

# MELBOURNE LEASED HOUSING ASSOCIATES II, LLLP

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2001 West Blue Herron Blvd., Riviera Beach, Florida 33404

June 19, 2018

**VIA EMAIL [ABBOTT@BREVARDHFA.ORG](mailto:ABBOTT@BREVARDHFA.ORG)**

Angela A. Abbott, Esq.  
Housing Finance Authority of Manatee County  
435 12<sup>th</sup> Street West, Suite 117  
Bradenton, FL 34205

Re: Tax Credits Crane Creek Apartments

Dear Angela:

Melbourne Leased Housing Associates II, LLLP (“Dominium”), purchased and rehabilitated an existing tax credit property in Brevard County in the last year, now collectively known as Crane Creek Apartments (the “Property”). The acquisition and rehabilitation of the Property was partially financed through the issuance of tax-exempt obligations by Angela’s client, the Brevard County Housing Finance Authority (“BCHFA”). In connection with that tax-exempt financing, Dominium entered into a Land Use Restriction Agreement (the “LURA”) with the BCHFA, which, among other things, requires that all but 12 units at the Property be occupied by “Low-Income Tenants”.

The Property was a prior tax-credit project (formerly Crane Creek Apartments). Accordingly, at the time of closing, all but 12 units in the Property were occupied by tenants that, at the time of their initial occupancy, were “Low-Income Tenants” (i.e., their income did not exceed 60% of the applicable Area Median Gross Income (“AMI”). The low-income housing tax-credit program and tax-exempt bond programs generally permit over-income tenants to remain in their units if they subsequently become “over-income” after their initial occupancy as long as the “next available unit rule” is met.

The Compliance Monitoring Agent on this transaction, First Housing, has raised three compliance issues with regard to the LURA. The first issue is whether families whose income exceeded the 60% AMI threshold at the bond closing need to leave the Property, even though they originally met the 60% AMI threshold when they first moved in. A second issue raised is whether the income certifications previously submitted by Dominium to Compliance Monitoring Agent satisfy the LURA requirements. The last issue raised is what reporting period may be used for the property (e.g. does the property need to generate reports from the 21<sup>st</sup> day of a month through the 20<sup>th</sup> day of the following month, while the Florida Housing Finance Corporation (“FHFC”) reports generally run from the 1<sup>st</sup> of each month through the end of the month, with a report being due on the 10<sup>th</sup> of a month).

For the first issue, as we previously discussed, there may have been some confusion between what the federal tax code requires and what the LURA provides. In short, for the acquisition of existing property with exempt bonds, the tax code simply requires income recertification for the minimum number of units necessary to meet the set-aside elected for the bonds to be tax exempt (e.g. 20% @ 50% or 40% @ 60%). The fact an issuer may wish for more of the units to be set-aside does not increase or change the burden under the tax code for qualifying the bonds as tax-exempt. In our case, as long as at least 40% of the units at the time of the issuance of the bonds were occupied by tenants earning 60% or less of the AMI, there is no tax issue with the bonds. That test has been easily met on this property as substantially all of the tenants at bond issuance earned less than 60% AMI. The remaining few families earned 60% or less at initial move in (recall this is an old tax credit property) but have since gone over income. It appears the LURA, as drafted, should allow these families to stay since they qualified at their initial occupancy, but the misapplication of the bond rules to all of the units is creating some confusion here. On this issue, Dominion's concern is needing to displace 26 families when that is not necessary to preserve the tax-exemption on the bonds. Of course, as those families move on, the units will again be rented to low-income families. Accordingly, we simply request the Authority to clarify its intent for allowing the existing families to stay as long as once they vacate the unit; such unit is then rented to a low-income tenant.

The second issue appears to be related to whether or not the income certification form needs to be clearly denoted as an "initial certification" given the circumstances and whether a certification for existing tenants needs to be executed within a certain number of days moving in. While section 42 has some language regarding retroactive certifications for the LIHTC program and the "next available unit rule", that language is not necessarily relevant for tax-exempt bond transactions. Unless the Issuer has some preference on this issue, we would respectfully request the tenant certifications already submitted by Dominion be acceptable so long as they contain the requisite information needed by the Compliance Monitoring Agent to verify whether a family qualifies for occupancy, regardless of whether those certifications are marked as an initial certification, re-certification, or otherwise. In other words, we request that any full recertification performed within the year following bond closing be accepted as an "initial certification," which should immediately resolve any open issues related to the tenant income certifications. Finally, we request once such qualification has been established for a family, going forward, we would like to use the tax credit certification form submitted annually to FHFC for any subsequent years for such family.

The last issue relates to what reporting period must be used. The LURA requires the monthly reporting period to run from the 21<sup>st</sup> of the month through the 20<sup>th</sup> of the following month; however this is different from FHFC which requires reporting for the 1<sup>st</sup> of the month to the end of the month, with the report being due on the 10<sup>th</sup> of the following month. This results in a requirement to generate and submit two reports for each month. We request an alignment of due dates, so that the Bond reporting is adjusted to allow for reporting from the 1<sup>st</sup> of the month to the end, with a report being due the 10<sup>th</sup> of each month in order to match the reporting time frames already being met for FHFC.

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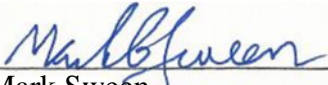
As always, it is Dominion's intent is to comply with all tax credit, issuer, and bond requirements in a way that minimizes disruption to the tenants at the Property (which have already endured an extensive rehabilitation of the Property). In that regard, the HFA's and Dominion's goals are very likely to be aligned with regard to the issues described above. If these two items are acceptable, we respectfully request the authority to issue a clarification to the Compliance Monitoring Agent for same.

Sincerely,

**MELBOURNE LEASED HOUSING  
ASSOCIATES II, LLLP**, a Florida limited liability  
limited partnership

By: The Partnership, Inc., a Florida not-for-profit  
corporation, its General Partner

By:

  
Name: Mark Sween

Title: Manager