STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: WRDG T3A, LP FHFC Case No.: 2023-046VW

_____/

**ORDER GRANTING WAIVER OF**
**RULE 67-48.0072(17)(h), FLA. ADMIN. CODE (2017)**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on July 21, 2023. On June 21, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(17)(h) (5/24/2017) (the "Petition") from WRDG T3A, LP (the "Petitioner") to allow Petitioner's General Contractor to subcontract with two separate affiliated subcontractors. Notice of the Petition was published on June 23, 2023, in Volume 49, Number 122, 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.

2. Petitioner successfully applied for funding to assist in the construction of Boulevard Tower I, a 119-unit development located in Hillsborough County, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DAT 7/21/2023

3. Rule 67-48.0072(17)(h), Fla. Admin. Code (2017), states, in relevant part:

> The General Contractor must meet the following conditions:... 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. Petitioner requests a waiver of the above rule to allow Petitioner's General Contractor to subcontract with affiliated subcontractors. After construction of the Development was completed, Petitioner discovered that its General Contractor had subcontracted with two subcontractors that have common principals with the General Contractor: FUSE Equipment, LLC and Fuse Builds, LLC (collectively the "Affiliated Subcontractors"). FUSE Equipment, LLC's subcontract totaled $61,544, and FUSE Builds, LLC's subcontract totaled $545,685. The Affiliated Subcontractors performed rough carpentry work amounting to approximately 2.41% of the total construction costs.

5. As justification for the request, Petitioner states that the Tampa area's challenging labor market created staffing shortages at many local subcontracting firms. As a Davis-Bacon Act project, the Development was subject to additional federal labor requirements, and Petitioner avers the

Affiliated Subcontractors had the credentials necessary to hire, document, and pay in accordance with the Davis-Bacon Act. Petitioner's general contractor is unaware of any unaffiliated subcontractor that could have provided the same services at a lower cost.

6. Staff requested Seltzer Management Group, Inc. ("Seltzer"), the underwriter on this transaction, to provide Florida Housing with a recommendation on the costs incurred by the affiliated subcontractors. Staff received a recommendation on June 2, 2023. Seltzer, in conjunction with Hillmann Consulting LLC, the construction consultant, made a positive recommendation to approve the work performed by the affiliated subcontractors.

7. 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.

8. 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.

9. 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 Rule 67-48.0072(17)(h), Fla. Admin. Code (2017), is hereby **GRANTED** to allow Petitioner's General Contractor to subcontract with the two affiliated subcontractors referenced herein under the following conditions:

(1) No General Contractor Fee will be taken on the costs subcontracted to the affiliated entities; and

(2) An independent Certified Public Accountant will confirm and/or audit all payments between the affiliated entities in addition to the eight (8) subcontractors representing 40% of the costs that are already required to be confirmed and/or verified per the General Contractor Cost Certification Instructions.

**DONE and ORDERED** this 21st day of July, 2023.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Brian J. McDonough
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
bmcdonough@sternsweaver.com

Betty Zachem, Interim General Counsel
Melissa Levy, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Betty.Zachem@floridahousing.org
Melissa.Levy@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

**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.**