

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

In re: Poinciana Crossing, Ltd.

FHFC CASE NO. 2020-048VW  
Application No. 2019-119C  
RFA No. 2018-112

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**PETITION FOR VARIANCE FROM FLORIDA ADMINISTRATIVE CODE**  
**RULE 67-48.023(2)**

Petitioner Poinciana Crossing, Ltd. (“Petitioner”), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation (“Florida Housing”) for a variance from the provisions of Rule 67-48.023(2), Florida Administrative Code to allow it to provide at least 40% of its units at 60% of Area Median Income (“AMI”) to calculate its Minimum Set-Aside Commitment as allowed by the Internal Revenue Code section 42(g)(1). In Support of this Petition, Petitioner states:

**Petitioner and the Development**

The name, address, telephone, and email address for Petitioner is:

Poinciana Crossing, Ltd.  
3 Miami Central, 161 NW 6<sup>th</sup> Street, Suite 1020  
Miami, Florida 33136  
Telephone: 305-357-4725  
Email: lwong@apcompanies.com

The name, address, telephone and email address of Petitioner’s counsel is:

Brittney Adams Long  
Radey Law Firm  
301 South Bronough Street, Suite 200  
Tallahassee, Florida 32301  
Telephone: 850-425-6654  
Email: balong@radeylaw.com

Petitioner submitted Application No. 2019-119C in response to RFA 2018-112 (“the RFA”) for competitive housing credits to assist in the construction of a 113-unit development located in Broward County, Florida, known as Poinciana Crossing (the “Development”).<sup>1</sup>

### **Type of Variance**

The variance being sought is permanent in nature.

### **Rule For Which a Variance Is Requested**

Rule 67-48.023(2) provides:

(2) Each Housing Credit Development shall comply with the minimum Housing Credit Set-Aside provisions, as specified in Section 42(g)(1) of the IRC. Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside committed to by the Applicant in the Application.

When Poinciana Crossing submitted its Application in response to the RFA, it sought to use income averaging to satisfy its Housing Credit Set-Aside commitments. Such income averaging is permitted by the Internal Revenue Code. Poinciana Crossing now proposes to change its set-aside commitment so that more lower-income residents can be served by the proposed Development. By replacing all 80% of AMI units at Poinciana Crossing with 60% of AMI units, Poinciana Crossing will further the mission of its partner, the Housing Authority of the City of

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<sup>1</sup> The following information regarding the Development is provided to facilitate staff’s preparation of background material for the Florida Housing Board of Directors (“Board”):

- Development Name: Poinciana Crossing
- Developer, including at least one natural person Principal: APC Poinciana Crossing Development, LLC; HEF Development LLC; Howard D. Cohen
- County of Development: Broward
- Number of Units: 113
- Type: High Rise
- Set Asides: 18 at 30% AMI; 60 at 60% AMI; 27 at 80% AMI; 8 market rate
- Demographics: Family
- Funding Amounts: \$ 2,882,000 in 9% HC

Fort Lauderdale, to provide high quality housing at the most affordable levels to Fort Lauderdale's citizens. Because rule 67-48.023(2) requires Applicants to adhere to the Housing Credit Set-Aside commitments in their Applications, Poinciana Crossing needs a variance from the rule in order to change its Set-Aside commitments.

### **Statutes Implemented by the Rule**

The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"), section 420.5099, Florida Statutes, which relates to the allocation of Low-Income Housing Tax Credits.

### **Justification for Granting Variance From the Rule(s)**

Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

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. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Granting the requested variance in this instance would allow Petitioner to modify its Set-Aside commitment while still complying with the Internal Revenue Code. The controlling statutes and Florida Housing's rules are designed to allow the flexibility necessary to provide relief when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results.

For Poinciana Crossing, HEF Development, LLC (a co-developer) and HEF Poinciana Crossing, Inc (the co-general partner) are both affiliates of the Housing Authority of the City of Fort Lauderdale. The Housing Authority has as a part of its mission to provide the most affordable and high-quality affordable housing possible to the residents of Fort Lauderdale. Poinciana Crossing, in its original Application, sought to use income averaging to comply with the set-aside requirements in the RFA. Poinciana Crossing would now prefer to use percentages of AMI in order to make more affordable units available. If this variance is granted, Poinciana Crossing would be able to provide more deeply affordable housing to the citizens of Fort Lauderdale by moving 27 units from the 80% of AMI band to 60% of AMI or below. Also, the AMI level for 12 (10.6% of the total units) Extremely-Low Income units will be reduced from 30% of AMI to 28% AMI or below. A comparison of the unit mix from the original Application to the mix in the proposed variance request is shown in the chart below:

<b>Unit Mix</b>	<b>Poinciana Crossing Application</b>	<b>Poinciana Crossing Petition</b>
1BR 30%	9	6 *
1BR 60%	30	46
1BR 80%	14	0
1BR Market	4	4
2BR 30%	9	6 *
2BR 60%	30	47
2BR 80%	13	0
2BR Market	4	4
<b>Total</b>	<b>113</b>	<b>113</b>

\*28% AMI

By granting this variance, Florida Housing would recognize the goal of increasing the supply of affordable housing and recognize the integral mission and principles of fundamental fairness in providing and developing affordable rental housing. The purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§ 420.5099, Fla. Stat.), would be more greatly achieved if the variance is granted.

In this instance, Florida Housing has jurisdiction to grant a variance from the Rule, and Petitioner meets the standards for a variance from the Rule.

**Action Requested**

WHEREFORE, Petitioner respectfully requests that Florida Housing:

Grant this Petition and all relief requested therein;

Grant a variance from Rule 67-48.023(2) and allow for calculation of the minimum set aside percentage at 40% of units at 60% of AMI; and

Grant such further relief as may be deemed appropriate

Respectfully submitted this 3rd day of August, 2020.

*/s/ Brittany Adams Long*  
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Secondary: [lmcelroy@radeylaw.com](mailto:lmcelroy@radeylaw.com)  
Counsel for Poinciana Crossing, Ltd.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,  
Attn: Corporation Clerk  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301  
[CorporationClerk@floridahousing.org](mailto:CorporationClerk@floridahousing.org),

Joint Administrative Procedures Committee  
680 Pepper Building  
111 W. Madison Street  
Tallahassee, Florida 32399  
[Joint.admin.procedures@leg.state.fl.us](mailto:Joint.admin.procedures@leg.state.fl.us)

this 3rd day of August, 2020.

/s/ Brittany Adams Long  
Brittany Adams Long