

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Delmar Terrace South, LLC

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

Petitioner.

**PETITION FOR WAIVER OF PROVISION OF RULE-ADOPTED 2015 HOUSING
CREDIT QUALIFIED ALLOCATION PLAN TO ALLOW EXCHANGE OF
2015 HOUSING CREDITS FOR 2016 OR 2017 HOUSING CREDITS**

Petitioner, DELMAR TERRACE SOUTH, LLC, a Florida limited liability company, hereby submits this Petition to the Florida Housing Finance Corporation ("FHFC") for a waiver of the restriction in the 2015 Housing Credit Qualified Allocation Plan, incorporated by reference in FHFC Rule 67-48.002(95), Fla. Admin. Code on when a recipient of housing credits can exchange previously issued housing credits for current year housing credits, in order to exchange 2015 Housing Credits for 2016 or 2017 Housing Credits and extend its "placed in service" deadline (and other development deadlines). In support of this petition, Petitioner states as follows:

A. NATURE OF REQUEST.

1. 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 a provision of the Qualified Allocation Plan, incorporated by reference in Rule 67-48.002(95), Fla. Admin. Code, to allow Petitioner to exchange housing credits from Florida Housing's 2015 allocation for 2016 or 2017 housing credits.

B. THE PETITIONER

2. 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)

C. FACTUAL BACKGROUND

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. The Certificate of Binding Commitment entered into by Florida Housing and Delmar Terrace required Delmar Terrace to meet the following project deadlines, including 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.

11. 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. As of the date of this Petition, Delmar Terrace has demonstrated site control and has documented satisfaction of the 10% test.

12. 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 has paid the SAIL loan extension fee of \$32,500.

D. QAP PROVISIONS

13. The Housing Credit program is governed in part by a Qualified Allocation Plan (QAP), required by federal law, which sets forth the selection criteria and preferences of Florida Housing for Developments which will receive Housing Credits. The QAP also contains certain provisions governing the distribution and return of Housing Credits. Florida Housing creates a QAP annually, and incorporates it by reference in Florida Housing Rule 67-48.002(95), Fla. Admin. Code. The QAP in effect for RFA 2014-115 was the 2015 QAP.

14. Paragraph II.K. of the 2015 QAP allows an applicant to return its allocation of Housing Credits if it is apparent that the Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control. According to Paragraph 11.j. of Exhibit C to RFA 2014-115, found on page 117 of the RFA, the approval of a request for a return of HC allocation and receipt of a new HC allocation requires payment of a \$15,000 fee. Florida Housing may then allocate Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, if Florida Housing agrees that the delay was caused by circumstances beyond the Applicant's control, and certain other factors.

15. However, Paragraph II.K. specifies that a return of Housing Credit Allocation, and receipt of allocation from the next year, can only occur "in the last calendar quarter of the year in which [the Development] was otherwise required to be placed in service." As noted, since Delmar Terrace's Carryover Allocation Agreement (and First Amendment to Carryover Allocation Agreement) were both entered into at the very end of calendar year 2015, its currently required "placed in service" date is December 31, 2017. Having to wait until the final quarter of 2017 to request an exchange of credits when Delmar Terrace is aware now that it cannot meet the

December 31, 2017 “placed in service” deadline, will create uncertainty in the investors involved in the Delmar Terrace financing structure. That uncertainty was exacerbated by the change in administration in Washington, with a likely push to lower corporate federal income tax rates, which will in turn substantially impact the price investors will be willing to pay for housing credit investments. Delmar Terrace’s investors are unwilling to close the tax credit partnership with that uncertainty lingering at this time.

16. Delmar Terrace seeks a waiver of Paragraph II.K. of the QAP in order to return its 2015 Housing Credits now (instead of in late 2017) and receive an allocation of 2016 or 2017 Housing Credits instead of 2015 Housing Credits. Especially given the instability in the market for housing credits, driven by likely changes in corporate income tax rates, tax credit investors generally, and Delmar Terrace’s equity investor specifically, are unwilling to commit to purchasing tax credits (by entering into the tax credit partnership). Further, with the expansion of the Delmar Terrace site, discussed below, it will not be possible to complete this high-rise development by the end of the calendar year 2017.

