

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: Poinciana Crossing, Ltd.

FHFC CASE NO. 2020-049VW
Application No. 2019-119C
RFA No. 2018-112

**PETITION FOR WAIVER OF RULE 67-48.0072(17)(i),
FLORIDA ADMINISTRATIVE CODE**

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner Poinciana Crossing, Ltd. (Poinciana Crossing) submits this Petition to Respondent Florida Housing Finance Corporation (Florida Housing) for a waiver of rule 67-48.0072(17)(i), Florida Administrative Code. Poinciana Crossing submitted an application (No. 2019-119C) for Housing Credits (also known as tax credits) in response to Request for Applications 2018-112 (RFA). Poinciana Crossing seeks a waiver of rule 67-48.0072(17)(i) so that a subcontractor affiliated with Poinciana Crossing's Developer – Step-Up Apprentice Program (Step-Up) – may serve as the cabinet manufacturer and installer on the proposed Development. In support of this Petition, Poinciana Crossing states:

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is Poinciana Crossing, Ltd., 161 NW 6th Street, Suite 1020, Miami, FL 33136; 305-357-4725; lwong@apccommunities.com. For purposes of this proceeding, the contact information for Poinciana Crossing shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is: Brittany Adams Long, Radey Law Firm, 301 South Bronough Street, Suite 200, Tallahassee,

Florida 32301; 850-425-6654; balong@radeylaw.com.

B. BACKGROUND¹

3. Poinciana Crossing submitted an application in response to the RFA. Poinciana Crossing proposed to use equity raised from the Housing Credits to build a 113-unit, high-rise development in Broward County (City of Fort Lauderdale) called Poinciana Crossing to serve the family demographic.

4. On February 1, 2019, Florida Housing's Board of Directors preliminarily selected Poinciana Crossing for funding. Poinciana Crossing was subsequently invited to enter credit underwriting and submitted a signed acknowledgement accepting the invitation on March 14, 2019.

5. One of the developers of Poinciana Crossing (HEF Development LLC), its sole member Housing Enterprises of Florida, Inc. (HEF Development), and the General Contractor Suncrest Court GC, LLC, are affiliated with the Housing Authority of the City of Fort Lauderdale (HACFL). HACFL operates a state-certified Step-Up Apprenticeship Program that handles the facilities maintenance for HACFL's housing portfolio and operates as the cabinet manufacturing

¹ The following background information regarding Poinciana Crossing is provided to facilitate staff's preparation of a memorandum to 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 at market rate
- Demographics: Family
- Funding Amounts: \$2,882,000 in 9% Housing Credits

and installation subcontractor for HACFL's new developments. Step-Up has been operated by HACFL since 1994. Its 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; low-income individuals; and at-risk young adults, including high school dropouts, those lacking employable job skills, and/or the previously incarcerated. During the two-year state certified program, apprentices are trained in construction skills with a specialty in housing rehabilitation and building maintenance for occupations in the public and private sectors. All apprentices are required to obtain their GED while in the program. By the end of this year 93 apprentices will have graduated from the program.

6. Rule 67-48.0072(17)(i), Florida Administrative Code, prohibits construction costs from being subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. Application of this rule would prohibit Poinciana Crossing from using Step-Up as the cabinet manufacturing and installation subcontractor for Poinciana Crossing.

7. This prohibition last year was contained in 67-48.0072(17)(h). HEF Development was the developer for a development of Sailboat Bend II, Ltd. (Sailboat II) and Sailboat II worked with the staff of Florida Housing to determine that Step-Up could be used as a subcontractor, despite rule 67-48.0072(17)(h). Staff asked Sailboat II to solicit bids from other subcontractors, which Sailboat II did. Three bids were received for the fabrication, delivery, and installation of kitchen cabinetry and bathroom vanities at Sailboat II. Treston USA bid \$385,500; Distinctive bid \$410,298; and Step-Up bid \$466,399.45. Although Step-Up was not the low bidder, Step-Up agreed to match the bid of Distinctive, the next lowest bidder. Additionally, the General Contractor agreed not to charge a general contractor fee on the scope of work that would be performed by

Step-Up.

8. The Florida Housing Board granted a waiver of rule 67-48.0072(17)(h) for Sailboat II on August 2, 2019.

9. For Poinciana Crossing, three bids were also received. Distinctive bid \$470,245; Step-Up bid \$470,009; and Italian bid \$438,013. Republic provided a bid which has not been included because Republic only provided pricing for a different cabinet height (at 42”), rather than the cabinet height preferred by Ownership (at 30”). As in the case of Sailboat II, the General Contractor has again agreed not to charge a general contractor fee on the scope of work that would be performed by Step-Up.

10. Poinciana Crossing’s Petition for waiver seeks the same relief for the same reasons as in the Sailboat II petition.

11. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

12. Rule 67-48.0072(17)(i) provides:

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

.....

(i) 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.’”

D. STATUTES IMPLEMENTED BY THE RULE

13. Rule 67-48.0072(17)(i) implements section 420.5087 (State Apartment Incentive Loan Program), section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund), and section 420.5099 (Allocation of the low-income housing tax

credit program). All of these programs are part of the Florida Housing Finance Corporation Act, found at sections 420.501-420.517, Florida Statutes. One of the purposes of the Act is “to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families.” § 420.502(8), Fla. Stat.

E. JUSTIFICATION FOR REQUESTED WAIVER

14. Section 120.542(1), Florida Statutes, provides that “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” That procedure requires those seeking a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

15. Strict adherence to rule 67-48.0072(17)(i) would prevent Poinciana Crossing from using Step-Up, an established subcontractor that has installed more than 1,000 kitchen and bathroom cabinets in new affordable housing developments in Broward County since 2011. Step-Up has demonstrated that it is competitive in its pricing while also providing on-the-job training and a classroom curriculum to its apprentices. Principles of fairness would be violated if Poinciana Crossing is prevented from taking advantage of this successful program that provides value not only to HACFL’s affordable housing portfolio, but to the community at large. Moreover, not granting the waiver would be unfair because Poinciana Crossing has agreed that the General Contractor will not charge a general contractor fee on the scope of work that would be performed

by Step-Up and because Florida Housing has granted a similar waiver to Sailboat II.

16. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2018-112, or Florida Housing.

17. The statutes underlying the rule will be served by the approval of Poinciana Crossing's waiver request. Section 420.502(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income" One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting the waiver request will not only further these goals, but will assist those in the Step-Up program who are furthering their education and receiving valuable training that likely will lead to future employment.

F. ACTION REQUESTED

18. For the reasons expressed, Poinciana Crossing respectfully requests that the Florida Housing Board of Directors grant the requested waiver of rule 67-48.0072(17)(i).

Respectfully submitted,

/s/ Brittany Adams Long
Brittany Adams Long, FBN 504556
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Tallahassee, Florida 32301
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Secondary: 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,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

this 3rd day of August, 2020.

/s/ Brittany Adams Long
Brittany Adams Long