

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2018-009VW

WEST LAKE I, LTD.

Petitioner,

vs.

FHFC APPLICATION: 2016-184BS
REQUEST FOR APPLICATIONS: 2015-112

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c), (26), F.A.C., (OCT. 8, 2014)

Pursuant to Section 120.542, Florida Statutes (“Fla. Stat.”), and Rule 28-104.002, Florida Administrative Code (“F.A.C.”), Petitioner West Lake I, Ltd., a Florida limited partnership, submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a 60-day extension of the invitation closing deadline and firm commitment closing deadline, and a waiver from paying a second extension fee under Rule 67-48.0072(4)(c), (26), F.A.C., effective October 8, 2014 (the “Rule”). In support thereof, Petitioner states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative are:

Matthew Rieger
West Lake I, LTD
3225 Aviation Ave.
Suite 602
Coconut Grove, FL 33133
Tel: 305-537-4704
Fax: N/A
E-mail: MattR@htgf.com

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorney are:

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
bmcdonough@stearnsweaver.com
Tel: (305) 789-3350
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B. THE DEVELOPMENT AND ITS FINANCING

3. Petitioner timely submitted its application in response to the Request for Applications ("RFA") for the development named "West Lake Apartments," which later received an approval to change the development name to "Twin Lakes Estates – Phase I" (the "Development"). *See* Application No. 2016-184BS.

4. Florida Housing issued a preliminary commitment letter and an invitation to enter credit underwriting to Petitioner on March 21, 2016 with a closing deadline of March 21, 2017.

5. Florida Housing's Board (the "Board") approved a request per Rule 67-48.0072(4)(c), F.A.C., to extend this loan closing deadline to March 21, 2018 (the "Loan Closing Deadline") at its December 2016 meeting.

6. Approximately five months later, Florida Housing staff issued a firm commitment letter stating that the loan had to close within 180 days, meaning that – per the Rule – Petitioner had to close by November 6, 2017 or request an extension of up to 90 days.

7. Petitioner's request for a 90-day extension of the firm commitment closing deadline was granted pursuant to the Rule, extending the deadline to February 5, 2018 (the "Firm Commitment Closing Deadline") upon payment of the extension fee (*i.e.*, 0.05% of the loan amount). The extension was granted to allow additional time to close the loan once the

appropriate U.S. Department of Housing and Urban Development (“HUD”) approvals were received.

8. Petitioner paid the extension fee of approximately \$26,000.

9. Petitioner received HUD approval of the proposed disposition on December 21, 2017. Based on the date the Housing Authority of the City of Lakeland submitted the evidentiary support to HUD, HUD’s 45 days to review eliminated the feasibility of meeting the Firm Commitment Closing Deadline (*i.e.*, February 5, 2018). Thus, Petitioner petitioned for, and was granted,¹ a Rule waiver extending the Firm Commitment Closing Deadline to coincide² with the Loan Closing Deadline (*i.e.*, March 21, 2018).

10. Despite proceeding as expeditiously as possible, and though close to the finish line, Petitioner is concerned that there is a small possibility that the closing may not occur by March 21, 2018. In an abundance of caution, Petitioner seeks a waiver to extend both the Firm Commitment Closing deadline and the Loan Closing Deadline by 60 days and to waive the imposition of a second extension fee.

11. If the waiver is not granted: (1) the lack of an extension will prevent Petitioner from being able to close on the loan, preventing Petitioner from being able to complete the Development (and causing Petitioner to lose its more than \$700,000 investment in the Development to date); and (2) the second extension fee would violate principles of fairness and prevent Petitioner from providing affordable housing at the lowest possible cost, as discussed in paragraphs 16 - 21, below.

12. The requested waiver is permanent in nature.

¹ See Order Granting Waiver of Rule 67-48.0072(26), Fla. Admin. Code, FHFC Case No. 2018-002VW (January 26, 2018).

² This difference between the Firm Commitment Closing Deadline (governed by the Rule) and the Loan Closing Deadline (governed by Rule 67-48.0072(4)(c) (2014)) was eliminated by subsequent amendments to the Rule.

C. RULE FROM WHICH WAIVER IS SOUGHT

13. Petitioner requests a waiver from the Rule, which provides:

(4) If the invitation to enter credit underwriting is accepted: . . .

(c) For SAIL, EHCL, and HOME Applicants, **the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months.** All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. **The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board approves the request to extend the commitment beyond the initial 12 month closing deadline.** In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

(26) For SAIL, EHCL, and HOME, these loans and other mortgage loans related to the construction of the Development must close within 120 Calendar Days of the date of the **firm loan commitment(s)**, unless the Development is a Tax-Exempt Bond-Financed Development which then **the closing must occur within 180 Calendar Days** (subject to the closing deadlines established by the invitation to enter credit underwriting). A request for **an extension of the firm loan commitment(s) may be considered by the Board for an extension term of up to 90 Calendar Days** (subject to the closing deadlines established by the invitation to enter credit underwriting). All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term, and any credit underwriting report, if available, prior to determining whether to grant the requested extension. **The Corporation shall charge an extension fee of one-half of one percent of the loan amount if the Board approves the request to extend the commitment beyond the period outlined in this rule chapter.**

See Rule 67-48.0072, F.A.C., effective October 8, 2014 (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

14. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, Sections 420.5087 (State Apartment Incentive Loan Program), 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and 420.5099 (Allocation of the low-income housing tax credit), Fla. Stat.

E. JUSTIFICATION FOR REQUESTED WAIVER

15. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers shall be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship 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.

16. Strict application of the Rule would lead to the unreasonable, unfair and unintended consequence that Petitioner would be unable to close and would thus be unable to complete the Development. This strict application would create a substantial hardship because Petitioner would lose the more than \$700,000 it already invested in the Development.

17. The purpose of the underlying statute will be achieved if the 60-day extension is granted because it will ensure that affordable housing is made available in Polk County.

18. Moreover, strict application of the Rule would violate principles of fairness. The delay necessitating the extension was not caused by Petitioner. Transactions involving HUD are, by their nature, very hard to manage in terms of timing of closing. Petitioner has already incurred an extension fee under the Rule of approximately \$26,000 and should not be required to

pay a second fee due to an extension necessitated by factors outside of its control; especially where payment of the fee would prevent it from providing affordable housing at the lowest cost possible.

19. Due to its short length (*i.e.*, 60 days), the extension will neither prejudice Florida Housing nor the Development.

20. Although Petitioner has previously sought extensions, those extensions have not exceeded the twelve months permitted under the Rule.

21. Denial of the Rule waiver would have a material adverse effect on the Development's viability.

22. If this requested waiver is not granted, Petitioner will suffer a substantial and unnecessary economic and operational hardship in that Petitioner will not be able to close, preventing Petitioner from proceeding with the Development. Denial of the requested waiver would also deny Polk County of this much-needed affordable housing.

23. A waiver of the Rule's requirements would serve the purposes of Sections 420.5087, 420.5089, 420.5099, Fla. Stat., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to households of limited means.

24. Should Florida Housing require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

25. Petitioner requests the following:
- a. That Florida Housing grant Petitioner a permanent waiver from Rule 67-48.0072(4)(c) and (26), F.A.C., effective October 8, 2014, extending the Firm Commitment Closing Deadline by 60 days to May 20, 2018 and waiving the Extension Fee imposed by the Rule.
 - b. That Florida Housing grant the Petition and all the relief requested therein; and
 - c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.

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/s Brian J. McDonough

BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 22nd day of February, 2018.

/s Brian J. McDonough

Brian J. McDonough, Esq.