

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: West Lake I, Ltd.

FHFC Case No.: 2017-082VW

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**ORDER GRANTING WAIVER OF RULE 67-21.008(1)(a)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 8, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on November 20, 2017, from Sunset Pointe Associates, Ltd (“Petitioner”). Notice of the Petition was published on November 21, 2017, in Volume 43, Number 230, 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 successfully applied for an award of SAIL and ELI Gap funding to be used in conjunction with Florida Housing-Issued MMRB and Non-Competitive Housing Credits under Request for Applications 2015-112 (the “RFA”) to assist in the construction of a development serving elderly persons in Polk County.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

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*W. M. Alamy* /DATE: 12/8/17

3. Petitioner requests a waiver of Rule 67-21.008(1)(a), Fla. Admin. Code, to allow it to close on its bond financing although it will not be secured by a recorded Mortgage at the time of closing. The Rule provides as follows:

(1) Each Mortgage Loan for a Development made by the Corporation shall:

(a) Be evidenced by a properly executed Note or other evidence of indebtedness and be secured by a recorded Mortgage;

4. Petitioner asserts that the U.S. Department of Housing and Urban Development (“HUD”) has a declaration of trust on the development property, and that they will be unable to record a mortgage until HUD releases the declaration of trust. Petitioner also asserts that recent actions by the U.S. House of Representatives have created the possibility that private activity bonds may be abolished after December 31, 2017. Because of the need to close on these bonds by December 31, and because of the existence of the HUD declaration of trust, Petitioner asserts that it will not be possible to record a mortgage on the property prior to December 31, 2017. Petitioner anticipates that it will be able to record such mortgage early in 2018.

5. In addition to this rule waiver request, Corporation staff also received a letter from the Applicant requesting a waiver of the requirement of RFA 2015-112 requiring that the proposed equity amount to be paid prior to or simultaneous with the closing of construction financing be at least 15 percent of the total proposed equity to be provided. Petitioner asserts that it will not be possible to meet this 15

percent requirement at the closing of the construction financing because of the necessity of closing on the Miami-Dade bonds by December 31.

6. 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

7. Section 120.542(2), Fla. Stat., 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.

8. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income elderly persons, and that it would suffer a substantial hardship if the waiver is not granted. 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.

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

**IT IS THEREFORE ORDERED:**

Petitioner's request for waiver of Rule 67-21.008(1)(a), Fla. Admin. Code, is hereby **GRANTED** to allow it to close on its financing even though a mortgage will not have been recorded. Petitioner's request for waiver of the requirements of RFA 2015-112 so that it will not be required to pay 15% of the total proposed equity by closing of the construction financing is hereby **GRANTED**. Both waivers are subject to the following conditions:

1. Within six months of closing, the mortgage must be recorded and at least 15% of the total proposed equity must be paid.
2. All funding, including all bond proceeds, will be placed in escrow at closing. If Petitioner has not complied with the first condition above, all funding will be terminated and any bonds held in escrow will be paid off.

DONE and ORDERED this 8th day of December, 2017.



Florida Housing Finance Corporation

By:

Chair

Copies furnished to:

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

### **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.**