

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2018-035VW

LAKE BEULAH, LTD.

Petitioner,

vs.

FHFC APPLICATION: 2016-369BS  
REQUEST FOR APPLICATIONS: 2016-109

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C.**

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner Lake Beulah, Ltd., a Florida limited partnership, submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of Rule 67-48.0072 (21)(b) (the “Rule”) in effect at the time the Petitioner submitted its application in response to Florida Housing’s Request for Applications 2016-109, SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the “RFA”). Petitioner seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. In support of its Petition, the Petitioner states as follows:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative are:

Matthew Rieger  
Lake Beulah, LTD  
3225 Aviation Ave.

Suite 602  
Coconut Grove, FL 33133  
Tel: 305-537-4704  
Fax: N/A  
E-mail: MattR@htgf.com

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorney are:

Brian J. McDonough  
Stearns Weaver Miller Weissler Alhadeff & Sitterson  
150 West Flagler Street  
Suite 2200  
Miami, FL 33130  
bmcdonough@stearnsweaver.com  
Tel: (305) 789-3350  
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**B. THE DEVELOPMENT AND ITS FINANCING**

3. Petitioner timely submitted its Application in response to the RFA for the development named "Lake Beulah View," which later received an approval to change the development name to "Twin Lakes Estates – Phase II" (the "Development"). *See* Application No. 2016-369BS. Petitioner received an Invitation to Enter Underwriting dated March 31, 2017 and accepted the invitation on April 5, 2017.

4. The Petitioner – a joint venture with a public housing authority – previously requested of the Florida Housing Board, by letter dated November 14, 2017, to extend the 9-month period to secure a firm commitment for the SAIL and ELI Loan.

5. On December 8, 2017, the Florida Housing Board approved the Firm Loan Commitment Issuance Extension for six months, extending the deadline from January 5, 2018 to July 5, 2018 and Petitioner paid the \$66,000 extension fee required by the Rule.

6. The extension was requested due to delays in achieving commitments for equity and final construction documents, as well as potential additional gap sources to be allocated.

More specifically, the extension was necessitated by a substantial reduction on Low-Income Housing Tax Credit (“LIHTC”) pricing experienced after the RFA deadline (October 2016), which essentially stalled the LIHTC market for several months, and – in turn – delayed the feasibility of the assumptions taken at the time of closing, necessitating a conceptual redesign of the development proposal. The foregoing factors delayed commitment for the equity and final construction documents necessary for issuance of the credit underwriting report. During the extension period, Petitioner applied for other gap sources of funding to complement the reduction on tax credit pricing.

7. The Development needs the sources of financing resulting from the contemplated tax-exempt financing and equity raised through the syndication of the resulting low-income tax credits in order to be able to be financially feasible. However, Petitioner was only recently able to execute acceptable commitments of debt and equity.

8. Petitioner is in need of a 75-day extension of the credit underwriting period through and including September 18, 2018, in order for: (1) the developer to update the rents and change the unit mix in the third party due diligence reports ordered by the underwriter (AmeriNat); and (2) to give the underwriter sufficient time to finalize the Credit Underwriting Report based on those updated reports.

9. The requested waiver is permanent in nature.

### **C. RULE FROM WHICH WAIVER IS SOUGHT**

10. Petitioner requests a waiver from the Rule, which provides:

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant’s acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a

firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

*See Rule 67-48.072(21)(b), F.A.C.*

#### **D. STATUTES IMPLEMENTED BY THE RULE**

11. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),<sup>1</sup> Section 420.5087 (State Apartment Incentive Loan Program); Section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund); and Section 420.5099 (allocation of the low-income housing tax credit).

12. Further, pursuant to the RFA, "Proposed Developments funded under this RFA will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the SAIL Loan requirements outlined in Rule Chapter 67-48, F.A.C., the ELI Loan requirements outlined in Exhibit D of the RFA, the MMRB and/or Non-Competitive HC requirements outlined in Rule Chapter 67-21, F.A.C., and the Compliance requirements of Rule Chapter 67-53, F.A.C."

