") to allow Petitioner's general contractor to receive a fee over 14%. Notice of the Petition was published on January 12, 2023, in Volume 49, Number 8, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

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

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann McLamore/DATE: 1/30/2023

2. Petitioner successfully applied for funding to assist in the construction of the Innovare, a 51-unit mid-rise development located in Pinellas County, Florida (the "Development").

3. Rule 67-48.0072(16)(b) Fla. Admin. Code (2019), in relevant part, provides:

> The General Contractor's fee shall be limited to a maximum of 14 percent of the actual construction costs…

4. RFA 2020-103, in relevant part, states::

> General Contractor's fee is limited to 14% of actual construction cost.
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> ***
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> NOTES: … (3) General Contractor's fee is limited to 14% of actual construction ...
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> A 1.2. General Contractor Fee See Note (3)…(Max. 14% of A 1.1., column 3)

5. Petitioner requests a waiver of the above rules to allow its general contractor to receive a fee over 14%. Construction of the Development began in November 2021. In January 2022, The U.S. Department of Housing and Urban Development (through the St. Petersburg Housing Authority) issued a stop work order relating to an environmental review conducted under 24 CFR Part 58. The stop work order was not lifted until October 2022, resulting in a 42-week delay, roughly doubling the construction schedule.

6. Petitioner avers that the delay caused the general contractor to incur $435,481 in additional general conditions costs, increased the cost of work, and required the general contractor to re-bid several scopes of work after the stop work order was lifted. Petitioner states the additional general conditions costs were necessary and unavoidable. After the additional costs are considered, the General Contractor's fee would increase to approximately 16.9%.

7. Petitioner has agreed to pay any General Contractor fee above 14% out of its Developer Fee.

8. 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.

9. 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.

10. 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.

11. 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 67-48.0072(16)(b) Fla. Admin. Code (2019) and certain parts of RFA 2020-103 is hereby **GRANTED** to allow Petitioner's General Contractor to exceed the maximum fee of 14% of actual construction costs on the condition that any amounts over the 14% limitation be paid out of the Petitioner's Developer Fee and reflected as a subset of Developer Fee in the Development Final Cost Certification.

DONE and ORDERED this 27th day of January 2023.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.