

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

BLUE BROADWAY, LLC,

Petitioner,

FHFC CASE NO. 2018-071VW

v.

APPLICATION NO. 2017-212C

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER

Petitioner Blue Broadway, LLC (“Blue Broadway”) by and through undersigned counsel, petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the timing provisions of the 2016 Qualified Allocation Plan (“2016 QAP”) as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code (“F.A.C.”) (the “Rule”) pertaining to a tax credit exchange. In support, Blue Broadway states as follows:

A. **THE PETITIONER**

1. The address, telephone, facsimile numbers and e-mail address for Blue Broadway and its qualified representative are:

Blue Broadway, LLC
Attn: Shawn Wilson
5300 W. Cypress Street, Suite 200
Tampa, FL 33607
Telephone: (813) 384-4825
Email: swilson@blueskycommunities.com

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2. The address, telephone and facsimile number and e-mail address of Blue Broadway's counsel is:

Michael P. Donaldson, Esq.
Carlton Fields, P.A.
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3. Blue Broadway timely submitted its Application in response to RFA 2016-113 requesting \$2,110,000 in an award of Low Income Housing Tax Credits ("Tax Credits") to supplement the construction of an affordable housing complex in Hillsborough County, Florida. Blue Broadway was awarded its requested Tax Credits on September 22, 2017. The funds generated from the Tax Credits supplement the development of 144 affordable apartment units in a complex named the Preserve at Sabal Park ("Development").

4. This requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Blue Broadway, (b) could deprive Hillsborough County, Florida of essential affordable low-income housing units in a timely manner, and (c) would violate the principals of fairness.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(96), F.A.C. and Subsection II.K. of the 2016 QAP, which provides as follows:

K. Notwithstanding any other provision of this QAP, where 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, and 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.

(emphasis added).

6. The process found in the 2016 QAP requires an applicant to return its allocation of Tax Credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. Blue Broadway is requesting a waiver of this limitation on the timing of the Tax Credit exchange, to allow a credit exchange to be approved by the Executive Director, or the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2019.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP

7. The 2016 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutes relating to the allocation of Tax Credits contained in Section 420.5099 Florida Statutes ("F.S."). See § 420.5099, F.S.,

(2017) (the "Statute"). Per Section 420.5099(1),(2), F.S., Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.K OF THE 2016 QAP

8. Blue Broadway requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the Tax Credit exchange prior to the last quarter of 2019.

9. In September of 2016, Blue Broadway committed to exploring the possibility of developing a Tax Credit financed project in Hillsborough County to help meet the needs of families in the area. The Application for The Tax Credits was submitted on December 30, 2016, and the Tax Credits were awarded on September 22, 2017. Between the time Blue Broadway initially underwrote the transaction in the fall of 2016 and early 2018 the transaction was negatively impacted by a \$2,458,150 decrease in Tax Credit equity proceeds and a \$1,335,966 increase in construction costs. The decrease in Tax Credit equity proceeds was the result of the anticipated and eventual passing of federal corporate tax reform. The construction cost increased due to increases in material and labor within this sector; which in turn resulted partially from the numerous storm events which occurred across Florida and the Southwest subsequent to the Application Deadline.

10. The significant increase in costs and decrease in funding required Blue Broadway to undertake numerous efforts to creatively modify elements of the Development to address the resulting funding shortage, while still conforming to all Florida Housing standards. While all of those efforts have been successful and the Development is ready to move forward, the time it took to address those issues significantly delayed the permitting process. Blue Broadway is in the middle of

completing the permitting process, which is required in order to close on all financing for the project and meet the 10% test. However, Blue Broadway will not complete the permitting process and, therefore, will not be able to meet the 10% test by the current deadline of December 12, 2018.

11. The delays to date have been caused by circumstances outside the control of Blue Broadway. The delays were unforeseen and unanticipated. Blue Broadway will not meet its December 12, 2018, 10% test deadline or its December 31, 2019 placed in service deadline. Blue Broadway believes it will meet the 10% test by February 28, 2019.

12. Under Section 120.542(1), F.S. and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), F.S. (2017).

13. In this instance, Blue Broadway meets the standards for a waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that affordable housing units will be made available for the target population in Hillsborough County, Florida. The strict application of the 2016 QAP and the timing limitation on the credit swap will create substantial hardship for Blue Broadway because it will not be able to timely construct the Development. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to

¹ Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), Florida Statute (2017)

facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would deny Hillsborough County these much-needed affordable housing units.

14. The requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, it would increase the probability that a tax credit investor will commit to the Development and Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. See § 420.5099(2), F.S. (2017). Additionally granting the requested waiver would be consistent with similar requests that have been granted. *Janie Poe Associates 3, LLC v. Florida Housing Finance Corp.*, FHFC Case No. 2015-002VW (Order Granting Waiver dated March 24, 2015), *Denton Cove Ltd. v. Florida Housing Finance Corp.*, FHFC Case No. 2017-081VW (Order Granting Waiver dated December 8, 2017).

F. ACTION REQUESTED

15. For the reasons set forth herein, Blue Broadway respectfully requests Florida Housing (i) grant the requested permanent waiver of the timing requirements found in the 2016 QAP and allow the requested credit exchange to be approved before the last calendar quarter of 2019; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted this 26th day of September 2018.

/s/ Michael P. Donaldson
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Attorney for Blue Broadway

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by Hand-Delivery for filing with Corporation Agency Clerk and Hugh Brown, General Counsel for the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, with copies served via Hand-Delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399 this 26th day of September 2018.

/s/ Michael P. Donaldson
Michael P. Donaldson