

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: WEST LAKE I, LTD.

FHFC Case No.: 2018-002VW

**ORDER GRANTING WAIVER OF
RULE 67-48.0072(26), FLA. ADMIN. CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 26, 2018, pursuant to a “Petition for Waiver of Rule 67-48.0072(26), F.A.C., (Oct. 8, 2014)” (the “Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on January 4, 2018, from West Lake I, Ltd. (“Petitioner”). Notice of the Petition was published on January 5, 2018, in Volume 44, Number 4, 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.

3. Petitioner now requests a waiver of the above Rule to extend the Firm Commitment Deadline to March 21, 2018, and to waive the extension fee.

4. Rule 67-48.0072(26) (a), Fla. Admin. Code (Rev. 10-8-14), provides as follows:

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.

5. Petitioner received a Preliminary Commitment Letter and an Invitation to Credit Underwriting on March 21, 2016, which established an initial Loan Closing Deadline of March 21, 2017.

6. On December 9, 2016, the Board approved a closing extension per Rule 67-48.0072(4)(c), Fla. Admin. Code to extend the Loan Closing Deadline to March 21, 2018.

7. On May 9, 2017, Corporation staff issued a Firm Commitment Letter stating that the loan had to close within 180 days per the Rule – establishing a (separate) Firm Commitment Closing Deadline of November 6, 2017.¹

8. Petitioner then received, per the above Rule, a 90-day extension upon paying the 0.05% (\$26,000) fee which extended the Firm Commitment Closing Deadline to February 5, 2018, to await approvals regarding the Development from the United States Department of Housing and Urban Development (HUD). Petitioner received HUD approval of the disposition of the subject property on December 21, 2017, but now must wait 45 days for HUD review of evidence submitted by the City of Lakeland.

9. Based on the above, Petitioner does not believe it can accomplish the February 5, 2018 Firm Commitment Closing Deadline, and requests this Rule waiver to obtain an additional 44 days to close, bringing this deadline concurrent with the Loan Closing Deadline of March 21, 2018. Failure to meet the current deadlines could result in the loss of \$700,000 invested in the Development to date.

10. Section 120.542(2), Fla. Stat., provides in pertinent part:

¹ Subsequent Rule amendments have eliminated these separate closing deadlines.

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.

11. The Board finds that strict application of the above Rule regarding the Firm Commitment Deadline 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, and that it would have no impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental effect on Florida Housing.

12. Although Petitioner has also requested a waiver of the extension fee, the Board finds that such a request is unnecessary – as this request is processed as a waiver of the Rule and not within the operation of the Rule, no such fee will be imposed for this extension. The Board therefore finds Petitioner's request to waive the extension fee as moot.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of R. 67-48.0072(26), Fla. Admin. Code is hereby **GRANTED** to establish March 21, 2018 as the Firm Commitment Deadline, concurrent with the Loan Closing Deadline. Petitioner's request to waive the extension fee is **DENIED** as moot.

DONE and ORDERED this 26th day of January, 2018.

Florida Housing Finance Corporation



By:

Roy E. Dinger
Chair

Copies to:

Hugh R. Brown, General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Brantley Henderson, Director of Multifamily Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhdadeff & Sitterson, P.A.
150 West Flagler Street, Suite 150
Miami, Florida 33131

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.