E. JUSTIFICATION FOR REQUESTED WAIVER

17. When Delmar Terrace was invited into credit underwriting in December of 2015, representatives of MBS expressed concern to Agency staff that it would be extremely difficult (if not impossible) to place the project in service by December 2017. Delmar Terrace was assured that an exchange of 2015 tax credits for subsequent year’s credits would be available should the project need additional time, and was advised that such an exchange would occur in the fourth quarter of the placed-in-service year. Delmar Terrace immediately began working on this concept with its investor, and continued to push the project forward.

18. By September of 2016, it was clear that the Investor would only be comfortable closing with written confirmation from FHFC, prior to closing, that it would exchange the 2015 credits for 2016 or 2017 credits in the fourth quarter of 2017. Delmar Terrace informed its investor that, under Florida Housing's rule-adopted QAP, written confirmation could not be obtained until the fourth quarter of the placed-in-service year, absent a rule waiver. Nonetheless, Delmar Terrace was confident that a solution could be reached, and in that spirit, made the significant financial commitment to close on the project site (including contracting for an additional adjacent parcel, discussed below) in December of 2016, and advanced the architectural plans forward to the point that it was able to submit for building permits in February of 2017.

19. In the wake of the 2016 Presidential election, the LIHTC market has experienced a shock -- the likes of which has not been seen since the financial collapse of 2008. As a result of the current environment, the LIHTC investor for Delmar Terrace will not close with any unusual conditions present in the transaction. Investors across the market have tightened underwriting criteria, and LIHTC-financed developments with any unusual aspects whatsoever are having difficulty finding investors.

20. The primary reason for Delmar Terrace's request to waive the 2015 QAP provision, and to allow for a credit exchange earlier than the QAP would otherwise allow, is the uncertainty in the tax credit equity market. Delmar Terrace's equity partner is a very experienced equity investor but is unwilling to close the tax credit partnership without knowing that the development will be able to meet a placed-in-service deadline.

21. The equity investor has, further, reduced the rate it is willing to pay for housing credits because of lingering uncertainty over federal corporate income tax rates. Delmar Terrace has continued to negotiate with general contractors to bring the development to fruition within

budget, and may still experience a financing gap of \$500,000 or more, but Delmar Terrace's developer is confident that the development is still financially feasible. (From the outset of the application, the Developer had already budgeted for deferring \$3.0 million of its \$3.2 million Developer Fee.)

22. In addition, following the award of funding and entering into the Carryover Allocation Agreement, as specific development plans were being prepared, setback and "stepback" requirements for higher floors of the building limited the number of units that could be located on each floor. The result, then, was that the 65 units would require a 17 story building. Delmar Terrace was able to place an adjacent parcel of property under contract to expand the development site, reduce the building height to 12 stories, and, upon completion of the development, use the adjacent parcel as a greenspace and children's play area for Delmar Terrace tenants. A shorter high-rise will allow for more efficient construction and is the right outcome for the families and individuals who will be served. The due diligence process, contract negotiations, and additional site plan meetings with local government staff on the feasibility of the site expansion and project redesign further delayed the development schedule.

Relief Requested

23. Based primarily on the issues with its equity investor, Delmar Terrace seeks to exchange its previously awarded 2015 Housing Credits for 2016 or 2017 Housing Credits, which Delmar Terrace understands would extend the placed-in-service date to December 31, 2018 or December 31, 2019, and would provide certainty to Delmar's investors that the project will remain in compliance with the "placed in service" date required for Housing Credit developments. Investor uncertainty regarding Delmar Terrace's ability to obtain a later placed in service date, and the unwillingness of investors to close the tax credit partnership in the face of such uncertainty,

would impose a substantial economic hardship on Delmar Terrace; essentially, the project could not move forward, tax credits would be returned, and the large expenditures Delmar Terrace has already expended would be lost.

24. Granting the requested waiver 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.

25. The requested Rule waiver or variance 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.

Statutory Purpose Served

26. 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.

