

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Delmar Terrace South, LLC

FHFC CASE NO.: 2017-073VW

ORDER GRANTING WAIVER OF RULE 67-48.0072(4)(c) and (27)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 27, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on October 10, 2017, from Delmar Terrace South, LLC (“Petitioner”). On October 13, 2017, Florida Housing received Petitioner’s Amendment to Petition for Waiver and Variance (the “Amendment”). Notice of the Petition was published on October 12, 2017, in Volume 43, Number 198, 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 competitive housing credits and State Apartment Incentive Loan (“SAIL”) financing

under Request for Application
FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas Blamoy /PATL: 10/27/17

("RFA") 2014-115 to assist in the development of Delmar Terrace, a 65-unit homeless housing development in Pinellas County, Florida. Petitioner's Application Numbers were 2015-158CS and 2016-002CS (the "Applications").

3. In the original Petition, Petitioner sought a waiver of a Rule-adopted RFA provision to allow an additional extension of the SAIL loan closing deadline, a variance to Rule 67-48.0072(15) to allow a surety bond, and a variance to a Rule-adopted Qualified Allocation Plan ("QAP") provision on placed in service dates.

4. The Amendment to the Petition withdrew the variance request for Rule 67-48.0072(15) to allow alternate forms of construction completion guarantees and from the QAP provision that is adopted in and incorporated by Rule 67-48.0072(95) regarding the placed in-service deadline.

5. The sole issue remaining is a request for waiver of Rule 67-48.0072(4)(c) and 67-48.0072(27), incorporating by reference the terms and provisions of the RFA.

6. Rule 67-48.0072(4)(c), Fla. Admin. Code, provides:

(c) ... 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.

7. Rule 67-48.0072(27), Fla. Admin. Code, provides:

(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

8. Petitioner was awarded funding funder RFA 2014-115 (the "RFA"). The RFA contained the following provisions regarding the SAIL loan closing deadline and extensions to that deadline in Exhibit C, Section 11:

- 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.

(emphasis added).

9. Petitioner requests a waiver of the above Rules and bolded selection of the RFA provision above to permit it to extend its SAIL loan closing deadline. Petitioner was invited to credit underwriting on November 2, 2015, and received a 12-month extension to close the SAIL loan until November 2, 2017. Now, Petitioner

is requesting an additional extension of the SAIL loan closing date to January 31, 2018 to align with the deadline for closing of the tax credit partnership for Petitioner. Additionally, Petitioner recently received an award of Development Viability Loan funding under RFA 2017-109. Petitioner asserts that the credit underwriting process will be more efficient, complete, and accurate if all financing proceeded to a common closing date.

10. The Board finds that granting the waiver will not have any impact on 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 strict application of the above Rules and bolded selection of the RFA provision under these circumstances would constitute a substantial hardship and violate the principals of fairness. 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 and bolded selection of the RFA provision under these circumstances would cause substantial hardship to Petitioner, and 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: Petitioner's amended request for a waiver of the above Rules and bolded selection of the RFA provision regarding the SAIL loan closing deadline and extensions to that deadline is **GRANTED**, so that the SAIL loan closing deadline may be extended from November 2, 2017 until January 31, 2018.

DONE and ORDERED this 27th day of October, 2017.

Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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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.