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FLORIDA HOUSING FINANCE CORPORATION

FILED FOR THE
FINANCE CORPORATION

CASE NO. 2019-100VW

HTG PARADISE, LLC

Petitioner,

vs.

FHFC Application No. 2018-102C
REQUEST FOR APPLICATIONS:2017-112

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 Paradise, LLC. ("HTG Paradise" 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 Paradises' 2018 Housing Credits before the last quarter of 2020. HTG Paradise 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 Paradise states as follows:

PETITIONER AND ATTORNEY

1. The name, address, telephone number and email address for Petitioner is HTG Paradise, LLC, (Attn Scott Osman, 3225 Aviation Avenue, Suite 600, Coconut Grove, Florida, 33133, 305-860-8188, operationalcontact@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; mداughton@mmd-lawfirm.com.

BACKGROUND

3. HTG Paradise submitted an application in response to, *RFA 2017-112 Housing Credit Financing For Affordable Housing Developments Located in Miami-Dade County* (the "RFA") HTG Paradise proposed to build 76 Garden Apartment units in Miami-Dade County to serve a Family demographic.

4. On May 4, 2018, HTG Paradise was preliminarily selected for funding by Florida Housing's Board of Directors. Litigation by other applicants commenced and was not resolved until July 27, 2018. HTG Paradise was invited into credit underwriting on July 30, 2018.

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 Paradise and Florida Housing entered into the carryover allocation agreement on November 9, 2018. The Carryover Agreement allows (pursuant to Section 42 of the Internal Revenue Code) the

¹ Rule 67-48.028(1), F.A.C.

applicant until the end of the second year in which the carryover allocation is issued to place the development in service. HTG Paradise's Carryover Agreement required that the Development be placed in service by November 30, 2020.

6. Due to delays beyond the control of HTG Paradise, described herein, the December 31, 2020, placed-in-service deadline cannot be met. HTG Paradise is currently waiting on an Environmental Review and Clearance from the U.S. Department of Housing and Urban Development for subordinate HoDAG financing. Without these HUD approvals construction cannot commence.

7. An Environmental Review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site will not have an adverse environmental or health effect on end users.

8. The Environmental Review process takes a minimum of 90 days due to public notice and the comment period required. HTG Paradise was not able to start this process with Miami Dade County until the subordinate HoDAG financing was approved by the Miami-Dade Board of County Commission. The HOME RFP was issued on August 31, 2018 and was due on Oct. 1, 2018. Paradise Lakes was not originally recommended for funding; however, Miami-Dade County received a return allocation of HoDAG funding and was able to award Paradise Lakes HoDAG funding at the County Commission meeting on July 23, 2019. Subsequent to the award a Miami-Dade County project manager was assigned on August 12, 2019 and Contract Management Training Session was attended on August 15, 2019. Miami Dade County Technical Review was then conducted and completed on or about September 30,

2019. Early Notice and Public Review of Activity in a 100 Year Flood Plan was published in the Miami Herald on October 2, 2019. Final Flood Plain Notice was published in the Miami Herald on November 9, 2019. Finally, the FONSI/RROF Notice was published in the Miami Herald on November 16th with a 15day comment period ending on December 2, 2019. The U.S. Department of HUD has a 16-day comment period thus we are expecting final Environmental Review approval on or about December 30, 2019.

9. In the interim, HTG Paradise has continued to work towards closing by obtaining final development approvals and finalizing investor and lender documents. However, given the fact that the necessary HUD approvals have not yet been obtained without which the 14 month construction period cannot even commence, the development will not be placed in service by December 31, 2020

10. HTG Paradise 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 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)

11. The requested waiver is permanent in nature.

RULE FOR WHICH WAIVER IS SOUGHT

12. HTG Paradise 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

13. 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

14. Section 120.542(1), Florida Statutes, provides that [s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results. 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.² Petitions for variances and waivers are also required to demonstrate the purposes of the underlying statute will be achieved.

15. Strict adherence to Subsection II.K. of the QAP would create a substantial hardship for HTG Paradise. 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 Miami-Dade 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.

16. 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. (West River-granted credit swap in November 2019; Cathedral Townhouse, LLC- granted credit swap in October 2019; Lofts at Lemon-granted credit swap in October 2019; Residences at Dr. King Boulevard, Ltd.-granted credit swap in December 2019)³

17. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2017-112, or Florida Housing. A denial of the requested waiver, however, would result in substantial economic hardship to HTG Paradise as it will be unable to complete the Development, which will only contribute further to the shortage of affordable housing in Miami-Dade County. Additionally, denial of

² "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 not significantly different from the way it affects other similarly situated persons who are subject to rule.

³ The reasons that precipitated the credit swaps 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 securing of additional funds; replacement of key development team members; delay in obtaining HUD approvals; title issues which only became known after the design process.

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.

18. The statutes underlying the QAP and the rule will be served by the approval of HTG Paradies' 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 PARADISE, will not be able to build the proposed development if the waiver is not granted.

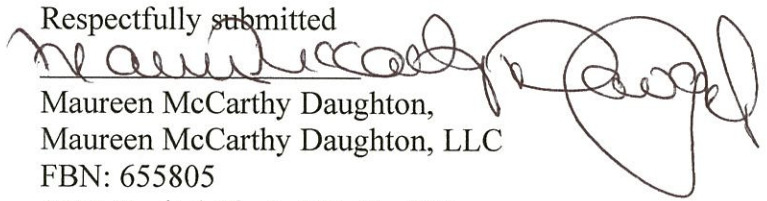
ACTION REQUESTED

19. For the above stated reasons, HTG Paradise, 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);
- Allow the immediate return of HTG Paradise's 2018 Housing Credit Allocation; and
- Immediately allocate new Housing Credits to HTG Paradise with a later placed in service date of December 31, 2021.

Dated this 20th of December 2019.

Respectfully submitted


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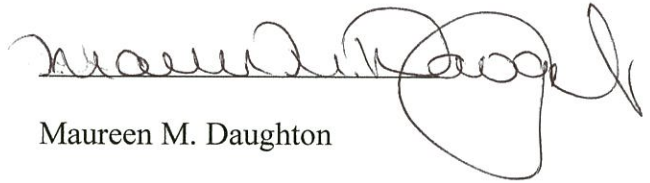
CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed this 20th 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