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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: The Village of Casa Familia, Ltd.

FHFC CASE NO. 2022-061VW
Application No. 2019-422CG/2021-325CG/2022-230V
RFA No. 2019-107

PETITION FOR VARIANCE FROM FLORIDA ADMINISTRATIVE CODE RULE 67-48.002(96) AND THE 2018 QAP

Petitioner, The Village of Casa Familia, Ltd. (Petitioner), pursuant to section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation (Florida Housing) for a waiver of the timing provisions of the 2018 Qualified Allocation Plan (2018 QAP) as incorporated and adopted Rule 67-48.002(96) (2018), Florida Administrative Code, pertaining to a tax credit exchange. Due to forces outside of Petitioner's control, Petitioner cannot meet the 10% Test and Site Control deadlines as required by the 2021 Carryover Allocation Agreement.

In short, Petitioner, Miami-Dade County ("County") and Miami-Dade Public Housing and Community Development ("PHCD") have continued working with HUD to resolve HUD's earlier expressed *Olmstead* concern about a tenant selection preference. As shown in paragraph 15 *infra*, PHCD and the County are awaiting further guidance from HUD, as the last informal HUD response on this issue indicated that PHCD had authority to award Project Based Vouchers ("PBV") for this development. To date, however, the further guidance has not been received so Petitioner is seeking an additional waiver. In further support, Petitioner states:

A. Petitioner and the Development

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

Ms. Deborah Lawrence
The Village of Casa Familia, Ltd.
1550 Douglas Road, Suite 280
Coral Gables, Florida 33134
Telephone: (954) 605-8789
Email: dlawrence@casafamilia.org

The name, address, telephone and email address of Petitioner's counsel is:

Christopher B. Lunny
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301
Telephone: 850-425-6654
Email: clunny@radeylaw.com

2. Petitioner submitted Application No. 2019-422CG in response to Request for Applications No. 2019-107, Financing for the Development of Housing for Persons with A Disabling Condition or Developmental Disabilities (the "RFA"), for competitive housing credits to assist in the construction of a 59-unit development located in Miami-Dade County, Florida, known as The Village of Casa Familia (the "Development") to serve low-income individuals with disabilities.[1]

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[1] The following information regarding the Development is provided to facilitate staff's preparation of background material for the Florida Housing Board of Directors:

- Development Name: The Village of Casa Familia
- Developer, including at least one natural person Principal: Casa Familia Developer, LLC, Howard D. Cohen
- County of Development: Miami-Dade
- Number of Units: 50 (including 9 shared units)
- Type: Garden Apartments
- Set Asides: 15% of residential units at 28% of area median income and 71% of residential units at 60% of area median income
- Demographics: Special Needs-Individuals with Developmental Disabilities
- Funding Amounts: $1,500,000 in Competitive Housing Credits; $4,000,000 grant,

3. The Development will be built on county-owned land. The non-profit principal of the Applicant, Casa Familia, Inc. ("CFI"), had a long-term ground lease with the County with a requirement that the community serves individuals with intellectual or developmental disabilities. Petitioner had a sublease with CFI for a portion of the site to build two residential buildings and a community center. Petitioner was awarded $1.5 million in annual 9% tax credits and a $4 million grant in RFA 2019-107. Additionally, Petitioner was awarded a $2 million Viability Loan funding in RFA 2021-211 and the Petitioner anticipates receiving $2.95 million of National Housing Trust Funds through Florida Housing's Construction Housing Inflation Response Program ("CHIRP"). Petitioner also received a $2 million Surtax loan from PHCD and a total of $5.15 million in Miami-Dade County General Obligation Bonds (GOB). The Development is also being awarded 57 PBV's by PHCD and the remaining two units, not awarded vouchers, will be set aside as exempt manager units.

4. The application was assigned number 2019-422CG. Petitioner was invited into credit underwriting on May 20, 2019. On December 26, 2019, Petitioner entered into a 2019 Carryover Allocation Agreement with Florida Housing for the allocation of tax credits.

5. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development is required to be Placed In Service not later than the close of the second calendar year following the calendar year in which the allocation is made. Pursuant to 26 U.S.C. 42(h)(1)(E)(ii), and Florida Housing's requirements, Petitioner's deadline to meet the 10% Test was June 30, 2020. Petitioner requested, and Florida Housing granted under Rev Proc 2014-49, an extension of the 10% Test to December 26, 2020,

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$2,000,000 Viability Loan, and $2,950,000 NHTF Loan (CHIRP)

and the Placed-In-Service date to December 31, 2021, which were extended to June 26, 2021 and December 31, 2022, respectively under Rev Proc 2014-49.

6. In order to meet the 10% Test, Petitioner needed to close financing, by June 26, 2021. Petitioner was not able to meet this goal because HUD required an additional six months to review whether the Development's proposed Demographic Commitment complies with *Olmstead v L.C.*, 527 U.S. 581 (1999) and other applicable laws. Thus, Petitioner sought a waiver of the timing provisions of the 2018 Qualified Allocation Plan (QAP) as incorporated and adopted in rule 67-48.002(96), Florida Administrative Code, to allow for a credit exchange to be approved by the Board of Directors of Florida Housing (the "Board") at that time rather than in 2022.

7. This waiver was granted on June 18, 2021, which permitted Petitioner to exchange its 2019 housing credits for an allocation of 2021 housing credits. This, thereby, extended the associated deadlines of the 10% test and Site Control deadline. Petitioner then signed a 2021 Carryover Allocation Agreement in June of 2021. The original 10% Test deadline under the 2021 Carryover Allocation Agreement was December 31, 2021. The Petitioner submitted to Florida Housing and was granted an extension of the 10% Test deadline to June 25, 2022 due to the additional time it was taking to ensure the proposed development was in compliance with HUD requirements pertaining to the PBVs. Due to the same HUD issue, Petitioner requested and was granted another extension of the 10% Test (as allowed under IRS Notice 2022-05) to December 31, 2022 which is the current deadline.

B. <u>Type of Waiver</u>

8. The waiver being sought is permanent in nature.

C. <u>Rule For Which a Variance Is Requested</u>

9. Petitioner requests a waiver of subsection II.K. of the 2018 QAP. Rule 67-48.002(96) (2018) provided:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2018 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or fromhttp://www.flrules.org/Gateway/reference.asp?No=Ref-09578.

10. Subsection II.K. of the 2018 QAP provided:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, 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 pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, 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. A Development located in a HUD-designated DDA or QCT at the time of original allocation may retain its designation as such.

11. The process in the 2018 QAP requires an applicant to return its allocation of housing tax credits in the fourth quarter of the last calendar year in which it was otherwise required

to be Placed In Service before a tax credit exchange can be approved by the Executive Director of Florida Housing. Petitioner 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.

D. Statutes Implemented by the Rule

12. The 2018 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act, the statutes relating to the allocation of Low-Income Housing Tax Credits contained in section 420.5099, Florida Statutes.

E. Justification for Granting Waiver From the Rule

13. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, section 120.542(2) states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "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.

14. Petitioner requests a waiver of the timing requirements found in the 2018 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2023 because the Petitioner cannot satisfy the requirement in the 2021 Carryover Agreement, as extended, to spend 10% of the reasonably expected basis of the Development or satisfy the Site Control deadline by December of 2022. The petitioner is

unable to meet the current deadlines because the Petitioner does not have active site control from the County and therefore is unable to close financing to start construction. At this time, the County is unable to extend the lease until HUD provides clearer guidance on the administration of the PBVs and tenant selection preference.

15. A timeline of the HUD issues that have delayed the project for the last two years are summarized as follows:

A complaint was made in early 2021 to the U.S. Department of Housing and Urban Development (HUD) suggesting that the Development may not comply with the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), which prohibits segregating individuals with development disabilities from integrated housing options. The Petitioner was made aware of the complaint received by HUD and forwarded to PHCD that the Development may not comply with the Supreme Court's *Olmstead* decision. *See* **Exhibit A**, Email with Complaint. While PHCD and Miami-Dade County remain supportive of the Development, they will not issue a commitment for the PBVs or the GOB funds or provide site control until they receive confirmation from HUD that the Development complies with the law. Without the rental subsidy provided by a PBV HAP contract and GOB sources to fund a portion of the construction costs, the Development will be unable to serve many individuals who would benefit from the stable supportive housing that it offers. The Petitioner cannot close on the financing or start the construction until it receives the PBV and GOB commitments and has valid site control.

