

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: WEST LAKE I, LTD

FHFC CASE NO.: 2017-047VW

ORDER GRANTING WAIVER OF RULE 67-21.013 (2015), F.A.C.

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on July 28, 2017, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on June 23, 2017, from West Lake I, LTD ("the Petitioner"). Notice of the Petition was published on July 10 in Volume 43, Number 132, 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 SAIL Financing of Affordable Multifamily Housing Developments under RFA 2015-112, to be used in conjunction with Multifamily Mortgage Revenue Bonds¹ (MMRB) and non-competitive Housing Credits to assist in the construction of a Development serving low-income

¹ The particular form of indebtedness here is a note. However, the rule to be waived uses the term "bonds," which is defined in Section 420.503(4), F.S., to include any note issued by the Corporation.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Jenifer D. Marshall /DATE: 7/28/2017

elderly. Petitioner now seeks a waiver to allow the purchase of non-credit enhanced revenue bonds by an entity that does not meet the definition of a Qualified Institutional Buyer.

3. Rule 67-21.013, Fla. Admin. Code (2015), allows a non-credit enhanced revenue bond to be sold only to a Qualified Institutional Buyer (QIB), as defined in Rule 67-21.002(88), Fla. Admin. Code (2015). The rule also requires that the purchaser of such bonds provide an investment letter.

67-21.013 Non-Credit Enhanced Multifamily Mortgage Revenue Bonds.

Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. . . . Unless such Bonds are rated in one of the four highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be Depository Trust Company (DTC)-Eligible) and shall comply with at least one of the following criteria:

* * *

(2) The Bonds shall be issued in minimum denominations of \$250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds (including any purchaser purchasing such Bonds in an immediate resale from an underwriter), but shall not be required of subsequent purchasers of the Bonds, to the effect that, among other things, such purchaser is a Qualified Institutional Buyer, is purchasing such Bonds for its own account and not for immediate resale to a purchaser other than a Qualified Institutional Buyer, and has made an independent investment decision as a sophisticated or institutional investor.

4. Petitioner is funding its Development using, among other things, a Freddie Mac Tax Exempt Multifamily Revenue Note (Bond) under its Tax Exempt Loan (TEL) Program. Federal law requires Freddie Mac to purchase the bonds

through an intermediary, which in this case is Walker & Dunlop, LLC (“W&D”). W&D, however, does not meet the definition of a Qualified Institutional Buyer in Rule 67-21.002(88), Fla. Admin. Code (2015). Petitioner seeks a waiver that will allow it to use the services of W&D in order to facilitate the note/bond portion of the financing for this Development. The notes/bonds will ultimately be sold to Freddie Mac (which is a QIB) in accordance with a commitment letter between W&D and Freddie Mac. Unless the waiver is granted, Petitioner will be required to find alternate financing, and funding for the Development will be jeopardized.

5. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Section 120.542(2) 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

6. The Board finds that granting the waiver would not have any impact on other participants in funding programs administered by Florida Housing and would not allow Petitioner to gain an unfair advantage over other applicants, nor would it have a detrimental impact on Florida Housing.

7. Petitioner has demonstrated 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.

8. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds that 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:

Petitioners' request for a waiver of Rule 67-21.013, Fla. Admin. Code (2015) is hereby **GRANTED** so that Petitioner will be able to use the services of W&D to purchase the non-credit enhanced revenue bonds as part of the TEL Program and so that W&D will not be required to submit an investment letter.

DONE and ORDERED this 28th day of July, 2017.

Florida Housing Finance Corporation

By: _____

Chair



Copies furnished to:

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

Ken Reecy
Director of Multifamily Development Programs
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 150
Miami, Florida 33131
bmcdonough@swmswas.com

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.