

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**In re: Delmar Terrace South, LLC**

FHFC Case No. 2017-073VW

**FHFC File No: 2015-158CS/2016-002CS**

**Petitioner.**

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**PETITION FOR WAIVER OF RULE-ADOPTED RFA PROVISION  
TO ALLOW ADDITIONAL EXTENSION OF SAIL LOAN CLOSING,  
AND VARIANCE TO RULE 67-48.0072(15) TO ALLOW SURETY BOND, AND  
RULE-ADOPTED QAP PROVISION ON PLACED IN SERVICE DATES**

Pursuant to Section 120.542, Fla. Stat., Petitioner, DELMAR TERRACE SOUTH, LLC, a Florida limited liability company (“Delmar Terrace”), hereby submits this Petition to the Florida Housing Finance Corporation (“FHFC”) for a waiver of Rule 67-48.0072 (4)(c), Fla. Admin. Code, which requires a SAIL loan closing to be accomplished within the time specified in the RFA; and for a waiver of the restriction in RFA 2014-115, incorporated by reference in FHFC Rule 67-48.0072(27), Fla. Admin. Code, to allow only one extension of a SAIL loan closing deadline. Delmar Terrace, whose SAIL loan closing deadline is currently November 2, 2017, seeks an extension of that deadline by approximately 90 days in order to match the required closing date of its tax credit partnership by January 31, 2018.

Delmar Terrace also seeks a variance from the provision in Rule 67-48.0072(15) that either a “principal individual” or both an individual and entity of the general partner or manager (or managing member) of an Applicant shall provide a guarantee for completion of construction of Developments receiving SAIL or HOME loans. Instead, Delmar Terrace seeks to provide a construction completion guarantee from the Applicant’s Member/Manager corporate entity, accompanied by a performance bond from a licensed surety company authorized to do business in Florida, for the amount of the SAIL loan and of the Development Viability Funding loan, with Florida Housing Finance Corporation as the sole obligee under such bond.

Petitioner also seeks a variance from the provision of paragraph K of the Qualified Allocation Plan, adopted and incorporated by reference in Rule 67-48.002(95), Fla. Admin. Code, to the extent it is interpreted by Florida Housing as limiting the prior extension of the Placed in Service date for Delmar Terrace to December 31, 2018. Delmar Terrace seeks a Placed in Service deadline of December 31, 2019.

In support of this petition, Petitioner states as follows:

**A. NATURE OF REQUEST**

1. **SAIL Closing Extension**

Pursuant to Section 120.542, Fla. Stat. (2016), and Rules 28-104.001 through 28-104.006, Fla. Admin. Code, Petitioner requests a waiver of Rule 67-48.0072 (4)(c), Fla. Admin. Code, which requires a SAIL loan received in conjunction with Competitive Housing Credits to close within the time frames specified in the competitive solicitation; for RFA 2014-115, the loan is required to close within 12 months of the invitation to enter credit underwriting, unless extended. See Attachments 1 and 2 to this Petition. RFA 2014-115 at Exhibit C, to the EFA paragraph 11.f, numbered page 116 of RFA 2014-115. Petitioner, who has previously received an extension of the closing date of the SAIL loan, also requests a waiver of a provision of RFA 2014-115, incorporated by reference in Rule 67-48.0072(27), Fla. Admin. Code, under which Delmar Terrace was awarded competitive housing credits and SAIL financing. See Attachment 3 to this Petition. The provision at issue appears to allow a recipient of a SAIL loan to seek only one extension of its SAIL loan closing; Delmar Terrace had previously requested and received an extension of its SAIL loan closing. The requested waiver would allow Petitioner to extend its SAIL closing deadline by 90 days to January 31, 2018 in order to match its required tax credit partnership closing date.

Delmar Terrace in fact intends to close all financing on the development before December 31, 2017, and is only seeking a full 90 day extension to match the tax credit partnership closing date.

2. **SAIL Guarantees**

Petitioner also requests a variance from the provision in Rule 67-48.0072(15) concerning construction guarantees. The 2014 version of this rule, which was in effect when Delmar Terrace applied for funding, required a guarantee from “the principal individual of the borrowing entity.” See Attachment 4 to this Petition. There is no “principal individual” in the Delmar Terrace entity. The 2016 version of the rule (Attachment 5 to this Petition) states that both an individual and entity of the general partner or manager (or managing member) of an Applicant shall provide a guarantee for completion of construction of Developments receiving SAIL or HOME loans. Instead, Delmar Terrace seeks to provide a construction completion guarantee from the Member/Manager corporate entity, accompanied by a performance bond from a licensed surety company authorized to do business in Florida, for the amount of the SAIL loan and of the Development Viability Funding loan, with Florida Housing Finance Corporation as the sole obligee under such bond.

3. **Placed in Service Date**

Petitioner also seeks a variance from the provision of paragraph K of the Qualified Allocation Plan, adopted and incorporated by reference in Rule 67-48.002(95), Fla. Admin. Code, to the extent it is interpreted by Florida Housing as limiting the extension of the Placed in Service date for Delmar Terrace to December 31, 2018. See Attachments 6 and 7 to this Petition. Delmar Terrace seeks a Placed in Service deadline of December 31, 2019. As explained more fully in this Petition, Petitioner previously sought and obtained approval for an exchange of its originally awarded 2015 and 2016 housing credits for current year’s credits; that exchange was approved in March 2017, and a new Carryover Allocation Agreement was entered into in April 2017, which

established a Placed in Service deadline of December 31, 2018. Delmar Terrace seeks to amend that Agreement, without requiring a new exchange of credits, to extend the Placed in Service deadline to December 31, 2019. To the extent the QAP is interpreted as requiring the Placed in Service deadline to be 12 months after the end of the year a credit exchange occurs, Delmar Terrace requests that a variance be granted to extend the 12 months to 24 months.

**B. THE PETITIONER**

4. As explained in this Petition, Petitioner was the recipient of Housing Credits and a SAIL loan from FHFC for a homeless development in Pinellas County. For purposes of this petition, Petitioner's address is that of its undersigned attorney, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., 2060 Delta Way, Tallahassee, Florida 32303 (telephone (850) 521-0700, fax (850) 521-0720, E-mail: [cbryant@ohfc.com](mailto:cbryant@ohfc.com))

**C. FACTUAL BACKGROUND**

5. Through Request for Applications (RFA) number 2014-115, FHFC sought to allocate federal low income housing tax credits ("Housing Credits") to applicants for the development of affordable housing in the six large counties of Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas. FHFC also sought to fund at least one Homeless development in one of those counties, utilizing both Housing Credits and State Apartment Incentive Loan ("SAIL") financing. The awards of SAIL and Housing Credit funding are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code.

