

RECEIVED
APR 14 2016 11:14

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Delmar Terrace South, LLC

**FHFC Case No. 2016-0026VW
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 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 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 housing credits.

B. THE PETITIONER

2. As explained in this Petition, Petitioner was the recipient of Housing Credits and a SAIL loan from the 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 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. 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.

5. 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.

6. 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.

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

- a. Demonstration of site control by June 30, 2016.
- b. Incurring at least 10% of the reasonably expected basis of the Development by June 30, 2016.
- c. Commencement of construction by September 30, 2016.
- d. Finalize credit underwriting by September 30, 2016.
- e. Close the tax credit partnership by September 30, 2016.
- f. Place all qualified buildings in service by December 31, 2017.

8. The Carryover Allocation Agreement entered into by Delmar Terrace and Florida Housing allowed for extension of the above deadlines. However, it also required the payment of extension fees for several of the deadline extensions, including:

- a. Extension of providing evidence of site control: \$5,000.00.
- b. Extension of meeting the "10% test": \$5,000.00.

- c. Extension of commencement of construction: \$10,000.00.
- d. Extension of finalizing credit underwriting: \$5,000.00.
- e. Extension of closing tax credit partnership: \$10,000.00.

9. On June 10, 2016, Petitioner requested extensions of the deadlines referenced in Paragraph 7 a. through f. above. A copy of Petitioner's request, in the form of a letter submitted by Delmar Terrace South, LLC, by its manager, Delmar Terrace MBS Member, Inc., is attached hereto as Exhibit A. Specifically, Petitioner requested extensions to:

- a. Demonstrate site control by June 30, 2017
- b. Meet the 10% test by June 30, 2017
- 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.
- f. Place all qualified buildings in service by December 31, 2018.

At Florida Housing staff's subsequent instruction, Delmar Terrace paid extension fees in the amount of \$35,000, for extension of items a. through e., but not for extension of the "placed in service" date (from December 31, 2017 to December 31, 2018). FHFC staff suggested to Delmar Terrace that it seek a rule waiver to allow an extension request not for the "placed in service" date, rather than seeking such an extension at a later date, as appears to be required by the QAP provision discussed infra; Delmar Terrace understands that extension of the "placed in service" date would extend other deadlines listed above.

D. QAP PROVISIONS

10. 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.

11. 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.

12. 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. Delmar Terrace's investors are unwilling to close the tax credit partnership with that uncertainty lingering at this time.

13. Delmar Terrace seeks a waiver of this provision of the QAP in order to return its 2015 Housing Credits now (instead of in late 2017) and receive an allocation of 2016 Housing Credits instead of 2015 Housing Credits. It is apparent that, with the recent expansion of the Delmar Terrace site, discussed below, it will not be possible to design, permit, and complete this high-rise development by the end of the calendar year 2017. Seeking the necessary extension of each of the deadlines imposed by the 2015 Housing Credit Allocation, and the eventual extension request for the “placed-in-service” deadline and exchange of credits at the end of 2017, will place an undue financial burden on Delmar Terrace. Delmar Terrace also requests a refund of the \$35,000 in extension fees already paid, less the \$15,000 “credit exchange” fee, if approved.

E. JUSTIFICATION FOR REQUESTED WAIVER

14. Following the award of funding and entering into the Carryover Allocation Agreement, Delmar Terrace explored the possibility of expanding its development site by acquisition of a small adjacent vacant parcel of property, currently being used as parking for a small building on another lot that houses a small (10 unit) affordable housing development providing permanent housing for formerly Homeless tenants. Delmar Terrace recently entered into a contract for the purchase of that parcel. By expanding its parcel size, Delmar Terrace will be able to construct all the way to the original parcel’s property line, instead of having to be set back from the original parcel’s property line. The newly-acquired small adjacent parcel will serve as the setback area for zoning and land use regulation purposes. During construction the adjacent lot can be used for material storage and onsite construction management for greater site security. Upon completion of the development, the lot will serve as a greenspace and children’s play area for Delmar Terrace tenants.

15. Construction to the property line, and thus increasing the footprint of the building, will also allow Delmar Terrace to lower its designed building height from the original planned 17 stories to 12 stories. A shorter high-rise will allow for more efficient construction and greater convenience to the tenants.

16. Because of the current usage of the small parcel, and its ownership by a non-profit organization, the due diligence process, contract negotiations, and approval process by the non-profit's board, have added significantly to the project development schedule. Conceptual site plan meetings with local government staff on the feasibility of the site expansion for both Delmar Terrace and the existing 10 unit development also had to be conducted prior to both the buyer and seller of this parcel reaching agreement, and this further delayed site development.

17. Because of the site expansion and building redesign, Delmar Terrace will be unable to meet a number of the deadlines imposed by the Certificate of Binding Commitment. Delmar Terrace may be able to request extension of these deadlines, but doing so would require the payment of considerable extension fees. As noted, Delmar Terrace has already submitted extension requests for the deadlines as described in paragraphs 7 and 9 above, and has paid extension fees totaling \$35,000.

