

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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CASE NO. 2019-099VW

FLORIDA HOUSING
FINANCE CORPORATION

HTG VILLAGE VIEW, LLC

Petitioner,

vs.

FHFC Application No. 2018-303C
REQUEST FOR APPLICATIONS:2017-113

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS
AND
RULE 67-48.002(95), FLORIDA ADMINISTRATIVE CODE (2017)**

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner, HTG Village View, LLC ("HTG Village View" or "Petitioner") submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Subsection II. K of the 2016 Qualified Allocation Plan ("2016 QAP"), which was incorporated by reference in rule 67-48.002 (95) (2017). Subsection II.K of the QAP prohibits the return of HTG Village Views' 2018 Housing Credits before the last quarter of 2020. HTG Village View seeks to return the 2018 credits now in exchange for an immediate allocation of 2020 Housing Credits. This would result in an extension to the placed-in-service date from December 31, 2020 to December 31, 2021. In support of this Petition, HTG Village View states as follows:

PETITIONER AND ATTORNEY

1. The name, address, telephone number and email address for Petitioner is

HTG Village View, LLC, 3225 Aviation Avenue, 6th Floor, Coconut Grove, Florida 33133, (305)-860-8188, Matr@htgf.com. For purposes of this proceeding, the contact information for Petitioner is that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is Maureen McCarthy Daughton, Maureen McCarthy Daughton, LLC, 1725 Capital Circle NE, Ste 304, Tallahassee, Florida 32308; 850-345-8251; mdaughton@mmd-lawfirm.com.

BACKGROUND

3. HTG Village View submitted an application in response to, *RFA 2017-113 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties.* (the "RFA:") HTG Village View proposed to build a 96 unit High Rise development in Broward County to serve the Elderly Non-ALF demographic.

4. HTG Village View was funded pursuant to a Final Order entered by the Florida Housing Board on September 14, 2018. HTG Village View on October 1, 2018 was subsequently invited into credit underwriting and submitted a signed acknowledgement accepting the invitation.

5. If an Applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, the applicant must enter into a "Carryover Allocation Agreement" ("Carryover Agreement") with Florida Housing by December 31 of the year in which the preliminary allocation is issued.¹ HTG Village View and Florida Housing entered into the Carryover Agreement on December 27, 2018.² The Carryover

¹ Rule 67-48.028(1), F.A.C.

² The Carryover Agreement in December 2018 was for \$2,514,965.15 of credits that were available at the time. HTG Village View was issued a 2019 Carryover Allocation for the remaining \$46,034.85 requested allocation.

Agreement allows (pursuant to Section 42 of the Internal Revenue Code) the applicant until the end of the second year in which the carryover allocation is issued to place the development in service. The HTG Village View Carryover Agreement required that the Development be placed in service by December 31, 2020.

6. Due to delays beyond the control of HTG Village View, described herein, the December 31, 2020, placed-in-service deadline cannot be met. First, during the design and planning process, HTG learned for the first time that a sewer main would have to be removed and that FPL overhead lines running north and south down the middle of the property would have to be replaced. It took FPL over one year to complete the design, planning and permitting process. The electrical lines at issue, serviced the adjacent neighbor to the north. An easement had to be obtained from the fee owner for the property that HTG Village View was purchasing in order to commence this work. The work is currently in process and should be complete by January 2020. The sewer issue took 8 months of negotiation with the neighboring property owner to allow for re-routing of the sewer line, followed by another 2 months of permitting and 2 months to perform the work. Both the FPL and sewer work required easements to be vacated by the County Commission and perfected through a City of Fort Lauderdale engineering certificate that all utilities had been removed and relocated. The sewer work is now complete.

7. Addressing these improvements required communication, coordination and cooperation from local governments, neighboring property owners and the utilities which caused unexpected delays. Specifically, numerous meetings had to be coordinated to accommodate all interested parties, fees paid to commence work and numerous negotiations with neighbors to obtain the needed easements.

8. Anticipating this delay, on May 3, 2019, HTG Village View requested an extension to the site control, 10% test, notice of commencement, credit underwriting report and tax credit partnership agreement. On May 17, 2019, the Corporation approved extensions to the site control and 10% test deadline to December 27, 2019. The Corporation also approved the deadline for the notice of commencement, credit underwriting report and tax credit partnership agreement to December 31, 2019 however the placed in service deadline remained December 31, 2020.

9. In early August 2019, HTG Village View was continuing to work towards closing on financing by December 2019 by finalizing the General Contractors contract and achieving fully permitted construction documents. However by August 20, it was evident that the fully permitted construction documents would not be obtained without significant delay due to the moving of the transmission lines and the sewer main, which in turn delayed the civil engineering review as it was not certain that the utility easements and relocations would be timely resolved.³

10. The above described delays have resulted in a significant hardship in that HTG Village View was not able to obtain its fully permitted construction documents in a timely fashion to meet the existing placed in service deadline.