6. Delmar Terrace applied in RFA 2014-115 for an award of Housing Credits and a SAIL loan for the construction of a 65 unit high-rise development for homeless tenants in Pinellas County. Delmar Terrace sought Housing Credits in the amount of \$1.66 million and a SAIL loan of \$3.25 million.

7. The Applicant entity is Delmar Terrace South, LLC, a Florida limited liability company. The Member/Manager of Delmar Terrace South, LLC, is Delmar Terrace MBS Member, Inc., a Missouri Corporation. The ownership structure of Delmar Terrace MBS Member, Inc., is such that there are two shareholders, both of which are corporate entities, not natural persons. MBA Holdings, LLC, owns 66.67% of Delmar Terrace MBS Member, Inc. MBA Holdings, LLC, is owned by eleven members at varying ownership levels, up to 16% interest each; all such members are irrevocable trusts, not natural persons. There are no natural persons in the ownership of MBA Holdings, LLC.

8. The other shareholder of Delmar Terrace MBS Member, Inc., with a 33.33% ownership interest, is GS MBA Investor, LLC. GS MBA Investor, LLC, is a Delaware limited liability company that is a wholly owned subsidiary of The Goldman Sachs Group, Inc. There are no natural persons in the ownership of GS MBA Investor, LLC.

9. The Developer Entity for Delmar Terrace is Delmar Terrace Developers, LLC, whose Member/Manager (with 62.5% ownership) is McCormack Baron Salazar, Inc., and whose minority member (with 37.5% ownership) is Gibraltar Development Partners, LLC (Eugenia Anderson Manager/Member). The Co-Developer is Boley Centers, Inc. The natural person principal of Delmar Terrace Developers whose prior general development experience was relied upon to satisfy the RFA 2014-115 requirements was Vincent R. Bennett, who is an officer of McCormack Baron Salazar, Inc.

10. For purposes of Section 42 of the Internal Revenue Code, Delmar Terrace proposed to set aside 40% of the units for residents earning 60% or less of Area Median Income. In the Total Set-Aside Breakdown Chart included in the Delmar Terrace application, Delmar Terrace committed to set aside 15% of the units for tenants at or below 40% of AMI (the Extremely Low

Income level for Pinellas County in RFA 2014-115) and the remaining 85% of the units for tenants at or below 60% of AMI.

11. When the FHFC Board approved final eligibility and funding determinations for RFA 2014-115 at its meeting in May, 2015, it decided to fund four Homeless developments in four different Large Counties, including Delmar Terrace in Pinellas County. Administrative litigation commenced over some of the other awards of funding in RFA 2014-115 (not involving Delmar Terrace or other Homeless applicants) and was not all finally resolved until December 2015. Delmar Terrace entered at-risk credit underwriting in November, 2015.

12. On or about December 23, 2015, Florida Housing issued to Delmar Terrace a Preliminary Allocation Certificate allocating \$1,512,604.30 in annual housing credits from the Corporation's 2015 Housing Credits. The Preliminary Allocation Certificate required Delmar Terrace to pay a non-refundable administrative fee of \$149,400 to Florida Housing, calculated as nine percent (9%) of Delmar's full allocation amount of \$1.66 million. Delmar Terrace timely paid the administrative fee.

13. Also on or about December 23, 2015, Delmar Terrace executed the 2015 Carryover Allocation Agreement for the 2015 Housing Credit Allocation of \$1,512,604.30. At that same time, Petitioner and Florida Housing executed a Certificate of Binding Commitment for \$147,395.70 in 2016 Housing Credits, the balance of Delmar Terrace's \$1.66 million Housing Credit request amount. Subsequently, on December 30, 2015, Florida Housing and Petitioner executed a First Amendment to the 2015 Carryover Allocation Agreement awarding all \$1,660,000 of Delmar Terrace's Housing Credit allocation from 2015 Housing Credits.

14. The Certificate of Binding Commitment entered into by Florida Housing and Delmar Terrace required Delmar Terrace to meet certain project deadlines for demonstration of

site control; incurring at least 10% of the reasonably expected basis of the Development; commencement of construction; finalizing credit underwriting; closing the tax credit partnership; and placing all qualified buildings in service. On June 10, 2016, Petitioner requested extensions of these deadlines.

15. By letter dated August 24, 2016, Florida Housing staff approved extensions of five of these six deadlines as follows:

- a. Demonstrate site control by December 28, 2016
- b. Meet the 10% test by December 28, 2016
- c. Commence construction by June 30, 2017
- d. Finalize credit underwriting by June 30, 2017
- e. Close the tax credit partnership by June 30, 2017

The “placed-in-service” deadline of December 31, 2017, was not extended. Delmar Terrace paid extension fees totaling \$35,000 for the five deadlines that were extended at that time. As of the date of this Petition, Delmar Terrace has demonstrated site control and has documented satisfaction of the 10% test.

16. As noted, Delmar Terrace was also awarded a SAIL loan for the development. Delmar Terrace requested an extension of the original SAIL loan closing deadline of November 2, 2016, by one year, to November 2, 2017. On September 16, 2016, Florida Housing’s Board of Directors approved that extension, and Delmar Terrace paid the SAIL loan closing extension fee of \$32,500. (Delmar Terrace has also requested extensions of the deadline for completion of credit underwriting for its SAIL, and Florida Housing staff recently granted Delmar Terrace an extension until January 31, 2018, to complete credit underwriting for its SAIL financing.)

17. Delmar Terrace subsequently petitioned for a waiver of the Qualified Allocation

Plan provision governing when an applicant could seek to exchange its housing credits for a subsequent year's credit. This petition was granted by Florida Housing's Board of Directors on March 24, 2017.