To bring resolution to the *Olmstead* complaint, Petitioner then requested HUD's approval of the Development. *See* **Exhibit B**, May 17, 2021 Letter to HUD. The Petitioner asked for HUD's approval to implement a limited selection preference for households eligible for voluntary disability-specific services at the Development under section 106(a)(7) of the Housing

Opportunities Through Modernization Act of 2016, Pub. L. 114-201 (July 29, 2016), 130 Stat. 782 (HOTMA).

HUD responded on November 5, 2021 and offered general guidance with respect to the proposal. *See* **Exhibit C**, November 5, 2021 Letter from HUD. Petitioner then worked with HUD and PHCD to respond to HUD's concerns and provide requested information. *See* **Exhibit D** (email of February 14, 2022 from Ms. Lawrence to HUD).

The Petitioner continued to follow up with HUD on their response to help move the process forward. However, HUD finally responded to Petitioner's responses and issued a Memorandum of Assurances ("MOA") on August 22, 2022 which requested the Petitioner accept and sign in order to close out the complaint received from HUD. *See* **Exhibit E**. The MOA left the County unsure as to PHCD's authority to permit a tenant selection preference for a project receiving PBVs and the County requested further guidance. On October 4, 2022, the Miami Dade Vice Chairman sent a follow up letter to HUD to inform HUD that the County is awaiting their response to move forward. *See* **Exhibit F**. The Petitioner, County, and PHCD are still awaiting HUD's further guidance.

Once HUD issues guidance which PHCD and the County agrees is sufficient to issue PBVs, Petitioner must obtain a new ground lease with active site control because the previous ground lease is expired so that site control is secured. The Petitioner will need the new ground lease to be approved by Miami-Dade County Board of County Commissioner. Once that is accomplished, Petitioner can move forward to closing financing with the County, PHCD, and Florida Housing.

16. Despite these delays, Petitioner has been working diligently to complete pre-development activities and has to date completed the construction drawings and been diligently pursuing the permitting process. Moreover, Petitioner worked to address the *Olmstead* issue with

HUD as quickly as possible. Immediately upon receipt of the PBV, Surtax, and GOB commitments, Petitioner will close on the financing and commence construction. Though there is uncertainty surrounding the timeline to resolve the *Olmstead* complaint, the Petitioner hopes to close by June of 2023, with construction completed by December of 2024.

17. The Petitioner has incurred approx. $1.97M in eligible costs and has a shortfall of approx. $717K to meet the 10% Test deadline. The Petitioner is unable to make a ground lease payment to fill this gap since site control is expired. The Petitioner is unable to start construction until site control is obtained. With these delays, it is evident that Petitioner will not meet the 10% test deadline of December 31, 2022. With a credit exchange, Petitioner is confident that it will be able to meet the 10% Test, as extended due to the credit exchange. Therefore, the requested 2023 credit exchange would extend the Development's 10% Test deadline to June 30, 2023.

18. Under section 120.542(1), Florida Statutes, and chapter 28-104, Florida Administrative Code, 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, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2018).

19. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2018 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 59 much needed affordable housing units will be made available for a vulnerable segment of the population in Miami-Dade County, Florida. Specifically, 57 units in the Development (of 59 units) will be set aside for individuals with disabilities. The 57

units will be rented on a preferential basis to households eligible for voluntary services appropriate for individuals with disabilities. Supportive services available at the Development will be coordinated by United Community Options, an experienced, professional community-based support and service coordinator, which will serve as the Services Coordinator and will ensure residents' have the tools they need to live independent, self-determined lives. On-site resource counselors will be available to help residents connect with resources in the community and to empower them to do so. An on-site community center will welcome the participation of people from the neighborhood and greater community alongside the residents of the Development.

