

# BRADENTON LEASED HOUSING ASSOCIATES III, LLLP

2710 River Trace Cir., Bradenton, Florida 34208

May 15, 2018

**VIA EMAIL [ABBOTT@MANATEEHFA.ORG](mailto:ABBOTT@MANATEEHFA.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 River Trace Apartments and Manatee Pond Townhomes

Dear Angela:

Bradenton Leased Housing Associates III, LLLP (“Dominium”), purchased and rehabilitated two existing tax credit properties in Manatee County in the last year, now collectively known as River Trace (the “Property”). The acquisition and rehabilitation of the Property was partially financed through the issuance of tax-exempt obligations by your client, the Housing Finance Authority of Manatee County (“HFA”). In connection with that tax-exempt financing, Dominium entered into a Land Use Restriction Agreement (the “LURA”) with the HFA, which, among other things, requires that the Property be 100% occupied by “Low-Income Tenants”.

Each of the two sites comprising the Property was a prior tax-credit project (formerly River Trace Apartments and Manatee Pond Townhomes). Accordingly, at the time of closing, 100% of the 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.

The Compliance Monitoring Agent on this transaction, First Housing, has raised two 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. The second issue raised is whether the income certifications previously submitted by Dominium to Compliance Monitoring Agent satisfy the LURA requirements.

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 100% 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 over 80% of the tenants at bond issuance earned less than 60% AMI. The remaining 26 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.


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.

Angela  
May 15, 2018  
Page 3

Sincerely,

**BRADENTON LEASED HOUSING  
ASSOCIATES III, LLLP**, a Florida limited  
liability limited partnership

By: Bradenton Leased Housing Associates III, LLC,  
a Florida limited liability company, its General  
Partner

By:  \_\_\_\_\_  
Name: Christopher P. Barnes  
Title: Manager