

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2018-045VW  
APPLICATION NO.:** \_\_\_\_\_

MELBOURNE LEASED HOUSING  
ASSOCIATES II, LLLP.

Petitioner

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

\_\_\_\_\_ /

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**18 MAY 22 PM 12:08**  
FLORIDA HOUSING  
FINANCE CORPORATION

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

MELBOURNE LEASED HOUSING ASSOCIATES II, LLLP, a Florida limited liability limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the “Corporation”) for a waiver of the requirement that 15% of equity be paid in at the closing of the construction financing per the Non-Competitive Application Package (Rev. 08-2016) (the “NCA”) adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2017). This Petition is filed pursuant to Section 120.542, Florida Statutes (2017), 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 are:

Melbourne Leased Housing Associates II, LLLP  
2905 Northwest Boulevard, Suite 150  
Plymouth, Minnesota 55441

Attention: Mark G. Sween  
Phone: (763) 354-5634  
Email: [mween@Dominiuminc.com](mailto:mween@Dominiuminc.com)

2. The address and telephone number of Petitioner's counsel are:

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](mailto:dleon@broadandcassel.com)

3. On June 8, 2017, Petitioner submitted a Multifamily Revenue Bond Program Application to Brevard County Housing Finance Authority requesting in \$13,202,000 tax exempt bonds (the "County Bonds"). On June 12, 2017, Petitioner applied to the Corporation for Non-Competitive Housing Credits requesting an annual amount of \$733,639 in 4% low-income housing tax credits ("Housing Credits") to assist in financing the rehabilitation of an 127-unit development known as Crane Creek Apartments (the "Development"). On December 27, 2017, Petitioner closed on the County Bonds financing and housing tax credit syndication and is in the process of completing the rehabilitation of the Development.

**B. THE RULE FROM WHICH WAIVER IS SOUGHT**

4. Petitioner requests a waiver of the NCA, adopted and incorporated by reference by the Rule. The Rule provides:

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.

See Rule 67-21.003(1)(b), F.A.C. (emphasis added).

5. The NCA provides, in pertinent part:

7. Applicant Certification:

By completing, executing and submitting this Application form and all applicable exhibits, the Applicant certifies and acknowledges that:

\*\*\*\*

j. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (the 15 percent criteria), subject to the following:

\*\*\*\*

See Non-Competitive Application Form (Rev. 08-2016), p. 14 (the “15% Criteria”).

#### **C. STATUTES IMPLEMENTED BY THE RULES**

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that designated the Corporation as the housing credit agency and created the Housing Tax Credit Program. See § 420.5099, *Fla. Stat.*

#### **D. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

7. Petitioner hereby requests a waiver of the 15% Criteria for the reasons set forth below.

8. The NCA for the housing credits requires that an applicant pay “at least 15 percent of the total proposed equity to be provided” at the time of the construction closing. During credit underwriting for the County Bonds, First Housing Development Corporation of Florida (“First Housing”) determined, based on a letter of intent from the equity provider, that the total proposed equity amount was \$5,126,274. As such, Petitioner believed it was required to have an equity

contribution in the amount of \$768,942 paid at closing. The closing occurred on December 27, 2017, and the equity investor made a capital contribution in the amount of \$768,942, meeting the requirements in the Credit Underwriting Report (the "CUR").

9. At this time, Petitioner is in the underwriting process for the housing credits, and due to a difference in methodology calculating the total proposed equity, the total equity amount in the partnership agreement is \$5,805,238, which is \$678,964 higher than the equity amount in the CUR for the County Bonds. This discrepancy is due to the equity investor using a higher assumed purchase price for the building than the credit underwriter used in the CUR for the County Bonds. In connection with the housing credit application, the Corporation is using the equity amount in the partnership agreement and the \$768,942 paid at construction closing to determine whether the 15% requirement in the NCA has been met. Based on the higher total equity amount, the portion of the equity contributed at construction closing is only 13.25% and not the 15% required by the NCA.

10. Notwithstanding the different estimations of the total equity amount in the County Bonds underwriting and the partnership agreement, Petitioner met the required 15% Criteria outlined in the CUR. Given the unique circumstances in this deal, Petitioner did not lower the equity amount to match the CUR as it would have been difficult to obtain an upward adjuster in the future in the event Petitioner is able to obtain additional credits.

11. Petitioner will endure substantial hardship if this waiver request is denied as it would not be able to obtain the tax credits and therefore lose substantial portion of its financing. Without the equity financing the acquisition and rehabilitation of the Development would not be completed. Moreover, a denial of this waiver would violate the principles of fairness because Petitioner met the equity contribution requirements required under the CUR.

12. Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship<sup>1</sup> *or* violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat. As demonstrated in this Petition, the strict application of the Rule would constitute a substantial hardship and violate the principles of fairness. Further, 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. Lastly, the requested waiver will not adversely impact the Development or the Corporation.

#### **E. TYPE OF WAIVER**

13. The waiver being sought is permanent in nature.

#### **F. ACTION REQUESTED**

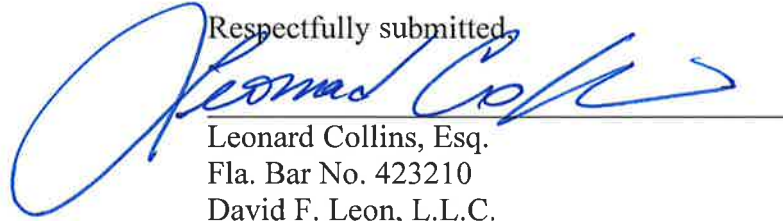
14. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of Rule 67-21.003(1)(b), Fla. Admin. Code, waiving the requirement that 15% of the equity be paid at construction closing; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

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<sup>1</sup> “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, “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. *See* Fla. Stat. § 120.542(2)

Respectfully submitted this 22<sup>nd</sup> day of May, 2018.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Leonard Collins", written over a horizontal line.

Leonard Collins, Esq.

Fla. Bar No. 423210

David F. Leon, L.L.C.

Fla. Bar No. 53929

Broad and Cassel LLP

390 N. Orange Ave., Suite 1400

Orlando, Florida 32801

Telephone: (407) 839-4200

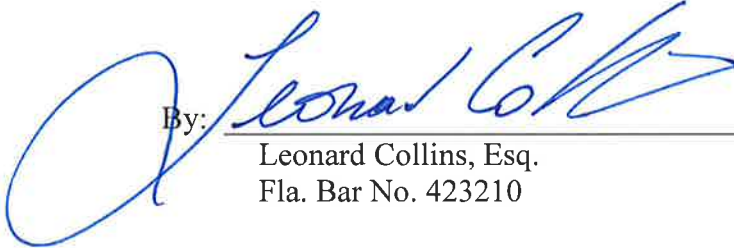
Facsimile: (407) 425-8377

Email: [dleon@broadandcassel.com](mailto:dleon@broadandcassel.com)

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 overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 22<sup>nd</sup> day of May, 2018.

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