

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CEC WILLOW LAKES, LLC

FHFC Case No.: 2008-045VW
Application No.: 2007-108BS

**ORDER GRANTING PETITION FOR WAIVER
OF RULES 67-48.004(1)(a), 67-21.003(1)(a) and 67-48.0075(7)(a)(1)¹
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 8, 2008, pursuant to a “Petition for Waiver of Rules Fla. Admin. Code 67-48.004(1)(a), 67-21.003(1)(a) and 67-48.0075(7)(a)(1)” (the “Petitioner”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on July 2, 2008, from **CEC WILLOW LAKES, LLC** (“Petitioner”). On July 18, 2008, the Notice of the Petition was published in Volume 34, Number 29, of the Florida Administrative Weekly. 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 Petitioner omits the subsection of Rule 67-48.0075, Fla. Admin. Code, but context makes clear Petitioner seeks a waiver of (7)(a)(1).

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Sherry Sue /DATE: 8-11-08

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

2. During the 2007 Universal Cycle, Florida Housing awarded an allocation of State Apartment Incentive Loan (“SAIL”), Housing Credits (“HC”), and tax-exempt bonds to Petitioner (under application #2007-108BS). Petitioner applied for the SAIL, competitive HC, and tax-exempt bonds to finance, in part, a Development known as Willow Lakes, a 304-unit rental development in Jacksonville, Duval County, Florida (the “Development”).

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

(2) Variances 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.

4. R. 67-48.004(1)(a), Fla. Admin. Code states in pertinent part:

(1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

... (a) The Universal Application Package or UA1016 (Rev. 3-08) is adopted and incorporated herein by reference and consists of the forms and instructions...which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC, or SAIL and HC Program(s).

5. R. 67-21.003(1)(a), Fla. Admin. Code states in pertinent part:

(1) When submitting an Application, Applicants must utilize the

Universal Application in effect at the Application Deadline.

... (a) The Universal Application Package or UA1016 (Rev. 3-08) is adopted and incorporated herein by reference and consists of the forms and instructions... which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the MMRB Program.

6. 2007 Universal Application Instructions, Part II.2.a.2 states:

(2) If applying for MMRB, SAIL or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3 percent or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

7. R. 67-48.0075(7)(a)(1), Fla. Admin. Code states:

(1) The supplemental loan shall be (i) based on each ELI Set-Aside unit above the minimum ELI Set-Aside threshold requirement in the Universal Application instructions; and (ii) non-amortizing at 0 percent simple interest per annum over the life of the loan, with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years.

8. Petitioner requests a waiver of Instructions, Part II.2.a.2 to change the identity of its sole member, Created Equal Communities, LLC, a foreign limited liability company ("CEC") authorized to do business in Florida, to CEC Willow Lakes Member, LLC, a Florida limited liability company ("CEC Willow Lakes").

9. In addition, Petitioner requests a waiver of the rule requiring Florida Housing to forgive a supplemental loan's principal balance when the awarded amount funds Extremely Low Income ("ELI") Household units for at least 15 years.²

10. Without the first waiver, CEC will likely incur adverse tax consequences because of its dual role as the sole member of Willow Lakes and the Developer of the Willow Lakes project. Moreover, investors in projects utilizing tax credits, such as this, require a separation between the managing member and the Developer.

11. Petitioner has also demonstrated that if Florida Housing fails to grant the waivers, negative federal income tax ramifications pertaining to forgivable loans will likely arise. Designating this loan as forgivable, whether it is ultimately forgiven or not, will likely cause the IRS to consider this loan as income that the IRS would tax, but for which Petitioner has not yet received a benefit.

12. Since approval will not affect Application scoring, Petitioner derives no unfair advantage over other applicants.

13. The Board finds that strict application of the above Rules under these circumstances will give rise to substantial hardship or otherwise

² Petitioner incorrectly identifies the duration of the covenant as twenty (20) years.

violate the principles of fairness. Under the circumstances described in the Petition, granting these requests furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. The waivers of R. 67-48.004(1)(a), R. 67-21.003(1)(a), and R. 67-48.0075(7)(a)(1), Fla. Admin. Code further this purpose.

IT IS THEREFORE ORDERED:

Petitioner's request for waivers of R. 67-48.004(1)(a) and R. 67-21.003(1)(a), Fla. Admin. Code are hereby **GRANTED** to permit Petitioner to change the identity of its sole member from CEC to CEC Willow Lakes. Also, Petitioner's request for a waiver of R. 67-48.0075(7)(a)(1), Fla. Admin. Code is hereby **GRANTED** to permit Petitioner to forgo the automatic forgiveness a supplemental loan's principal balance receives when the awarded amount funds ELI Household units for at least 15 years. Any other relief requested in the Petition is denied.

DONE and ORDERED this 8th day of August, 2008.



Florida Housing Finance Corporation

By: *Lynn M. Stultz*
Chairperson

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.