18. Delmar Terrace and Florida Housing then entered into a new Carryover Allocation Agreement, executed by Delmar Terrace on April 24, 2017, and by Florida Housing on April 27, 2017. The 2017 Carryover Allocation Agreement established the following project deadlines:

- a. Demonstrate site control upon execution of the Agreement (April 27, 2017)
- b. Demonstrate satisfaction of the 10% test on or before October 31, 2017
- c. Commence construction on or before January 31, 2018
- d. Finalize credit underwriting by January 31, 2018
- e. Close the tax credit partnership by January 31, 2018
- f. Place the development in service by December 31, 2018

19. Given that the closing of the tax credit partnership for Delmar Terrace has been extended to January 31, 2018, Delmar Terrace now seeks extension of the closing of the SAIL financing to the same date. Obviously, as the largest component of the development financing, the development cannot be constructed without the housing credit equity. While Delmar Terrace plans to close its tax credit partnership before January 31, 2018 (and in fact intends to close all financing by December 31, 2017), it would be futile to close on the SAIL financing unless and until the housing credit financing closes.

20. In addition, Delmar Terrace applied for Development Viability Loan funding in RFA 2017-109. On September 22, 2017, Florida Housing's Board of Directors approved the award of Development Viability Loan funding to seven of the eight applicants who applied for such funding, including Delmar Terrace. This will result in up to an additional \$540,093 in



financing for the Development. No notices of protest were filed by any Applicant challenging the eligibility and funding determinations the Board made on September 22 in RFA 2017-109, so the additional \$540,093 in loan funding has final approval (subject to credit underwriting). Extension of the SAIL closing deadline will assist in completion of credit underwriting for Delmar Terrace for all forms of financing.

**D. RULE PROVISIONS**

**SAIL Closing Deadline**

21. The SAIL program is governed in part by portions of Rule Chapter 67-48, Fla. Admin. Code, of relevance to this request are Rules 67-48.0072(4)(c) and (27), Fla. Admin. Code. Rule 67-48.0072(4)(c) reads, in pertinent part:

For SAIL and HOME that it is conjunction with Competitive HC, the credit underwriting process and loan closing must be accomplished within frames outlined in the competitive solicitation.

Rule 67.48.0072(27) similarly reads:

For SAIL and HOME that is in conjunction with Competitive HC, upon issuance of the preliminary loan commitment, those Corporation loans and other mortgage loans related to the Development must close within the time frame outlined in the competitive solicitation.

See attachments 1 and 3 to this Petition.

22. The competitive solicitation in which Delmar Terrace was awarded funding was RFA 2014-115. RFA 2014-115 contained the following provisions regarding the SAIL loan closing deadline and extensions to that deadline:

f. Loan Closing Extension Fees:

In the event the SAIL loan does not close within the timeframe prescribed, extension fees will be assessed. The loan must close within 12 months of the date of the invitation to enter credit underwriting (preliminary loan commitment). Applicants may

request one (1) extension of up to 12 months related to this closing deadline. The Corporation shall charge a non-refundable extension fee of 1 percent of the loan amount if the Board approves the request to extend the preliminary commitment beyond the initial 12 month closing deadline. In addition, the loan related to the construction of the Development must close within 180 Calendar Days of the date of the firm loan commitment. A request for an extension of the firm loan commitment may be considered by the Board for an extension term of up to 90 Calendar Days. The Corporation shall charge an extension fee of one-half of one percent of each loan amount if the Board approves the request to extend the firm commitment.

RFA 2014-115, at Exhibit C, paragraph 11.f. (emphasis added). See attachment 2 to this Petition.

22. Notably, this rule-adopted RFA provision requires a non-refundable 1 percent extension fee if the preliminary loan commitment is extended beyond the initial 12 month closing deadline. Delmar Terrace has already been assessed (and paid) the 1 percent extension fee. The RFA does not require a fee for any subsequent extensions, and Delmar Terrace specifically requests that it not be assessed a further extension fee for extending the SAIL loan closing date.

### **Loan Guarantees**

23. The 2016 version of Rule 67-48.0072, the Credit Underwriting and Loan Procedures rule, also contains a paragraph 15 which addresses construction completion guarantees for SAIL and HOME loan. This Rule reads as follows:

For SAIL and HOME, the general partner(s) (individual and entity) or manager(s)/managing member(s) (individual and entity), as applicable, of the Applicant shall provide a guarantee for completion of construction.

See Attachment 5 to this Petition. As previously noted, the 2014 version of this rule (Attachment 4 to this Petition) required a construction guarantee from the “principal individual of the borrowing entity,” but Delmar Terrace has no “principal individual” within the borrowing entity.

24. To the best of Delmar Terrace's knowledge and understanding, Corporation staff views the 2016 version of the rule as requiring both individual and corporate entity guarantees for completion of construction, even where there is no individual serving as a general partner or manager/managing member of an Applicant, or having an ownership interest in the Applicant.

25. Paragraph 15 of the rule has an additional provision that allows other individuals or entities having a direct or indirect ownership interest to provide construction completion guarantees "as recommended by the Credit Underwriter or as otherwise required by the Corporation." Such additional guarantees can only be required after considering certain factors such as the liquidity of any guarantee provider; the Applicant's, Developer's, or General Contractor's ("GC") history in completing similar developments; the past performance of the Applicant, Developer, GC, or other guarantee provider in developing or construction Developments financed by the Corporation; and the percentage of the Corporation funds utilized compared to Total Development Costs. However, it is Delmar Terrace's understanding that Corporation staff's position on requiring guarantees from individuals for Delmar Terrace is based on the first sentence of paragraph (15), set out above, and not on any consideration of the need for "additional" guarantees.

#### **Placed in Service Date**

26. Finally Rule 67-48.002(95) incorporates by reference the state's Qualified Allocation Plan ("QAP") for administering the housing credit program. (Attachment 6 to this Petition) As explained above, the QAP contains a provision dealing with exchanges of housing credits that were initially awarded for a subsequent year's credits. The QAP provision on exchanges of credits, sometimes informally referred to as "credit swaps," states in part as follows:

. . .where . . .it is apparent that a Development will not be placed in service by the date required. . ., the Corporation may reserve

allocation. . .and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service. . .

Paragraph K of 2016 QAP (identical to provision in 2015 QAP). See, Attachment 7 to this Petition.

27. As explained above, Delmar Terrace already obtained a credit swap, evidenced by a new Carryover Allocation Agreement in April 2017. Delmar Terrace was already facing a potential funding shortfall at that time due to the changes in credit pricing following the 2016 presidential election. Florida Housing was well aware of the credit pricing issues, and created a Development Viability Loan program in which applicants from a limited number of RFA's could seek additional financing. Delmar Terrace in fact applied for and obtained such additional funding.