27. 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.

28. 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.

29. Florida Housing recognizes that on occasion the original Development schedule proves to be unattainable, and allows for deadline extensions under certain circumstances. As discussed previously in this Petition, for Housing Credit financing those circumstances may necessitate the exchange of previously allocated credits for an award of current year credits, in order to comply with federal requirements for placing a development in service within a certain calendar year relative to the year of housing credit allocation to that development.

30. 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 allowing Delmar Terrace to exchange the 2015 credits for 2016 or 2017 credits. The purpose for the request is to address investor certainty regarding compliance with the placed-in-service date and equity pricing, and to accommodate Delmar Terrace's site expansion that will allow it to more efficiently build housing that will, in operation, be more convenient for tenants, more financially viable, and will offer the tenants a new amenity (greenspace and recreational area) not previously available.

Substantial Hardship

31. Delmar Terrace would suffer substantial economic hardship if the QAP provision allowing a housing credit exchange only in the last quarter of the original "placed in service" year was strictly applied. Delmar Terrace has expended substantial sums of money in the development

of this project, including the Housing Credit administrative fee of \$149,000; \$35,000 in extension fees necessitated by the site expansion; purchase of the original project site; and substantial architectural engineering, permitting, and other fees.

32. The waiver being sought is temporary in nature, to the extent that, once an exchange of 2015 housing credits for 2016 or 2017 housing credits occurs, the relevant placed-in-service date would be controlled by the 2016 or 2017 housing credit issuance year.

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

Precedent for Variance

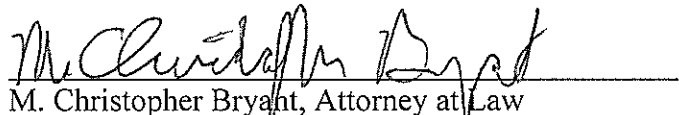
34. On at least two prior occasions, Florida Housing has waived the QAP provision limiting exchanges of Housing Credits to occur only in the fourth quarter of the “placed in service” year, and to allow the exchange of credits to occur earlier in the development process. See, *In Re: Arbours of Tumblin Creek, LLC*, FHFC Case No. 2015-034VW (Board approval obtained October 30, 2015) and *In Re: Oakland Preserve, LLC*, FHFC Case No. 2015-035VW (Board approval obtained October 30, 2015). In both cases the Petitioners cited as one reason for the requested early credit exchange the investor partner’s concern over waiting until the last quarter of the “placed in service” year to obtain approval for an exchange of prior issued credits for current year credits. More recently, at its February 2017 meeting, Florida Housing’s Board of Directors approved waivers of the QAP provision governing when tax credit recipients can request an exchange of prior year’s credits for current year credits, based on investor uncertainty in the current political environment over corporate income tax rates and the resulting real value of tax credits, and project delays. See, *In Re: Heritage at Pompano Station Housing Partners, LP*, FHFC Case No. 2017-004VW; *In Re: Frenchtown Square Partners, LLC*, FHFC Case No. 2017-005VW; *In*

Re: West Lakes Phase I, LP, FHFC Case No. 2017-007VW; and In Re: Landings at Port Richey Senior Housing Limited Partnership, FHFC Case No. 2017-008VW.

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. Enter an order granting a waiver of the requirements of the 2015 Qualified Allocation Plan, incorporated by reference in Rule 48.002(95), Fla. Admin. Code, so as to allow Delmar Terrace South, LLC to exchange previously allocated Housing Credits for 2016 or 2017 Housing Credits now instead of in the last quarter of 2017, the current “placed in service” year; and
- C. Grant such further relief as may be deemed appropriate.

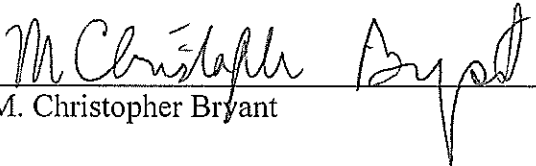
RESPECTFULLY SUBMITTED this 7th day of March, 2017



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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, 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, this 7th day of March, 2017.



M. Christopher Bryant