

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: West Lake I, Ltd.

FHFC CASE NO.: 2018-009VW

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**ORDER GRANTING WAIVER OF RULE 67-48.0072(4)(c)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the “Board”) on March 16, 2018, pursuant to a “Petition for Waiver of Rule 67-48.0072(4)(c), Fla. Admin. Code (Rev. 10-8-14)” (“Petition”).<sup>1</sup> Florida Housing Finance Corporation (“Florida Housing”) received the Petition on February 14, 2018, from Amelia Court at Creative Village Partners, Ltd. (“Petitioner”). Notice of the Petition was published on February 23, 2018, in Volume 44, Number 38, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner was selected to receive an award of competitive housing State Apartment Incentive Loan (“SAIL”) and Extremely Low Income (ELI) Gap

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<sup>1</sup> Despite this caption, Petitioner also requested a waiver of R. 67-48.0072(26), Fla. Admin. Code (Rev. 10-8-14).

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*H. M. S. Ramer* / DATE: 3/16/18

funding to be used in conjunction with Florida Housing-issued MMRB and Non-Competitive Housing Credits under Request for Applications (RFA) 2015-112. These funds are to be used to assist in the construction of a Polk County development serving the elderly population, to be known as “Twin Lakes Estates Phase 1”<sup>2</sup> (the “Development”).

3. Petitioner seeks a waiver of R. 67-48.0072(4)(c), Fla. Admin. Code, which provides:

(c) ... For SAIL and HOME that is in conjunction with Competitive HC, the credit underwriting process and loan closing must be accomplished within the time frames outlined in the competitive solicitation.

4. In its request for relief, Petitioner also requested a waiver of R. 67-48.0072(26), Fla. Admin. Code, which provides:

(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, 32 and any credit

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<sup>2</sup> Previously known as West Lake Apartments.

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.

5. Petitioner was invited into Credit Underwriting on March 21, 2016, and given an initial Loan Closing Deadline of March 21, 2017. On December 9, 2016, the Board granted a waiver of the initial Loan Closing Deadline to March 21, 2018 and the Petitioner subsequently paid the 1% extension fee of \$52,940. On May 9, 2017, staff issued a Firm Commitment, establishing a Firm Commitment Closing Deadline of November 6, 2017. On October 27, 2017, the Board granted an extension of the Firm Commitment Closing Deadline to February 5, 2018 and the Petitioner subsequently paid the 0.50% extension fee of \$26,470.

6. On January 26, 2018, the Board granted a waiver of R. 67-48.0072(26), Fla. Admin. Code (Case No. 2081-002VW) to extend the Firm Commitment Deadline to March 21, 2018 to correspond with the Loan Closing Deadline (the “Consolidated Closing Deadline”).

7. Petitioner now seeks a further 60-day extension of the Consolidated Closing Deadline to May 21, 2018. As per its previous request for a Rule waiver, Petitioner cites delays incurred by HUD approval of the disposition of the subject property (obtained December 21, 2017) and the subsequent 45-day review by the City of Lakeland. The MMRB/SAIL/ELI closing is currently scheduled for March

7, 2018, and while Petitioner believes it can meet the current March 21, 2018 Closing Deadlines, out of an abundance of caution it seeks a short extension (and waiver of the associated fee) of 60 days.

8. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

9. Section 120.542(2), Florida Statutes, provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. Petitioner has demonstrated that strict application of the above Rule under these circumstances would constitute a substantial hardship and violate the principals of fairness. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

11. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

12. The Board further finds that Although Petitioner has also requested a waiver of the extension fee, such a request is unnecessary – as this request would be processed as a waiver of the Rule and not within the operation of the Rule, no such fee should be imposed for this extension.

**IT IS THEREFORE ORDERED:** Petitioner’s request for a waiver of the above Rules is **GRANTED** to extend the consolidated Loan Closing Deadline to May 20, 2018. Petitioner’s request for a waiver of the extension fee is **DENIED** as moot.

DONE and ORDERED this 16th day of March, 2018.

Florida Housing Finance Corporation

By:

  
Chair

**Copies furnished to:**

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### **NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**