

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: VILLA CAPRI II ASSOCIATES,
LTD

FHFC CASE NO.: 2019-068VW

ORDER GRANTING WAIVER OF RULE 67-21.026(10), F.A.C.

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 20, 2019, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 13, 2019, from Villa Capri II Associates, Ltd. ("Petitioner" or "Villa Capri"). Notice of the Petition was published on August 15, 2019, in Volume 45, Number 159, 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 non-competitive, 4% housing credits to assist in the construction of Villa Capri II, a 117-unit family housing development in Homestead, Florida.
3. Rule 67-21.026(10), Fla. Admin. Code (2015), provides in relevant:

The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, which may include

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change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a physical needs assessment for rehabilitation units and review the Development's costs.

4. In December 2014, Petitioner asserts that it acquired and began construction on Villa Capri II (the "Development"). The financing included tax-exempt bond financing from the local bond issuer in Miami-Dade County. In October 2015, Petitioner submitted a non-competitive application for the allocation of four percent low-income housing tax credits. On May 28, 2014, Petitioner entered into a stipulated sum contract which was permissible under the 2014 version of Rule 67-21.026(10), Fla. Admin. Code. After execution of the stipulated sum contract, the Rule was revised to require a guaranteed maximum price contract.

5. According to Petitioner, the work contracted for under the stipulated sum contract has been completed. A principal of the general contractor executed an affidavit, attached to the petition, that states that the general contractor's fee was limited to a maximum of fourteen percent of the actual construction costs, no cost savings were billed or paid, and the only costs that have been or will be paid are actual costs incurred. Additionally, Petitioner asserts that the general contractor will not be paid more under the stipulated sum contract than if it had performed the work under a guaranteed maximum price contract.

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:

Variations 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 and, 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 67-21.026(10), Fla. Admin. Code (2015) is hereby **GRANTED** to allow the use of a stipulated sum contract with the general contractor.

DONE and ORDERED this 20th day of September, 2019.

Florida Housing Finance Corporation

By: 
Chair

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.