

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Delmar Terrace South, LLC

FHFC CASE NO.: 2018-005VW

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 January 26, 2018, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on January 10, 2018, from Delmar Terrace South, LLC (“Petitioner”). Notice of the Petition was published on January 11, 2018, in Volume 44, Number 08, 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 (“RFA”) 2014-115 to assist in the development of Delmar Terrace, a 65-unit

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HOUSING FINANCE CORPORATION

Thomas Blamoy / DATE: 1/26/18

homeless housing development in Pinellas County, Florida. Petitioner's Application Numbers were 2015-158CS and 2016-002CS (the "Applications").

3. Additionally, Petitioner's Application Number 2017-285V was selected to receive Development Viability Loan funding under RFA 2017-109.

4. Petitioner requests a waiver of Rule 67-48.0072(4)(c) and 67-48.0072(27), incorporating by reference the terms and provisions of the RFA. Petitioner seeks to extend its SAIL closing deadline from January 31, 2018 to April 28, 2018.

5. 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.

6. 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

7. 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).

8. 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. Additionally, Petitioner was granted a rule waiver to further extend the SAIL loan closing deadline to January 31, 2018. Petitioner's credit underwriting report is scheduled to be presented to the Board on January 26, 2018. Petitioner asserts that if credit underwriting approval occurs on January 26, 2018, a reasonable period of time is needed to schedule closing of all financing.

9. Florida Housing staff agreed to extend the deadline for closing of the tax credit partnership to 90 days after approval of the credit underwriting, or April 28, 2018. Petitioner requests an extension of the SAIL loan closing date to April 28, 2018 to align with the deadline for closing of the tax credit partnership. Petitioner requests this additional extension to allow sufficient time for Florida Housing's outside counsel to prepare closing documents and for those documents to be reviewed and finalized by all parties.

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 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 January 31, 2018 until April 28, 2018.

DONE and ORDERED this 26th day of January, 2018.

Florida Housing Finance Corporation



By:

Ray E. Dabugue
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.