18. Delmar Terrace seeks to exchange its previously awarded 2015 Housing Credits for 2016 Housing Credits, which Delmar Terrace understands would result in the project development deadlines being moved later in time. Obtaining later development deadlines would eliminate the need for Delmar Terrace to request multiple extensions and paying additional extension fees; may allow Delmar Terrace to request withdrawals of some extension requests already submitted and receive full or partial refunds of extension fees already paid (or receive credit towards other extension fees); 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. Paying multiple extension fees and investor uncertainty regarding the development deadlines would impose a substantial economic hardship on Delmar Terrace.

19. The granting of the 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 State funding. The change would also not provide Delmar Terrace with an unfair competitive advantage over other applicants. All scoring would have been the same.

20. 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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 credits. The purpose for the request is 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

26. 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, and \$35,000 in extension fees necessitated by the site expansion.

27. The waiver being sought is temporary in nature, to the extent that, once an exchange of 2015 housing credits for 2016 housing credits occurs, the relevant deadlines and placed in service date are controlled by the 2016 housing credit issuance year.

28. 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

29. 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 claimed delays resulting from litigation in RFA process, local development approval delays, and investor partner’s concern over uncertainty of 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.

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 2015 Housing Credits for 2016

Housing Credits now instead of in the last quarter of 2017, the current "placed in service" year;

C. Refund the extension fees already paid by Delmar Terrace that are in excess of the \$15,000 Housing Credit exchange fee; and

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

RESPECTFULLY SUBMITTED this 11th day of July, 2016.



M. Christopher Bryant, Attorney at Law
Counsel for Delmar Terrace South, LLC
OERTEL, FERNANDEZ, BRYANT
& ATKINSON, P.A.

2060 Delta Way
Tallahassee, Florida 32303
Telephone: (850) 521-0700
Facsimile: (850) 521-0720
E-mail: cbryant@ohfc.com

CERTIFICATE OF SERVICE

The Petition for Waiver is being served by hand delivery, with a copy served by electronic transmission, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, 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 and Hand Delivery to Hugh Brown, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301 this 11th day of July, 2016.



M. Christopher Bryant

**MCCORMACK
BARON
SALAZAR**

June 10, 2016

Ms. Amy Garmon
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Re: Delmar Terrace South, LLC, Application # 2015-158CS/2016-002CS
Request for Extension of Deadlines

Dear Ms. Garmon:

Thank you for your e-mail notification on June 1, 2016, concerning upcoming June 30, 2016, deadlines for Delmar Terrace (and for other developments submittal by other applicants).

The purpose of this letter is to request extension of those deadlines for Delmar Terrace.

Under the terms of Florida Housing's previously issued Certificate of Binding Commitment for Housing Credits, Delmar Terrace was to meet the following terms:

- a. Certify that it shall demonstrate to Florida Housing that it has satisfied the requirement of site control on or before June 30, 2016;
- b. Certify that it shall incur at least 10 percent of the reasonably expected basis (10% test) of the Development on or before June 30, 2016;
- c. Acknowledge and agree to commence construction on or before September 30, 2016;
- d. Acknowledge and agree to finalize credit underwriting on or before September 30, 2016;
- e. Acknowledge and agree to close its tax credit partnership on or before September 30, 2016;
- f. Acknowledge and agree that all qualified buildings within the Development shall be placed in service on or before December 31, 2017.

EXHIBIT

A

MCCORMACK
BARON
SALAZAR

Amy Garmon
June 10, 2016
Page 2

The purpose of this letter is to request extensions of those timeframes to the following:

- a. Satisfaction of site control by June 30, 2017
- b. Meeting the 10% test by June 30, 2017
- 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
- f. All qualified buildings placed in service by December 31, 2018

The reasons for the extension requests relate to an expansion of the Delmar Terrace development site. In the course of planning the construction and development of Delmar Terrace, Delmar Terrace's co-developer, Boley Centers, Inc., agreed to make available for the Delmar Terrace development a small vacant adjacent parcel currently being used as parking for a small building on another lot. By expanding the parcel size, Delmar Terrace will be able to construct all the way up to the property line for the original parcel, instead of having to be set back from that property line; the small adjacent parcel to be acquired will serve as the setback. The small vacant parcel will serve as a greenspace and children's play area for Delmar Terrace. Construction to the property line will also allow Delmar Terrace to lower its design building height to 12 stories, from the original planned 17 stories, allowing for more efficient construction and greater convenience to the tenants. The acquisition necessary to expand the site, and to modify and permit the development plans, requires additional time to complete.

Thank you for your consideration of this request, and please advise if additional information is needed.

MCCONNACK
BALON
R. H. WOOD

Amy Garmon
June 10, 2016
Page 3

Sincerely,

Delmar Terrace South, LLC

By: Delmar Terrace MBS Member, Inc.



Kim Hartmann, Vice President