28. Delmar Terrace is now less than 15 months from its Placed in Service deadline of December 31, 2018, established by the April 2017 CAA. As an urban high rise development, this is an inadequate construction period. Further, Delmar Terrace's identified investor partner is requiring a cushion of 6 months for construction completion before the Placed in Service deadline.

29. Delmar Terrace seeks to have its Placed in Service Deadline extended to December 31, 2019, but expressly does not seek another "credit swap." Delmar Terrace simply requests a variance from the QAP provision that Florida Housing interprets as limiting the extension of the Placed in Service deadline to the end of the year following the year of a credit swap, to the end of the second year following Delmar Terrace's April 2017 credit swap.

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

30. As explained in paragraph 15 above, the deadline for closing of the tax credit partnership for Delmar Terrace is January 31, 2018, although Delmar Terrace fully anticipates closing all financing for Delmar Terrace before the end of December, 2017. It will not be possible for all financing to be closed by the current SAIL loan closing deadline of November 2, 2017,

especially given the recent award of Development Viability Loan funding (RFA 2017-109) to Delmar Terrace on September 22, 2017. That award became final on Wednesday, September 27, when no other applicant in RFA 2017-109 filed a notice of protest of the eligibility and funding determinations in that RFA. It would be more efficient and allow for more complete and accurate credit underwriting to have all financing proceed to a common closing date. So that credit underwriting can be completed with the credit underwriter having a complete picture of the financing sources for Delmar Terrace – housing credits, SAIL, and Development Viability Loan funding – Delmar Terrace suggests a single credit underwriting completion date would be more practical and more efficient.

31. As to the construction completion guarantee rule, due to the way in which the Applicant and its entities are structured, there is no natural person with a personal ownership interest that would be an appropriate personal guarantor. The Developer (McCormack Baron Salazar) develops and operates affordable housing in many states, and Florida is the only state where MBS does business that requires personal guarantees. The Applicant here is unable to produce personal guarantees.

32. In order to satisfy Florida Housing's statutory obligation to protect the SAIL fund, Delmar Terrace proposes that a guarantee from its corporate Member/Manager, Delmar Terrace MBS Member, Inc., will be provided; and a construction completion guarantee bond from a licensed surety authorized to do business in Florida will be provided, in the amount of Delmar Terrace's SAIL loan and its Development Viability Funding loan, with Florida Housing as the sole obligee under the bond. This additional surety will provide greater security to Florida Housing than a guarantee from a natural person. In the event of a default, Florida Housing would have a

much simpler and quicker means of recourse with a performance bond from a surety company than with a personal guarantee from a natural person.

33. The delays incurred with this proposed Development through early this year were addressed in Delmar Terrace's rule waiver petition in March of this year, which was granted, resulting in the April 2017 Carryover Allocation Agreement. Since that time, Delmar Terrace participated in Florida Housing's Development Viability Loan RFA 2017-109, and was awarded funding, but the award did not become final until September 27, 2017. Delmar Terrace has also been engaged in ongoing meetings and discussions with Corporation leadership and staff on critical issues regarding personal and corporate construction completion guarantees, but no resolution could be achieved. Likewise, discussions have been ongoing regarding the need for a Placed in Service deadline of December 31, 2019, which have not been resolved to date.

34. The need for the additional Development Liability Loan finding as well as additional delays while the other issues were under discussion have resulted in the December 31, 2018 Placed in Service Date, which was marginally feasible when the 2017 CAA was signed in April 2017, becoming impossible to achieve.

**F. RELIEF REQUESTED**

35. Delmar Terrace seeks to have the loan closing for its SAIL loan be extended to match the date for closing of its tax credit partnership: January 31, 2018. Delmar Terrace fully expects to close all financing on Delmar Terrace by the end of calendar year 2017, but requests the extension to January 31, 2018 in an abundance of caution.

36. Delmar Terrace also seeks to provide alternative but equally effective (or more effective) means of guarantees in lieu of personal guarantees; specifically, corporate entity guarantees and a surety bond.

37. Finally, Delmar Terrace requests that its Carryover Allocation Agreement be amended to extend its Placed in Service deadline to December 31, 2019, and therefore a variance is needed to the extent the QAP imposes a December 31, 2018 Placed in Service deadline.

38. Granting the requested waiver and variances would not adversely affect any required set-asides or points considered by Florida Housing in the scoring of the Delmar Terrace, and would not alter the scoring by Florida Housing that qualified Delmar Terrace for Housing Credits and SAIL funding. The change would also not provide Delmar Terrace with an unfair competitive advantage over other applicants. All scoring would have been the same.

39. The requested Rule waivers or variances will not adversely impact the Delmar Terrace development or the Florida Housing funding processes, and will serve the statutory purposes of the Florida Housing process. A denial of this Petition, however, would result in substantial economic hardship to Delmar Terrace., and essentially would result in Delmar Terrace losing its investor funding.

#### **G. STATUTORY PURPOSE SERVED**

40. Section 420.5087, Fla. Stat., created the State Apartment Incentive Loan program to provide loans to provide affordable housing to very low income persons. The SAIL statute specifies certain tenant groups which are to be considered in the allocation of SAIL funding, and one of those tenant groups is “persons who are homeless.” Section 420.5087(3)(c), Fla. Stat.

41. Section 420.5099, Fla. Stat., designates Florida Housing as the housing credit agency, pursuant to the Internal Revenue Code, and assigns Florida Housing the responsibility to allocate and distribute low-income housing tax credits. The statute also instructs Florida Housing to adopt procedures to ensure the maximum use of housing credits to encourage the development of low-income housing.

42. In furtherance of these statutory purposes, Florida Housing established the competitive Request for Application process to allocate various forms of funding to satisfy various geographic and demographic affordable housing goals. The RFA in which Delmar Terrace applied included a funding goal for developments to house Homeless persons, and Delmar Terrace applied in and was selected for that funding goal.

43. Florida Housing recognizes that on occasion the original Development schedule proves to be unattainable, and allows for deadline extensions under certain circumstances. Florida Housing's statutory purpose of financing the development of affordable housing for low income and very low income persons, including persons who are homeless, will still be served by providing a short extension of the loan closing for the SAIL financing.

