

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: LAKE BEULAH, LTD.

FHFC CASE NO.: 2019-026VW

**ORDER GRANTING WAIVER OF RULES 67-48.0072(4)(c)
AND 67-48.0072(26), FLA. ADMIN. CODE (2016)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on May 10, 2019, pursuant to an “Petition for Waiver of Rules 67-48.0072(4)(c) and 67-48.0072(26) F.A.C., (2016)” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on April 5, 2019 from Woodland Grove Apartments, LLC (“Petitioner”). Notice of the Petition was published on April 9, 2019, in Volume 45, Number 69, 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, in a joint venture with a public housing authority, successfully applied for an award of State Apartment Incentive Loan (SAIL),

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas Slattery / DATE 5/10/19

Multifamily Mortgage Revenue Bond (MMRB), Extremely Low Income (ELI) and 4% Non-Competitive Housing Credit (HC) funding under RFA 2016-109, to assist in the construction of Twin Lakes Estates, Phase II (f/k/a Lake Beulah View), a Development located in Polk County.

3. Rule 67-48.0072, Fla. Admin. Code (2016), provides, in pertinent part:

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

...

(c) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, the credit underwriting process must be completed within the time frame outlined in subsection 67-48.0072(21), F.A.C., below and the loan must close within the time frame outlined in subsection 67-48.0072(26), F.A.C., below...

...

(26) For SAIL, EHCL, and HOME, that is not in conjunction with Competitive HC, these Corporation loans and other mortgage loans related to 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 of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

4. Per the above Rules Petitioner previously requested, paid the required fee, and was granted a six month extension of the firm loan commitment deadline to secure appropriate debt and equity that would allow the Development to be financially feasible, and to receive a response on applications for gap funding - Petitioner was initially unable to secure commitments for debt and equity in terms above market conditions.

5. Petitioner changed the unit mix of the Development to provide better net operating income, and in June 2018 was granted extra time via a Rule waiver (FHFC Case No. 2018-035VW) to allow for these changes, as well as to permit time to update the rents and to redesign the Development to accommodate the changes, and to extend the credit underwriting accordingly. Based on the above, the Board approved the waiver and extended the firm loan closing deadline 75 days, through September 18, 2018. The Board approved the Credit Underwriting report on July 27, 2018 and directed staff to proceed with loan closing activities.

6. Subsequently, Petitioner also received an extension of the loan closing deadline from January 28, 2019, to April 29, 2019, per the Rules above and again with the payment of the required fee, to allow additional time to obtain HUD's Mixed Finance Approval, which has not yet been received from HUD. This delay has been caused, in part, due to the shutdown of the Federal government between December 22, 2018 and January 25, 2019. HUD approved the Demolition and

Disposition of the existing public housing structures, but the HUD Mixed Finance approval is still pending.

7. Additionally, the Development's Construction Contract ("GC Contract") was originally executed on March 23, 2018. Because of the delay in obtaining HUD's approvals, the guaranteed minimum price on the GC Contract can no longer be maintained. As a result Petitioner was required to re-bid the Development to the original general contractor and another contractor. Both resulting bids were significantly higher, with more than a 15% increase over the underwritten Construction Cost of the original GC Contract. Petitioner continues to work with other contractors and estimates that, after value-engineering, the increase will be reduced to 10%.

8. To address this additional cost, Petitioner must: underwrite the increased rents; update the appraisal and the Plan & Cost Review report; obtain a new Credit Underwriting Report reflecting these changes; obtain Corporation approval of the new CUR; and obtain a new State Board of Administration (SBA) approval of the bond amounts.

9. Based on the circumstances above, Petitioner now requests a waiver of the above Rules to extend the closing date to November 30, 2019.

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

11. 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.

12. Petitioner has demonstrated that but for the granting of this waiver request, Petitioner would suffer a substantial hardship. 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.

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

IT IS THEREFORE ORDERED:

Petitioner’s request for a waiver of Rules 67-48.0072(4)(c) and 67-48.0072(26), Fla. Admin. Code (2016) is **GRANTED**, such that the loan closing (SAIL and ELI) deadline is extended from April 29, 2019, to November 30, 2019.

DONE and ORDERED this 10th day of May 2019.



Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.