

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2019-037VW
APPLICATION NO. _____

VERO BEACH LEASED HOUSING
ASSOCIATES III, LLLP,

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.003(1)(b)

VERO BEACH LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability 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 change in the ownership structure of the named Applicant prior to the Preliminary Determination being issued. Rule 67-21.003(1)(b), F.A.C. (2018), adopts and incorporates the Non-Competitive Application Package (Rev. 05-2018). This Petition is filed pursuant to Section 120.542 of the Florida Statutes and Chapter 28-104 of the Florida Administrative Code. In support of its petition, the Petitioner states:

A. PETITIONER AND DEVELOPMENT

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

Vero Beach Leased Housing Associates III, LLLP
2905 Northwest Boulevard, Suite 150
Plymouth, Minnesota 55441
Attn: Mark Sween
Telephone: (763) 354-5559
Email: mwsween@Dominiuminc.com

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

David F. Leon, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: david.leon@nelsonmullins.com

3. On August 8, 2018, the Petitioner submitted a Non-Competitive Application for the development named "Taylor Pointe Apartments", an acquisition/rehabilitation of a previously-constructed 168-unit development intended to serve low-income families living in Indian River County, Florida (the "Development").

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.003(1)(b), F.A.C. (2018) which adopts and incorporates the Non-Competitive Application Package (Rev. 05-2018) (the "Rule"). Specifically, Petitioner is seeking a waiver from Section A.5.b.(1) of the Non-Competitive Application Package, which prohibits a change (material or non-material) in the ownership structure of the Petitioner prior to the Preliminary Determination (defined in the Non-Competitive Application) being issued.

6. Rule 67-21.003(1)(b), F.A.C. (2018) provides, in relevant part:

(b) ... **The Non-Competitive Application Package or NCA (Rev. 05-2018) 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-09576>, which shall be completed and submitted to the Corporation in accordance with this rule chapter. (emphasis added)

7. Section A.5.b.(1) of the Non-Competitive Application Package provides, in relevant part:

For purposes of (1) and (2) below, a material change shall mean 33.3 percent or more of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant, and a non-material change shall mean less than 33.3 percent of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant.

- (1) The Applicant entity shall be the recipient of the Housing Credits and cannot be changed in any way (materially or non-materially) until after the Preliminary Determination is issued.

D. 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* §§ 420.509, 420.5099, *Fla. Stat.* (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. § 120.542(2), *Fla. Stat.*

E. JUSTIFICATION FOR GRANTING THE WAIVER OF THE RULE

10. Petitioner requests a waiver of the Rule prohibiting Petitioner from making any changes in its ownership structure prior to the Preliminary Determination being issued. The Preliminary Determination for 4% housing credits is issued upon completion of a satisfactory credit underwriting report update in transactions where an underwriter under contract with the Corporation is performing the credit underwriting on the bonds, as is the case in this transaction. The Petitioner applied for multifamily housing revenue bonds from Escambia County Housing Finance Authority (“Local HFA Bonds”) and is currently in the underwriting process with Seltzer Management Group Inc. (“Seltzer”) for the Local HFA Bonds. Accordingly, in this instance, the Preliminary Determination letter is not anticipated to be issued until after the closing on the Local HFA Bonds, which is currently scheduled to close on or about June 2019.

11. At the time that Petitioner submitted its Non-Competitive Application, the members of the general partner and class b limited partner of Petitioner were as follows:

<u>Members of General Partner</u>	<u>Members of Class B Limited Partner</u>
Paul R. Sween - 75%	The Paul R. Sween South Dakota Trust U/A/D September 30, 2016 - 75%
Mark G. Sween – 20%	Mark G. Sween – 20%
Dominium SVP Plan (PS), LLC – 5%	Dominium SVP Plan (PS), LLC – 5%

12. The members of the general partner wish to reassign their percentage interest in the general partner and the members of the class b limited partner wish to reassign their percentage interest in the class b limited partner of Petitioner amongst themselves due to a corporate restructuring within the parent company of Petitioner, as reflected below. Specifically, Paul R. Sween, individually, and through his trust, as applicable, would assign 10% of his interest in the general partner and the class b limited partner to Mark G. Sween. This change

would only affect the percentage interests of the current members and would not add any new principals to the ownership structure of Petitioner.

Members of General Partner	Members of Class B Limited Partner
Paul R. Sween – 65%	The Paul R. Sween South Dakota Trust U/A/D September 30, 2016 - 65%
Mark G. Sween – 30%	Mark G. Sween – 30%
Dominium SVP Plan (PS), LLC – 5%	Dominium SVP Plan (PS), LLC – 5%

13. The strict application of the prohibition in Section A.5.b.(1) of the Non-Competitive Application Package would result in Petitioner having to close on the Local HFA Bonds and other financing, including a Federal Home Loan Mortgage Corporation (“Freddie Mac”) loan, with the incorrect ownership structure. If Petitioner closes with the incorrect structure and has to later obtain the consent from other parties, including Freddie Mac, to change the ownership percentages, Petitioner may incur transfer related fees and expenses. Moreover, the increase of Mark G. Sween’s interest above the 25% threshold triggers new underwriting by Freddie Mac that would have to be done after the Freddie Mac loan closing. However, if Petitioner is permitted to change the ownership percentages now, it can close all of its financing with the correct structure and avoid unnecessary fees and delays caused by new underwriting later.

14. In this instance, Petitioner meets the standards for a waiver of the Rule. 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 small change to the ownership percentages of the current members of the general partner and class b limited partner and not a change in control of Petitioner or even the actual members of the general partner and class b limited partner. The Corporation will not be harmed by granting 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.

15. The requested waiver of the Rule serves the purpose of the Statute that 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.

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F. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of the prohibition from making changes to Petitioner's ownership structure until after the Preliminary Determination is issued; (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The Petition is being served by overnight 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 overnight delivery to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida ~~3299~~³²³⁰¹ 1400, this 10th day of April, 2019.



Yisell Rodriguez, Esq.
Fla. Bar No. 117915