44. Section 420.507(22), Fla. Stat., authorizes Florida Housing to develop and administer the State Apartment Incentive Loan program. Florida Housing is specifically authorized to underwrite credit for purposes of making SAIL loans, by both 420.57(22)(h) and Section 420.5087(2), Fla. Stat.

45. The State Apartment Incentive Loan fund was created by Section 420.5087(7), Fla. Stat., and is funded by legislative appropriation and by loan repayments, proceeds from the sale of property, and other sources from activities conducted under the SAIL program. Florida Housing may foreclose on a mortgage or security interest, or commence legal action to protect the interest of Florida Housing and of the SAIL fund and to recover the unpaid principal, accrued interest, and fees on behalf of the fund. Section 420.5087(8).

46. In short, the statutory purposes of Florida Housing's actions regarding the SAIL fund are both to make loans to affordable housing, and to protect and replenish the fund so that it will be a continuing source of funding for affordable housing developments in the future.



47. Florida Housing's credit underwriting authority assists in protecting the fund, in preventing the making of loans to developments which are not financially viable, and recovering moneys to keep the SAIL fund strong and capable of extending loans to other affordable housing developments. Construction completion guarantees are one form of security Florida Housing uses to protect the fund. Florida Housing's current rule appears to require construction guarantees from both natural persons and corporate entities within the ownership structure of the Applicant who direct the actions of Applicant entities. Specifically, Florida Housing's rule requires construction completion guarantees from both individuals and entities on behalf of the general partner (if the Application is a limited partnership) or managers or managing members (if the Applicant is an LLC).

48. Many Applicants have natural persons within the ownership structure of the Applicant entity, either directly as a general partner or manager, or indirectly as a whole or partial owner (shareholder, partner, or member) of a general partner or manager. Such Applicants can easily identify a natural person with the appropriate personal ownership interest to provide a guarantee. However, Delmar Terrace South, LLC, does not have any natural persons within the ownership structure of its manager.

49. In order to further Florida Housing's fulfillment of the statutory purposes of the credit underwriting process, Delmar Terrace proposes a construction completion bond from a licensed surety to protect the SAIL fund, and to protect Florida Housing's Development Viability Loan funding, in the event of a default.

50. Finally, without an extension of the Placed in Service deadline to December 31, 2019, Delmar Terrace's investor will not close the tax credit partnership. That would obviously

result in failure of the development proposal and the loss of an opportunity to provide housing for low income residents, and particularly homeless residents, of Pinellas County.

#### **H. SUBSTANTIAL HARDSHIP AND PRINCIPLES OF FAIRNESS**

51. Delmar Terrace would suffer substantial economic hardship if it could not extend its SAIL loan closing date. Delmar Terrace would have to duplicate efforts and resources to comply with separate financing closing deadlines for its SAIL and tax credit awards.

52. Further, because Delmar Terrace is in need of additional Development Viability Loan funding through RFA 2017-109, which was not awarded until the September 22, 2017 Board meeting, having to proceed with SAIL loan closing before such an award has been underwritten treats Delmar Terrace differently than applicants who were not in need of such financing. Principles of fairness are violated when the literal application of a rule affects one person in a manner specifically different from other similarly situated persons. Section 120.542(2), Fla. Stat.

53. The waiver being sought is temporary in nature, to the extent that, once the SAIL deadlines are extended to January 31, 2018, and SAIL loan closing occur by that date, the extension periods are irrelevant.

54. Principles of fairness would be violated by strictly applying the construction completion guarantee rule to the Applicant because of the structure of the Applicant. Other Applicants who have natural persons within their ownership structure can meet the rule requirements; Delmar Terrace South cannot. The Applicant's ownership structure was fully disclosed when it applied for financing in early 2015, and it was selected for funding. Florida Housing did not object to the Applicant's structure, and neither its rules nor the RFA contained any provisions requiring that natural persons be part of the ownership structure of the Applicant entity.

55. The variance from the construction completion guarantee rule is temporary in nature, in that once construction has been completed and certificates of occupancy are issued for the building there is no need for the construction completion guarantee in any form (corporate guarantee, personal guarantee, or surety bond).

56. If Florida Housing has questions or requires additional information, Petitioner is available to provide any information necessary for consideration of this Petition.

**WHEREFORE**, Petitioner Delmar Terrace South, LLC respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition for Waiver and all the relief requested herein;
- B. Grant a waiver of the provisions of RFA 2014-115 limiting an applicant to one SAIL loan extension request, incorporated by reference in Rules 48.0072 (4)(c) and (27), Fla. Admin. Code, so as to allow Delmar Terrace South, LLC to extend its SAIL loan closing to January 31, 2018;
- C. Acknowledge that no further SAIL loan extension fee is due, or, alternatively, waive such extension fee;
- D. Authorize Delmar Terrace to provide as its construction completion guarantee a guarantee from its corporate managing member supplemented with a construction completion bond from a licensed surety authorized to do business in Florida for the amount of the SAIL loan and the Development Viability Funding loan, with Florida Housing as the sole obligee under such bond; and
- E. Extend the Placed in Service Deadline for Delmar Terrace to twenty-four months after the year in which Delmar Terrace's April 2017 Carryover Allocation Agreement was entered into, if necessary granting a variance from the QAP.

F. Grant such further relief as may be deemed appropriate.

**RESPECTFULLY SUBMITTED** this 10th day of October, 2017.



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& ATKINSON, P.A.

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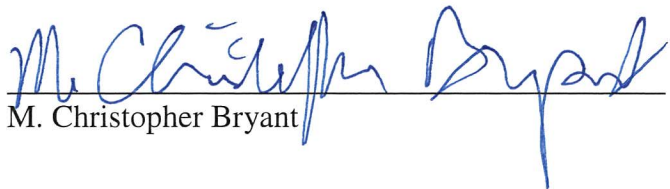
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy to be hand delivered within 5 days) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, [CorporationClerk@floridahousing.org](mailto:CorporationClerk@floridahousing.org), with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and by electronic transmission to Hugh Brown, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, [hugh.brown@floridahousing.org](mailto:hugh.brown@floridahousing.org), and Betty Zachem, Assistant General Counsel, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, [betty.zachem@floridahousing.org](mailto:betty.zachem@floridahousing.org), this 10th day of October, 2017.