#### **E. JUSTIFICATION FOR REQUESTED WAIVER**

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

13. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., 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. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

14. Petitioner's acceptance of Florida Housing's invitation to credit underwriting on April 5, 2017 means that a firm loan commitment for the Development would have initially been required to be issued to Petitioner by no later than January 5, 2018. Petitioner was granted a six-month extension of the firm loan commitment deadline, as allowed under the Rule, to July 5, 2018, in order to secure appropriate debt and equity that will allow the Development to be financially feasible, and also to receive a response on applications for gap funding. Even though Petitioner was unsuccessful in receiving allocations of additional gap funding, Petitioner was recently able to secure commitments for debt and equity in terms above market conditions. Nevertheless, a change of unit mix to provide a better net operating income to allow for such financial feasibility would require additional time for third party providers (*e.g.*, appraisal, market study, plan and cost analysis) to adjust their reports to the new unit mix. However, a further extension of the firm loan commitment deadline may not be granted without a waiver of the Rule.

15. Petitioner is requesting a 75-day extension of the firm loan commitment deadline from July 5, 2018 to September 18, 2018. Although the reports most likely will be finalized on time for the credit underwriter to be able to issue the Credit Underwriting Report for the approval

of the July 27, 2018 Board meeting, the extension is necessary in order for: (1) third-party providers to update the rents and change the unit mix in the third party due diligence reports ordered by the underwriter (AmeriNat); (2) to give the developer sufficient time to discuss or comment on the resulting reports; and (3) to give the underwriter sufficient time to finalize the Credit Underwriting Report based on those updated reports.

16. There are no obstacles known to Petitioner that would prevent Florida Housing's issuance of the firm loan commitment following delivery and approval of the Credit Underwriting Report.

17. The extension requested herein stems from the Petitioner's unanticipated need to restructure its financing for the Development, largely due to the substantial reduction on the price of Low-Income Housing Tax Credits equity, as compared to the market conditions at the time of the Application's submittal, which preceded the U.S. federal elections and tax reform. The uncertainty of the markets made it difficult to obtain debt and equity with a financially feasible pro forma. This resulted in Petitioner having to search for additional funding sources and/or unconventional financing. Nonetheless, Petitioner was recently able to successfully assemble permanent funds for the Development without seeking additional funds from Florida Housing in the form of a Viability Loan.

18. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA, or Florida Housing. A denial of the Petition, however, would: (a) result in substantial economic hardship to Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Polk County of essential affordable rental units set aside for persons of

limited means who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness<sup>2</sup>. See § 120.542(2), F.S.

19. If this Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction and the Development will not be constructed.

20. As discussed herein, Petitioner is requesting a second extension of the deadline for issuance of the firm loan commitment from July 5, 2018 to September 18, 2018, which request requires a waiver of the Rule.

21. The requested waiver will ensure the availability of SAIL and ELI financing which will otherwise be lost as a consequence of the pre-development delays described herein.

22. The foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the loss of a substantial sum of money should the transaction not go forward, and the loss of critical housing for households of limited means.

23. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated above, the requested waiver serves the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. Further, by granting the

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<sup>2</sup>“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.542(2), Florida Statutes.

requested waiver, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing.

24. Should Florida Housing require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

**F. ACTION REQUESTED**

25. Petitioner requests the following:
- a. That Florida Housing grant Petitioner a waiver from Rule 67-48.0072(21)(b), Florida Administrative Code, extend the deadline for issuance of the firm loan commitment from July 5, 2018 to September 18, 2018, and to refrain from imposing an extension fee in relation to this short-term extension;
  - b. That Florida Housing grant the Petition and all the relief requested therein; and
  - c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
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Miami, Florida 33131  
Tel: (305) 789-3350  
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/s/ Brian J. McDonough  
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

The original Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 18th day of May, 2018.

*/s Brian J. McDonough*

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Brian J. McDonough, Esq.