

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Poinciana Crossing, Ltd.

FHFC CASE NO.: 2020-049VW

ORDER GRANTING WAIVER OF RULE 67-48.0072(17)(h)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 4, 2020, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 3, 2020, from Poinciana Crossing, Ltd.” (“Petitioner”). Notice of the Petition was published on August 5, 2020, in Volume 46, Number 152, of the Florida Administrative Register. An Amended Petition was filed with Florida Housing on August 14, 2020. No public comments regarding the petition have been received. 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 9% Housing Tax Credits under RFA 2018-112, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Tom Blamory / DATE: 9/4/2020

Pinellas Counties, to assist in the development of Poinciana Crossing in Broward County, Florida.

3. Rule 67-48.0072(17)(h), Fla. Admin. Code (2018) provides:

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

(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 March 14, 2019. The Co-Developer of Petitioner, HEF Development LLC and its sole member, Housing Enterprises of Florida, Inc., and the General Contractor Suncrest Court GC, LLC, are 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 (2018) prohibits Petitioner from using Step-Up for the cabinet

manufacturing and installation subcontractor because it is affiliated with the Co-Developer for Poinciana Crossings.

5. Petitioner solicited bids from Step-Up and two other subcontractors. Step-Up was the second lowest bidder. Additionally, First Housing Development Corporation (“First Housing”), the Underwriter on this Development, prepared a recommendation in conjunction with the Construction Consultant, On Solid Ground, LLC (“OSG”). While OSG noted that the costs presented by Step-Up were approximately 15.5% above the costs incurred for other developments in South Florida, First Housing did acknowledge the community benefit provided by utilizing this subcontractor and made a positive recommendation.

6. Petitioner 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. Petitioner also asserts that a Certified Public Accountant (CPA) will confirm and/or audit all payments between the Affiliated entities, and the CPA will verify 100% of the work performed by the Affiliate entity (in addition to the 40% of costs that already have to be confirmed/verified per the General Contractor Cost Certification instructions).

7. 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.

8. Section 120.542(2), Fla. Stat. 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. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income residents. 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.

10. 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 under the following conditions:

1. The General Contractor may not charge a general contractor fee on the scope of work performed by Step-Up; and
2. A Certified Public Accountant (CPA) must confirm and/or audit all payments between the Affiliated entities, and the CPA must verify

100% of the work performed by the Affiliate entity (in addition to the 40% of costs that already have to be confirmed/verified per the General Contractor Cost Certification instructions).

DONE and ORDERED this 4th day of September, 2020.



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.