M. Christopher Bryant

### **Attachments to Delmar Terrace Petition for Variance and Waiver**

1. Rule 67-48.0072(4)(c) (Effective 2016)  
Re: timing of SAIL closing
2. RFA 2014-115 at Exhibit C, Paragraph 11.f.  
Re: timing of SAIL closing, and extensions of SAIL closing
3. Rule 67-48.0072(27) (Effective 2016)  
Re: timing of SAIL closing
4. Rule 67-48.0072(15) (Effective 2014)  
Re: guarantees for completion of construction from “principal individual of the borrowing entity”
5. Rule 67-48.0072(15) (Effective 2016)  
Re: guarantee for completion of construction from “the general partner(s) (individual and entity) or manager(s) managing member(s) (individual and entity), as applicable, of the Applicant”
6. Rule 67-48.0072(95) (Effective 2014) (identical to 2016)  
Re: definition of “QAP” or “Qualified Allocation Plan,” and incorporation by reference of QAP
7. Paragraph II.K. of Qualified Allocation Plan (2015 and 2016 identical)  
Re: allocation of housing credits when credits are returned

# RULE 67-48.0072(4) (2016)

(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. For SAIL and HOME that is in conjunction with Competitive HC, the credit underwriting process and loan closing must be accomplished within the time frames outlined in the competitive solicitation.

(5) The Credit Underwriter shall review all information in the Application and subsequently provided during the credit underwriting process, including information relative to the Applicant, Developer, Housing Credit Syndicator, General Contractor, and, if an ALF, the service provider(s), as well as other members of the Development team. The Credit Underwriter shall also request and review such other information as it deems appropriate to determine whether or not to provide a positive recommendation in connection with a proposed Development.

(6) In determining whether or not to provide a positive recommendation in connection with a proposed Development, the Credit Underwriter will consider the prior and recent performance history of the Applicant, Developer, any Financial Beneficiary of the Applicant or Developer, and the General Contractor in connection with any other affordable housing development. The performance history shall consider instances involving a foreclosure, deed in lieu of foreclosure, financial arrearage, or other event of material default in connection with any affordable housing development or the documents governing financing or operation of any such development.

(a) Unless the Credit Underwriter determines that mitigating factors exist, or that underwriting conditions can be imposed, sufficient to mitigate or offset the risk, the existence of the following shall result in a negative recommendation of the proposed Development by the Credit Underwriter:

1. Considering all affordable housing developments in which any party named above has been involved, if:
  - a. During the period prior to August 1, 2010, 5 percent or more of that party's developments have been the



- (a) All Developments other than RD – The annual fee to be comprised of a base fee of \$156 per month + an additional fee per set-aside unit of \$9.56 per year, subject to a minimum of \$244 per month, and includes an automatic annual increase of 3 percent of the prior year’s fee. Since fees for the full Housing Credit Extended Use Period will be collected at final allocation, the fee amount is discounted at a rate of 2 percent and based upon the payment stream from the Corporation to the monitoring agent.
- (b) RD Developments - The annual fee is \$450 per year. Since fees for the full Housing Credit Extended Use Period will be collected at final allocation, the fee amount is discounted at a rate of 2 percent and based upon the payment stream from the Corporation to the monitoring agent

Note: Upon prepayment or repayment of the RD loan, the previously identified RD Development will be identified as a non-RD Development and the annual compliance monitoring fee will be adjusted accordingly. The compliance monitoring fee as described in (2) above for the remaining Housing Credit Extended Use Period will be due and payable in full upon billing sent directly to the Development.

- (3) SAIL Compliance Monitoring Fee – Annual fee of \$871
- (4) Follow-up Review - \$167 per hour.

e. Commitment Fees:

With respect to the SAIL Program, each Applicant to which a firm commitment is granted shall submit to the Corporation a non-refundable commitment fee of 1 percent of the SAIL loan amount upon acceptance of the firm commitment.

- (1) Non-Profit sponsors who provide a certification indicating that funds will not be available prior to closing shall be permitted to pay the commitment fee at closing.
- (2) All Applicants shall remit the commitment fee payable to the Florida Housing Finance Corporation.

f. Loan Closing Extension Fees:

In the event the SAIL loan does not close within the timeframe prescribed, extension fees will be assessed. The loan must close within 12 months of the date of the invitation to enter credit underwriting (preliminary loan commitment). Applicants may request one (1) extension of up to 12 months related to this closing deadline. The Corporation shall charge a non-refundable extension fee of 1 percent of the loan amount if the Board approves the request to extend the preliminary commitment beyond the initial 12 month closing deadline. In addition, the loan related to the construction of the Development must close within 180 Calendar Days of the date of the firm loan commitment. A request for an extension of the firm loan commitment may be considered by the Board for an extension term of up to 90 Calendar Days. The Corporation shall charge an extension fee of one-half of one percent of each loan amount if the Board approves the request to extend the firm commitment.

g. Loan Servicing Fees:

The following fees are not the fees that will be charged, but are listed below for estimation purposes of completing your pro-forma in the Application. The actual fees will be based on the

Corporation.

(24) For SAIL, EHCL, and HOME, the Credit Underwriter's loan recommendations will be sent to the Board for approval.

(25) For SAIL, EHCL, and HOME, the Corporation shall issue a firm loan commitment within seven (7) Calendar Days after approval of the Credit Underwriter's recommendation for funding by the Board.

(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 for a term of up to 90 Calendar Days. 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, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline 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.

(27) For SAIL and HOME that is in conjunction with Competitive HC, upon issuance of the preliminary loan commitment, these Corporation loans and other mortgage loans related to the Development must close within the time frame outlined in the competitive solicitation.



Moody's, Standard and Poor's or Fitch.

(b) For the Applicant, general partner(s), and guarantors, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. If financial statements that are either audited, compiled or reviewed by a licensed Certified Public Accountant are not available, unaudited financial statements prepared within the last 90 days and reviewed by the Credit Underwriter and the two most recent years' tax returns. If any of the applicable entities are newly formed (less than 18 months in existence as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules. The financial statements and information provided for review should be in satisfactory form and shall be reviewed in accordance with the terms and conditions of this rule chapter and any applicable competitive solicitation.