20. This Development will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida. *See* § 420.502(2), Fla. Stat. Florida Housing is required by section 420.507(48), Florida Statutes, to reserve up to 5% of its annual allocation of low-income housing tax credits to allocate by competitive solicitation for high-priority affordable housing developments, such as housing for Persons with a Disabling Condition and their families or Persons with Developmental Disabilities, in communities throughout the state. The strict application of the 2018 QAP and the credit exchange requirements will create substantial hardship for Petitioner because it likely will not be able to satisfy the 10% Test or Site Control deadlines.

21. The requested waiver further 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 of Florida for low-income households. *Id.* By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

F. Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver of the timing requirements found in the 2018 QAP to allow the requested credit exchange to be approved before the fourth calendar quarter of 2022;

(ii) Grant this Petition and all of the relief requested herein; and

(iii) Grant such further relief as may be deemed appropriate.

/s/ Christopher B. Lunny

Christopher B. Lunny, FBN 0008982
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Counsel for The Village of Casa Familia, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed 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

This 15 day of November, 2022.

/s/ Christopher B. Lunny
Christopher B. Lunny

EXHIBIT A

Brian Jaffe

From: Brown, Clarence D. (PHCD) <Clarence.Brown@miamidade.gov>
Sent: Thursday, February 4, 2021 6:48 PM
To: dlawrence@casafamiliainc.org
Cc: Brian Jaffe; Greg Griffith; White, Tangie (PHCD)
Subject: FW: Miami Dade and Casa Familia, Inc.

Good Evening Ms. Lawrence. See below. I received this email today and want to share it with you and your partners. As I learn more I will keep you apprised. Have a good evening.

From: Chavis, Ann D [mailto:ann.d.chavis@hud.gov]
Sent: Thursday, February 04, 2021 11:35 AM
To: Brown, Clarence D. (PHCD) <Clarence.Brown@miamidade.gov>; White, Tangie (PHCD) <Tangie.White@miamidade.gov>
Subject: FW: Miami Dade and Casa Familia, Inc.

He will be calling you

From: President, Charles E <Charles.E.President@hud.gov>
Sent: Thursday, February 04, 2021 11:07 AM
To: Bustamante, Fiordaliza <fiordaliza.bustamante@hud.gov>; Chavis, Ann D <ann.d.chavis@hud.gov>
Cc: Chatman, Krysha R <Krysha.R.Chatman@hud.gov>; Levine, Aaron D <aaron.d.levine@hud.gov>
Subject: Miami Dade and Casa Familia, Inc.

Good Morning,

It has been brought to FHEO's attention that Miami-Dade County has leased County-owned land to Casa Familia, Inc. for the construction of The Village of Casa Familia (Casa Familia), an affordable housing community reserved for individuals with intellectual and developmental disabilities. Additionally, On January 20, 2021, the Miami-Dade County Board of County Commissioners voted unanimously to allocate $1,655,028 of Affordable Housing General Obligation Bonds to the development of the Village of Casa Familia.

Because Miami-Dade County is a recipient of federal financial assistance, it is subject to Section 504 of the Rehabilitation Act of 1973 (Section 504). Miami-Dade County also must comply with the Fair Housing Act (FHA) and Title II of the Americans with Disabilities Act (ADA).

On its face, the type of segregated housing which Casa Familia envisions could constitute unlawful discrimination under the Supreme Court's Olmstead decision (*Olmstead v. L.C.,* 527 U.S. 581 (1999)), which requires that "individuals with disabilities be given meaningful opportunities to live, work, and receive services in integrated settings." (See "Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead", attached to this letter.)

Such a determination would place the County in violation of multiple governing laws, including Section 504, the FHA, and Title II of the Americans with Disabilities Act.

While it doesn't appear any of the funds and land lease involved CDBG funds. Can you confirm the project does not involve any HUD funds? Also, if necessary can you assist FHEO with enforcing the aforementioned civil right violations with Miami -Dade?

Are you available to meet today for a brief discussion and to answer any questions?

