

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Delmar Terrace South, LLC,

FHFC CASE NO.: 2017-0017VW

**ORDER GRANTING WAIVER OF RESTRICTION IN QUALIFIED
ALLOCATION PLAN ADOPTED BY RULE 67-48.002(95)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 24, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on March 7, 2017, from Delmar Terrace South, LLC (“Petitioner”). Notice of the Petition was published on March 9, 2017, in Volume 43, Number 47, 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 an award of Low Income Housing Tax Credits (“HC”) and State Apartment Incentive Loan (SAIL) funding under Request for Applications 2014-115 (the “RFA”) to assist in the construction of

Delmar Terrace, a 65-unit homeless housing development in Pinellas County, Florida.

3. Petitioner seeks a waiver from requirements of Section II.K. of the 2015 Qualified Allocation Plan (“QAP”), which is incorporated in Rule 67-48.002(95), Fla. Admin. Code.

4. Rule 67-48.002(95), Fla. Admin. Code, defines and incorporates by reference Section II.K. of the 2015 QAP, which provides the following:

[W]here 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, 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.

5. Petitioner requests a waiver from the above provision of the QAP to permit the immediate return of its Carryover Allocation of 2015 Housing Credits and to receive a reservation and Carryover Allocation of 2016 or 2017 Housing Credits. Petitioner asserts that it cannot meet its currently required “placed in service” date of December 31, 2017, due to delays in obtaining correct set back requirements outside its control. Petitioner asserts that having to wait until the final quarter of 2017 to request an exchange of credits has created an unwillingness in Delmar Terrace investors to close the tax credit partnership, because of current uncertainty in the tax credit equity market.

6. 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.

7. 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.

8. Petitioner has demonstrated that strict application of the above QAP provision adopted by Rule, 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.

9. The Board finds that strict application of the above QAP provision adopted by Rule 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 request for a waiver of Section II.K. of the 2015 Qualified Allocation Plan (“QAP”), which is incorporated in Rule 67-48.002(95), Fla. Admin. Code is hereby **GRANTED** to permit the immediate return of its Carryover Allocation of 2015 Housing Credits and to receive a reservation and Carryover Allocation of 2016 Housing Credits, with a corresponding extension of all deadlines relative to those credits.

DONE and ORDERED this 24th day of March, 2017.

Florida Housing Finance Corporation

By: 
Chair

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.