(c) For the General Contractor, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100 percent of the total construction cost whose terms do not adversely affect the Corporation's interest, and is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

(15) For SAIL and HOME, the Credit Underwriter shall consider the following when determining the need for construction completion guarantees:

- (a) Liquidity of the guarantor(s).
- (b) Developer and General Contractor's history in successfully completing Developments of similar nature.
- (c) Problems encountered previously with Developer or contractor.
- (d) Exposure of Corporation funds compared to Total Development Cost.

At a minimum, the Credit Underwriter shall require a personal guarantee for completion of construction from the principal individual of the borrowing entity. In addition, a letter of credit or payment and performance bond whose terms do not adversely affect the Corporation's interest will be required if the Credit Underwriter determines after evaluation of paragraphs (a)-(d) in this subsection that additional surety is needed. However, a completion guarantee will not be required if funds are not drawn until evidence of lien free completion is provided.

(16) For all Developments, the Developer fee and General Contractor's fee shall be limited to:

as of the date that credit underwriting information is requested), a copy of any and all tax returns with related supporting notes and schedules. The financial statements and information provided for review should be in satisfactory form and shall be reviewed in accordance with the terms and conditions of this rule chapter and any applicable competitive solicitation.

(c) For the General Contractor, audited financial statements or financial statements compiled or reviewed by a licensed Certified Public Accountant for the most recent fiscal year ended, credit check, banking and trade references, and deposit verifications. The audited or compiled statements may be waived if a payment and performance bond equal to 100 percent of the total construction cost whose terms do not adversely affect the Corporation's interest, and is issued in the name of the General Contractor by a company rated at least "A-" by AMBest & Co.

(15) For SAIL and HOME, the general partner(s) (individual and entity) or manager(s)/managing member(s) (individual and entity), as applicable, of the Applicant shall provide a guarantee for completion of construction. In addition, one or more entities or individuals (other than a general partner or manager/managing member) having an ownership interest, either directly or indirectly, in the Applicant or in the general partner or managing member of the Applicant shall be required to provide guarantees or personal guarantees, as applicable, for completion of construction as recommended by the Credit Underwriter or as otherwise required by the Corporation. The Corporation shall consider the following when determining the need for additional construction completion guarantees based on the recommendations of the Credit underwriter:

(a) Liquidity of any guarantee provider.

(b) Applicant's, Developer's and General Contractor's history in successfully completing Developments of similar nature.

(c) The past performance of the Applicant, Developer, General Contractor or any other guarantee provider

1. A corporation, any officer, director or shareholder of the corporation,
2. A limited partnership, any general partner or limited partner of the limited partnership, or
3. A limited liability company, any manager or member of the limited liability company; and

(c) With respect to an Applicant or Developer that is a limited liability company, any manager or member of the Applicant or Developer limited liability company, and, with respect to any manager or member of the Applicant or Developer limited liability company that is:

1. A corporation, any officer, director or shareholder of the corporation,
2. A limited partnership, any general partner or limited partner of the limited partnership, or
3. A limited liability company, any manager or member of the limited liability company.

(94) "Project" or "Property" means Project as defined in Section 420.503, F.S.

(95) "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2015 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's Website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-04614>.

(96) "QCT" or "Qualified Census Tract" means any census tract which is designated by the Secretary of Housing and Urban Development as having either 50 percent or more of the households at an income which is less than 60 percent of the area median gross income, or a poverty rate of at least 25 percent, in accordance with Section 42(d)(5)(B) of the IRC.

(97) "RD" or "Rural Development" means Rural Development Services (formerly the "Farmer's Home Administration" or "FmHA") of the United States Department of Agriculture.

(98) "Redevelopment" means:

(a) With regard to a proposed Development that involves demolition of multifamily rental residential structures currently or previously existing that were originally built in 1985 or earlier and either originally received financing or are currently financed through one or more of the following HUD or RD programs: Sections 202, 236, 514, 515,



**Florida Housing Finance Corporation  
2015 Qualified Allocation Plan  
Low Income Housing Tax Credits Program**

I. Introduction

Pursuant to Section 420.5099, Florida Statutes, the Florida Housing Finance Corporation (FHFC) is designated as the “housing credit agency” responsible for the allocation and distribution of Low Income Housing Tax Credits (Housing Credits) in Florida. As the allocating agency for the state, FHFC must distribute Housing Credits to Applicants pursuant to a Qualified Allocation Plan (QAP).

Section 42(m) of the Internal Revenue Code (IRC) requires each state allocating agency to adopt an allocation plan that includes certain priorities and selection criteria.

- A. Preferences given when allocating Housing Credits:
- Serving the lowest-income tenants
  - Serving qualified tenants for the longest periods
  - Projects located in qualified census tracts
- B. The following selection criteria will be considered when determining the allocation of Housing Credits:
- Project location
  - Housing needs characteristics
  - Projects characteristics including housing as part of a community revitalization plan
  - Sponsor characteristics
  - Tenant populations with special housing needs
  - Public housing waiting lists
  - Tenant populations of individuals with children
  - Projects intended for eventual tenant ownership
  - Energy efficiency of the projects
  - Historic nature of the project
- C. Provides a procedure that the agency will follow in monitoring for noncompliance with the provisions of Section 42, IRC, and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

FHFC issues and allocates Competitive Housing Credits through competitive solicitation processes pursuant to Rule Chapter 67-60, F.A.C.

Prior to the issuance of a Housing Credit Allocation, a Development must be underwritten in accordance with Rule 67-48.0072, F.A.C., or as outlined in a competitive solicitation in order to determine the Development’s feasibility, ability to proceed and the appropriate Housing Credit amount, if any. FHFC shall issue Housing Credits in an amount no greater than the amount needed for the financial feasibility and viability of a Development throughout the Housing Credit

compliance period. The issuance of Housing Credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by FHFC.

All capitalized terms not otherwise defined herein have the meanings set forth in Rule Chapters 67-21, 67-48 and 67-60, Florida Administrative Code.

## II. Competitive Housing Credits

The portion of the Allocation Authority (annual per capita allocation amount plus any unused Housing Credit carryovers allocated among certain States per Section 42, IRC, (National Pool) minus any applicable binding commitments) designated to be available within each respective competitive solicitation process at the time the Board approves the list of applications to award funding will be awarded in accordance with each competitive solicitation process as approved by the Board. All Developments will be reviewed if eligible pursuant to Rule Chapter 67-48, Florida Administrative Code, and/or the requirements of a competitive solicitation, and evaluated pursuant to FHFC's competitive solicitation process.