Thank you,

Charles President
Director, FHEO Programs and Compliance, Florida & Kentucky
Office of Fair Housing & Equal Opportunity
Phone: (904) 208-6186 or (202) 975-5030

EXHIBIT B

Klein Hornig LLP
COUNSELORS AT LAW

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Emily Blumberg
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May 17, 2021

Via Email to Carlos.Osegueda@hud.gov

Carlos Osegueda, Region IV FHEO Director
U.S. Dept. of Housing and Urban Development
Atlanta Regional Office of FHEO
Five Point Plaza
40 Marietta Street, 16th Floor
Atlanta, Georgia 30303-2806

Re: The Village at Casa Familia
Request for Approval of Tenant Selection Preference

Dear Director Osegueda:

Please accept this letter as a request on behalf of The Village of Casa Familia, Ltd. (the "**Owner**") for confirmation that, should it receive an award of Section 8 Project-Based Vouchers ("**PBV**") from Miami-Dade Public Housing and Community Development ("**PHCD**"), the Owner may implement a limited selection preference for households eligible for voluntary disability-specific services at The Village at Casa Familia (the "**Project**") under Section 106(a)(7) of the Housing Opportunities Through Modernization Act of 2016, Pub. L. 114-201 (July 29, 2016), 130 Stat. 782 ("**HOTMA**"). The Owner, a partnership between Atlantic Pacific Communities, LLC, and Casa Familia, Inc. (the "**Co-Developers**"), desires to offer in 57 of 57 rental units a proposed selection preference for households eligible for voluntary services that are designed to be beneficial to individuals with "Developmental Disabilities" as that term is described in Florida Statute Section 393.063(12) ("**ID/DD**"). This selection preference is mandated by the Florida Housing Finance Corporation ("**FHFC**") in connection with a reservation of Low-Income Housing Tax Credits ("**LIHTC**") to the Project awarded under RFA 2019-107 Financing to Develop Housing for Persons with a Disabling Condition or Developmental Disabilities, Issued by Florida Housing Finance Corporation, February 26, 2019 ("**FHFC RFA**").

PHCD has indicated it intends to award PBVs to the Project non-competitively if HUD permits PHCD and the Owner to implement this proposed preference. Accordingly, the Owner respectfully seeks confirmation that it may implement this proposed preference as permitted by HOTMA. It is our understanding that the Office of General Counsel previously advised public housing authorities ("**PHAs**") that they are not required to request waiver of 24 C.F.R. §983.251(d) in order to implement such a preference because it is permitted under HOTMA. In the alternative, kindly consider this letter as a request for waiver of 24 C.F.R.

§983.251(d) and 24 CFR § 982.207(b)(3) and a request for approval of a remedial action directed to the Office of General Counsel ("**OGC**") under the *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead* ("**HUD Olmstead Statement**").

1. Background.

(a) Requirements of the FHFC RFA. FHFC, Florida's state allocating agency for LIHTC, is required by Florida Statute Section 420.507(48) to reserve a certain part of its annual LIHTC allocation to be distributed by competitive solicitation for high-priority affordable housing developments, such as housing for persons with Developmental Disabilities. The FHFC RFA under which the Project applied fulfills this statutory mandate by awarding LIHTC for applicants proposing the development of independent supportive housing for persons with Developmental Disabilities. The intent of the RFA is to ensure that people with Developmental Disabilities are not living in unnecessarily restrictive settings due to insufficient stable housing options or coordinated access to appropriate community-based healthcare and supportive services.

(b) The Village at Casa Familia. The Project was awarded an allocation of LIHTC under the FHFC RFA, and its approved application proposed that all but two manager units would serve individuals with Developmental Disabilities. Upon completion, the Project will consist of 59 residential rental units in two (2) new construction buildings located in the Kendall neighborhood of Unincorporated Miami-Dade County. Casa Familia, Inc. has entered into a ground lease with Miami-Dade County for the site on which the Project will be located; this ground lease requires that the Project serve individuals with Developmental Disabilities. Of the 59 Project units, 57 will be low-income, rent restricted units for purposes of the LIHTC program and two will be manager units; nine units will be Individual Room Occupancy ("**IRO**") units. It is hoped that fifty-seven units will be assisted through a PBV HAP contract for the Project, with PHCD selecting the Project pursuant to 24 C.F.R. §983.51(b)(2), and subsequent approval by HUD. Without the rental subsidy provided by a PBV HAP contract, the Project will be unable to serve many individuals who would benefit from the stable supportive housing that it offers. The 57 PBV units will be rented on a preferential basis to households eligible for voluntary services appropriate for ID/DD individuals. The supportive services available at the Project will be coordinated by United Community Option, an experienced provider of supported living services for individuals with ID/DD in Miami-Dade County. The Project will be located in a residential neighborhood, across the street from other apartment complexes and in close proximity to public transportation, shopping, restaurants, parks and healthcare providers. On-site resource counselors will be available to help residents connect with resources in the community and to empower them to do so. An on-site community center will welcome the participation of people from the neighborhood and greater community alongside the residents of the Project. The Project will provide individuals with ID/DD a community-based housing option that, for many, represents the most integrated setting appropriate to their needs.

