

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2015-001VW
APPLICATION NO. 2014-327S

MARIANNA GARDENS PRESERVATION, L.P.,

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-21.003(1)(a), FOR A CHANGE IN
OWNERSHIP STRUCTURE**

MARIANNA GARDENS PRESERVATION, L.P., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver of the Corporation's prohibition of a material change in the ownership structure of the named Applicant prior to loan closing. *See* Rule 67-21.003(1)(a), F.A.C. (2013), which adopts and incorporates the Non-Competitive Application Package (Rev. 3-13). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Marianna Gardens Preservation, L.P.
c/o Royal American Development, Inc.
1002 West 23rd Street, Suite 400
Panama City, FL 32405
Attn: Kimberly Murphy
Telephone: (850) 914-3226
Facsimile: (850) 769-1294
Email: kim.murphy@royalamerican.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

Hollie A. Croft, P.A.
Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, FL 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: hcroft@broadandcassel.com

3. The Petitioner submitted its Non-Competitive Application for the development named "Marianna Gardens", an acquisition/rehabilitation of a previously-constructed 100-unit development intended to serve low-income families living in Jackson County, Florida (the "Development").

4. The Petitioner also submitted an application to RFA 2014-103 – Financing of Affordable Multifamily Housing Developments with SAIL Funding to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "Competitive Application"), and was awarded SAIL Funds.

THE RULES FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-21.003(1)(a), F.A.C. (2013) which adopts and incorporates the Non-Competitive Application Package (Rev. 3-13) (the "Rule"). Specifically, Petitioner is seeking a waiver from Section A.2.a.(2) of the Non-Competitive

Application Package, which prohibits a material change in the ownership structure of the Petitioner prior to loan closing.

6. Rule 67-21.003(1)(a), F.A.C. (2013) provides, in relevant part:

(a) The Non-Competitive Application Package or NCA (Rev. 3-13) is adopted and incorporated herein by reference and consists of the forms and instructions available . . . which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the MMRB only, Non-Competitive HC only, or both MMRB and Non-Competitive HC.

7. Section A.2.a.(2) of the Non-Competitive Application Package provides, in relevant part:

(2) If applying for MMRB, with or without Non-Competitive HC, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3 percent or more of the Applicant, a general partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

STATUTES IMPLEMENTED BY THE RULE

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See Sections 420.509, 420.5099, F.S. (the “Statute”).

9. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING
REASONS

10. Petitioner requests a waiver from Rule 67-21.003(1)(a) prohibiting Petitioner from making a material change in its ownership structure prior to loan closing. Petitioner seeks to replace a general partner with a special purpose entity that is an affiliate of the general partner identified on the Non-Competitive Application, in order to meet the requirements of the bond purchaser.

11. At the time that Petitioner submitted its Non-Competitive Application, the general partners of Petitioner were special purpose entity Marianna Gardens Preservation 1, LLC and Royal American Development, Inc. ("RAD"). RAD seeks to transfer its general partner interest in the Petitioner to a new special purpose entity, RA Marianna Gardens, LLC, a Florida limited liability company, the members of which are RAD, and JBC of Panama City, Inc., a Florida corporation. Both RAD and RA Marianna Gardens, LLC are ultimately controlled by the same person or entity. Changes to the ownership structure of this general partner of the Petitioner are necessary to meet the requirements of the bond purchaser.

12. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. Unless the Rule is waived to allow the changes as outlined above, certain unreasonable, unfair and unintended consequences will occur, resulting in a substantial hardship to the Petitioner and the Development. Specifically, the purpose of the Rule was to prevent "flipping" applications to third party owners/developers once funds have been awarded. Strict application of the Rule will not fulfill this purpose, but instead lead to the unintended consequence of preventing internal structuring changes within the originally contemplated development. This will result in a substantial

hardship to Petitioner, as the change in ownership structure is merely a change in form and not a change in control and a requirement of the bond purchaser. The Corporation will not be harmed in the granting of this Petition, as the intent of the Rule will not be violated. The Rule was implemented to prevent third parties from entering the transaction after the application process. No third parties are entering the transaction; only internal restructuring will occur.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

13. Petitioner believes that a waiver of the Rule will serve the purpose of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, *et seq.*) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to change its ownership structure, as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

14. The waiver being sought is permanent in nature.

ACTION REQUESTED

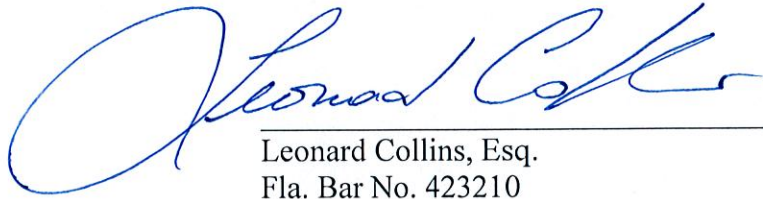
15. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver from Rule 67-21.003(1)(a), F.A.C. (2013).

WHEREFORE, Petitioner respectfully requests the following:

A. Grant the Petition and all relief requested herein;

- B. Waive Rule 67-21.003(1)(a), Florida Administrative Code (2013), which adopts and incorporates the Non-Competitive Application Package (Rev. 3-13), allowing Petitioner to change its ownership structure; and
- C. Grant such further relief as may be deemed appropriate.

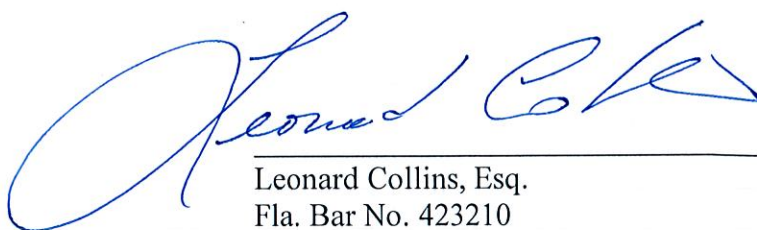
Respectfully submitted,



Leonard Collins, Esq.
Fla. Bar No. 423210
Hollie A. Croft, Esq.
Fla. Bar No. 886181
BROAD AND CASSEL
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: hcroft@broadandcassel.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The Petition is being served by hand-delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 Bronough Street, Suite 5000, Tallahassee, FL 32301, with copies served by hand-delivery to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 3299-1400, this 14th day of January, 2015.

A handwritten signature in blue ink, appearing to read "Leonard Collins", is written over a horizontal line. The signature is stylized and cursive.

Leonard Collins, Esq.
Fla. Bar No. 423210