- A. Up to five percent of the Allocation Authority will be reserved for high-priority affordable housing projects, as defined by the Board.
- B. Five percent of the Allocation Authority will be reserved for affordable housing projects that target persons who have a disabling condition. Any Housing Credits not allocated because of a lack of eligible projects targeting persons who have a disabling condition shall be distributed for high-priority affordable housing projects.
- C. 15 percent of the remaining Allocation Authority will be set aside for those Applicants that select and qualify for the following Development Categories: Preservation or Acquisition and Preservation.
- D. 85 percent of the remaining Allocation Authority available will be set aside for those Applicants that select and qualify for the following Development Categories: New Construction, Rehabilitation, Acquisition and Rehabilitation, Redevelopment, or Acquisition and Redevelopment.

The Geographic Set-Aside distributions for Allocation Authority in this section are based on the most recent statewide market study:

Large County Allocation Authority:	59.0%
Medium County Allocation Authority:	36.7%
Small County Allocation Authority:	4.3%

- E. FHFC's goal is to have a diversified rental housing portfolio. Therefore, its annual competitive solicitation process targeting goal is to include an allocation of Housing Credits with a minimum of: one (1) affordable housing project in the Florida Keys Area of Critical

State Concern and/or the City of Key West Area of Critical State Concern, pursuant to Section 420.507, Florida Statutes. All other targeting will be as approved by the Board.

- F. FHFC will endeavor to allocate through one or more competitive solicitations not less than 15 percent of the Allocation Authority for Developments with Applicants qualified as Non-Profit under Rule Chapter 67-48, F.A.C., or as provided in the competitive solicitations, as applicable, unless the Board approves otherwise. FHFC is required by Section 42, IRC, to allocate no more than 90 percent of the Allocation Authority to Applicants which do not qualify as Non-Profit Applicants.
- G. Any Allocation Authority received on or before September 30<sup>th</sup> from returned Housing Credits from a prior year or from National Pool, will be used, (i) to fully fund any Application that has been partially funded with a binding commitment and then (ii) use will be determined by the Board.
- H. Unless the Board approves otherwise, any Allocation Authority received on or after October 1<sup>st</sup> from returned Housing Credits from a prior year, will be used, (i) to fully fund any Application that has been partially funded with a binding commitment and then (ii) applied to the next annual Allocation Authority.
- I. FHFC will retain the authority to designate Developments as a high-cost area through the authority given to FHFC by the Housing and Economic Recovery Act of 2008, enacted July 30, 2008. The criteria for such designation will be that any Person with Special Needs Development or Homeless Development awarded in a competitive solicitation process will be eligible for up to the 30% boost if that Development is not located in a HUD-designated DDA or a QCT.
- J. If time constraints preclude the conduct of a competitive solicitation process and Allocation Authority remains available to FHFC after the allocation of Housing Credits to all Developments which (i) applied in a competitive solicitation process, and (ii) were determined to be eligible for funding by the Board, FHFC may allocate Housing Credits to any Development in a manner designated by the Board.
- K. Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in

seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

- L. In the event of a disaster declared by the federal or state government, any Allocation Authority not preliminarily allocated, as well as authority remaining after October 1st may be diverted to one or more federally or state declared disaster areas.
- M. In the event the Florida Legislature allocates natural disaster recovery funding to FHFC, a portion of the this year's or future year's Housing Credit Allocation Authority may be allocated to be used in conjunction with said natural disaster recovery funds. Once it has been determined that the natural disaster recovery funds have been allocated, the process for allocating this year's Housing Credits and/or awarding Housing Credits from the a future's year's Allocation Authority will be approved by the Board of Directors.
- N. Housing Credits will be allocated in accordance with the 2014 Qualified Allocation Plan until the 2015 Qualified Allocation Plan becomes effective.
- O. For any Application awarded Housing Credits with a binding commitment, the Carryover Allocation will reflect the same place-in-service deadline requirement as the Application awarded through that same competitive solicitation process.

### III. Non-Competitive Housing Credits

Developments financed with tax-exempt bonds subject to volume cap are required to meet FHFC minimum Housing Credit guidelines to qualify and be eligible for a Housing Credit analysis. If 50 percent or more of the aggregate basis of a Development's building(s) and the land on which such building(s) are located is financed with volume cap tax-exempt bonds, the Housing Credits are issued at the federal level rather than as part of the State's Allocation Authority and these Developments are subject to Rule Chapter 67-21, Florida Administrative Code; however, they must meet the minimum threshold criteria, as follows:

- A. Developments that receive tax-exempt bonds issued by FHFC will be deemed to have met the minimum threshold criteria by successfully completing a request for Housing Credits in their bond Application.
- B. Developments that receive tax-exempted bonds issued by a County Housing Finance Authority must submit a completed Non-Competitive Application Package by the date specified in Rule Chapter 67-21, Florida Administrative Code, and meet the threshold requirements thereof.
- C. Developments that receive tax-exempt bonds issued by any entity other than FHFC or a County Housing Finance Authority must request the non-competitive Housing Credits using the Non-Competitive Application Package, must meet threshold requirements specified in the application instructions and Rule Chapter 67-21, Florida Administrative Code, and must

submit the Application by the date specified in Rule Chapter 67-21, Florida Administrative Code.

The non-competitive Housing Credits are subject to applicable provisions of Rule Chapter 67-21, Florida Administrative Code, as outlined in subsection 67-21.027, Florida Administrative Code, including, but not limited to, the compliance monitoring requirements set forth in Part IV of this plan.

#### IV. Compliance

- A. All Developments funded with Housing Credits will be monitored by FHFC or its appointee. Detailed compliance requirements are set forth in Rule Chapter 67-53, Florida Administrative Code, and in 26 CFR Part 1 Section 1.42-5.
- B. FHFC shall promptly notify the Internal Revenue Service of any Development non-compliance in relation to Section 42 of the Code and all other related applicable federal regulations.

New: 4-30-90; Amended: 3-25-91; 3-12-92; 3-4-93; 12-16-93, 2-9-95; 1-5-96; 10-21-96, 12-8-97, 9-25-98, 12-16-99, 1-4-01, 2-22-02, 2-28-03, 3-1-04, 1-11-05, 12-22-05, 3-6-07, 3-4-08, 4-29-09, 11-18-10, 6-24-11, 11-1-11, 9-18-13, 9-4-14.