

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2017-061VW

AZURE ESTATES FL TC, LP, and
JERNIGAN GARDENS FL TC, LP,

Petitioners

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) and 67-21.003(8)(l) F.A.C.

AZURE ESTATES FL TC, LP, a Florida limited partnership, and JERNIGAN GARDENS FL TC, LP, a Florida limited partnership, (collectively, "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rules 67-21.003(1)(b) and 67-21.003(8)(l), Florida Administrative Code (2017). This Petition is filed pursuant to Section 120.542, Florida Statutes (2016), and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

c/o Millennia Housing Development Ltd.
Attn: Laura R. Anderson
4000 Key Tower, 127 Public Square
Cleveland, Ohio 44114-1309
Telephone: (216) 520-1250
Facsimile: (216)447-9646
Email: landerson@mhmltd.com

2. The address, telephone number and facsimile number of Petitioner's counsel is:

David F. Leon, L.L.C.
Broad and Cassel LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: dleon@broadandcassel.com

3. Petitioner intends to finance the acquisition and rehabilitation of two (2) apartment complexes currently known as Stonybrook Apartments in Riviera Beach, Florida and Windsor Cove Apartments in Orlando, Florida (collectively, the “Properties”) through a single tax-exempt bond issuance by the Corporation along with 4% HC. Petitioner will submit an application for Multifamily Mortgage Revenue Bonds for each Property; however, prior to submitting the two (2) applications, Petitioner requests a waiver of one \$3,000 application fee as more fully described below.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-21.003(1)(b) and (8)(l), Fla. Admin. Code (the “Rule”), which provides:

67-21.003 – Application and Selection Process for Developments.

(1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

(b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in Rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. **The Non-Competitive Application Package or NCA (Rev. 08-2016)**

is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-07356>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

* * *

(8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:

* * *

(1) Payment of the required Application fee and, if applicable, the TEFRA fee at submission of the Application;

Emphasis supplied.

C. STATUTES IMPLEMENTED BY THE RULES

5. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* §§ 420.509, 420.5099, *Fla. Stat.*

6. The pertinent statute regarding granting of waivers provides: "[W]aivers shall be granted ... when application of a rule would create a substantial hardship or would violate principles of fairness." Section 120.542(2), *Fla. Stat.* "Substantial Hardship" is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. *See* §120.542(2), *Fla. Stat.*

D. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

7. Rule 67-21.003(1)(b), Fla. Admin. Code, adopts and incorporates by reference the Non-Competitive Application Package, which Petitioner must use to apply for Multifamily Mortgage Revenue Bonds and 4% HC (“Application”). Part C of the Non-Competitive Application Instructions requires each applicant to “submit to the Corporation as part of the Application submission a non-refundable Application fee of \$3,000.” Further, Rule 67-21.003(8)(l) provides, in pertinent part, that “payment of the required Application fee” must be included in the Application. Accordingly, Petitioner is seeking a waiver of Rule 67-21.003(1)(b) and (8)(l), which would allow Petitioner to submit a single application fee for the Properties.

8. While Petitioner will submit a separate application for each Property, the financing structure will consist of a single tax-exempt bond issuance covering both Properties. A single bond issuance will result in a more efficient closing and development process as the Properties will be acquired and rehabilitated simultaneously. The strict application of the Rule would require Petitioner to pay two applications fee for a total of \$6,000. However, given that the Properties will be financed with one bond issuance, the application fees should be calculated as if it were one development. Submitting multiple application fees creates a substantial hardship for the developer.

9. Moreover, the savings could be allocated towards much-needed improvements at the Properties. The bond issuance will allow Petitioner to rehabilitate the Properties, improving living conditions in 472 units. The more resources allotted to the rehabilitation efforts on the Properties, the closer the Corporation is to fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

10. Petitioner believes that a waiver of this Rule will serve the purposes of Section 420.5099 and the Act that are implemented by Chapter 67-21 of the Florida Administrative Code,

because one of the goals of the Corporation is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, *et seq.*) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing. By granting this waiver, the Corporation would recognize the goal of preserving affordable housing through rehabilitation of existing developments.

10. The requested waiver will not adversely impact the Properties or the Corporation.

E. TYPE OF WAIVER

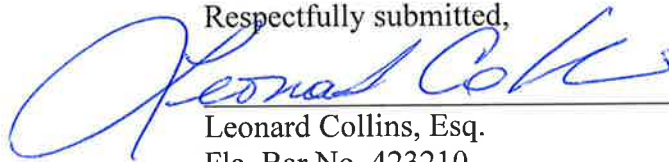
11. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

12. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of one \$3,000 application fee; (ii) grant the Petition and all the relief requested herein, and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted this 18th day of August, 2017.

Respectfully submitted,



Leonard Collins, Esq.
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David F. Leon, L.L.C.
Fla. Bar No. 53929
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this

18th day of August, 2017.

By: 
Leonard Collins, Esq.
Fla. Bar No. 423210