11. HTG Village View proposes to exchange its 2018 Housing Credits for an allocation of 2020. Housing Credits now rather than wait until the last quarter of 2020, which would effectively extend the placed-in-service deadline of the Development until December 31, 2021. This exchange will require a waiver of Subsection II.K of the QAP, which provides:

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

³ The Permit Ready Letter in fact was not received until December 17, 2019 from the City of Fort Lauderdale.

circumstances beyond the Applicants 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 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: (1) 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 the 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 Supplied)

12. The requested waiver is permanent in nature.

RULE FOR WHICH WAIVER IS SOUGHT

13. HTG Village View seeks a waiver from Subsection II.K of the 2016 QAP, which was incorporated by reference into Rule 67-48.0002(95) (2017). The current version of the rule incorporating a later QAP, is numbered as 67-48.002 (96).

STATUTES IMPLEMENTED BY RULE

14. Pursuant to section 420.5099(1), Florida Statutes, Florida Housing is designated as the "housing credit agency" for Florida within the meaning of section 42 of the Internal Revenue Code. Florida Housing is responsible for the allocation plan that includes priorities and selection criteria. Section 420.5099(2) also requires Florida Housing to "adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of lo the a of the applicant to proceed to competition of the project in the calendar year for which the credit is sought." Thus, the rules subject to this waiver request implement sections 420.5099(1) and (2), Florida Statutes, as well as other provisions of Part V of chapter 420, Florida Statutes, the Florida Housing Finance Corporation Act.

JUSTIFICATION FOR REQUESTED WAIVER

15. Section 120.542(1), Florida Statutes, provides that [s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” That procedure requires those seeking a variance of, or waiver from, a rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. §120.542(2), Fla. Stat.⁴ Petitions for variances and waivers are also required to demonstrate the purposes of the underlying statute will be achieved.

16. Strict adherence to Subsection II.K. of the QAP would create a substantial hardship for HTG Village View. Without the requested credit swap, the previously awarded Housing Credits will be unavailable, which means the Development cannot be completed. That would deprive low-income residents of Broward County of much needed affordable housing. As illustrated above, issues relating to the development of the site of the proposed Development were beyond the Applicant’s control.

17. Strict adherence to Subsection 11.K. of the QAP also would violate principles of fairness, as Florida Housing has granted similar waivers to other Developments facing similar circumstances. (Arbor Village- granted credit swap in November 2019; Georgian Gardens- granted credit swap in November 2019; Luna Trails- granted credit swap in 2019; Northside Transit

⁴ “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 rule.

Village- granted credit swap in November 2019; Residences at Dr. King Boulevard, Ltd.- granted credit swap in 2019) ⁵

18. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2017-113, or Florida Housing. A denial of the requested waiver, however, would result in substantial economic hardship to HTG Village View, as it will be unable to complete the Development, which will only contribute further to the shortage of affordable housing in Broward County. Additionally, denial of the waiver request would violate principles of fairness, as other similarly situated Developments have been granted waivers to Subsection IIK of the QAP and the rule that incorporates it by reference.

19. The statutes underlying the QAP and the rule will be served by the approval of HTG Village Views' waiver request. Section 420.504(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income..." One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting the waiver request will further these goals, as HTG Village View, will not be able to build the proposed development if the waiver is not granted.

ACTION REQUESTED

20. For the above stated reasons, HTG Village View, respectfully requests that the Florida Housing Board of Directors:

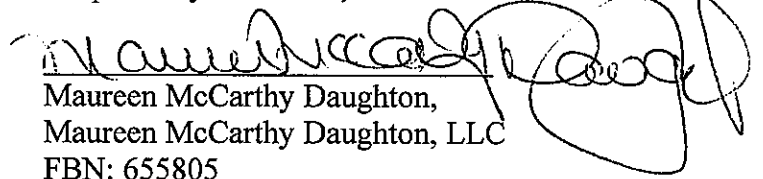
- Grant the requested waiver of Subsection II.K of the 2016 QAP and rule 67-48.002(95);

⁵ The reasons that precipitated the credit swap include but are not limited to, need for off-site improvements which required negotiation with neighboring property owners; revision to construction plans due to increased construction costs which required the securing of additional funds; redesign requirements due to a fire code violation in the design of a staircase; post Hurricane clean up; title issues which only became known after the design process.

- Allow the immediate return of HTG Village View's 2018 Housing Credit Allocation;
and
- Immediately allocate new Housing Credits to HTG Village View with a later placed in
service date of December 31, 2021.

Filed the 19th day of December 2019.

Respectfully submitted,



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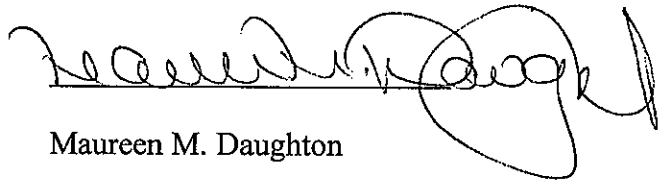
CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed this 19th day of December 2019,

by electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us



Maureen M. Daughton