

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SAILBOAT BEND II, LTD.

FHFC CASE NO.: 2019-061VW

ORDER GRANTING WAIVER OF RULE 67-48.0072(17), F.A.C.

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 2, 2019, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 10, 2019, from Sailboat Bend II, Ltd. ("Petitioner" or "Sailboat"). Notice of the Petition was published on July 11, 2019, in Volume 45, Number 134, 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 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 an allocation of competitive, 9% housing credits under RFA 2017-113 to assist in the development of Sailboat Bend Apartments II, a 110-unit elderly housing development in Ft. Lauderdale, Florida.
3. Rule 67-48.0072(17), Fla. Admin. Code, provides in relevant part:

(17) The General Contractor must meet the following conditions:

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(h) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

4. Florida Housing invited Petitioner into credit underwriting and Petitioner accepted on September 24, 2018. The Co-Developer of Sailboat, HEF Development LLC and its sole member, Housing Enterprises of Florida, Inc., is affiliated with the Housing Authority of the City of Fort Lauderdale ("HACFL"). According to Petitioner, HACFL operates a state-certified Step-Up Apprenticeship Program ("Step-Up") that handles the facilities maintenance for HACFL's housing portfolio and operates as the cabinet manufacturing and installation subcontractor for HACFL's new developments. Step-Up's mission is to provide a job training program designed to enhance vocational and educational skills resulting in employment opportunities for residents of low-income housing. Application of Rule 67-48.0072(17)(h), Fla. Admin. Code, prohibits Petitioner from using Step-Up for the cabinet manufacturing and installation subcontractor because it is affiliated with the Co-Developer for Sailboat.

5. Sailboat solicited bids from Step-Up and two other subcontractors. Although Step-Up was not the low bidder, Step-Up agreed to match the bid of the next lowest bidder. Sailboat asserts that the General Contract has also agreed not to charge a general contractor fee on the scope of work to be performed by Step-Up.

6. The Board finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact 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 if the waiver were not granted, Petitioner would suffer a substantial hardship. 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 67-48.0072(17)(h), Fla. Admin. Code is hereby **GRANTED** to allow Petitioner to use an Affiliate subcontractor, Step-Up, for the cabinet manufacturer and installer since Step-Up agreed to match

the bid of the next lowest bidder and provided that the General Contractor does not charge a general contractor fee on the scope of work performed by Step-Up.

DONE and ORDERED this 2nd day of August 2019.



Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.