2. Justification for Confirmation Request.

The Owner respectfully requests confirmation that it may implement the proposed limited selection preference for the anticipated PBV units under HOTMA. The proposed selection preference falls squarely within the bounds permitted by HOTMA: the preference will apply to households who qualify for voluntary services that are designed to serve individuals with ID/DD and are offered in conjunction with the assisted units. The selection preference will be consistent with the PHA Plan. Although the voluntary services provided will be designed for individuals with ID/DD, the preference will apply to any individual eligible for the voluntary services. Such a preference is permitted by Section 106(a)(7) of HOTMA, which permits a PHA (or owner, if the owner maintains a site-based waiting list when this provision of HOTMA is implemented) to establish a selection preference for households who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA Plan. This provision was implemented in the HOTMA Implementation Notice. See 82 Fed. Reg. 5438, 5471 (January 18, 2017) (HOTMA Implementation Notice) and 85 Fed Reg. 63664 (October 8, 2020) (HOTMA HCV and PBV Implementation Notice of Proposed Rulemaking).

The Project will comply with all applicable fair housing and civil rights requirements, including the requirement to administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities under section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. See 24 C.F.R. §8.4(d) and 28 C.F.R. §35.130(d). It will provide a community-based housing option which for many individuals with disabilities will be the most integrated setting appropriate to their needs. Further, the Project will fully comply with the federal home and community-based settings requirements of 42 C.F.R. § 441.301(c)(4), (5) since an individual living in the Project could choose the "disability-specific services" available at the Project as their Medicaid-funded home and community-based services ("**HCBS**"). The Owner urges HUD to confirm that no waiver or remedial action approval is needed to permit the use of the proposed selection preference for the Project under HOTMA.

3. Alternative Request for Waivers.

This section of the letter describes the bases for the Owner's alternative request for a waiver of 24 C.F.R. §982.207(b)(3) and §983.251(d) and approval of a remedial action under the HUD Olmstead Statement in the event the proposed selection preference is not confirmed as permitted under HOTMA Section 106(a)(7).

(a) Achieving Olmstead Goals by Providing the "Most Integrated Setting". An overarching principle of Section 504 and the ADA is the obligation to provide housing and services "in the most integrated setting appropriate to the needs of qualified" people with disabilities. 24 C.F.R. §8.4(d); 28 C.F.R. §35.130(d). "Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; afford individuals choice in their daily life activities; and provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible." HUD Olmstead Statement, question 1, quoting *Statement*

of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L. C. (2011) (the "**DoJ Olmstead Statement**"). The determination of whether a particular setting provides the "most integrated setting" is made primarily with respect to the needs and choices of the individual and the characteristics of the place where the person chooses to live and receive long term supports. DoJ Olmstead Statement, questions 1 and 4. HUD guidance goes on to say that a setting serving individuals within a category of disability may be permissible when it is part of a state or local plan to implement affirmative efforts to comply with the integration mandate of Section 504 and the ADA. HUD Olmstead Statement, question 3.

As described above, the Project meets all of these standards. The selection preference proposed for the Project is intended to serve a critical civil rights interest by ensuring that individuals with ID/DD receive services in the most integrated setting appropriate to their needs, consistent with the ADA and *Olmstead*. The services are voluntary, and the Project will offer individuals with ID/DD eligible for the services provided a community-based housing option that, for many, represents the most integrated setting appropriate to their needs. For those desiring the opportunity to live independently within a community designed to serve them, with appropriate services and supports provided by their chosen provider, the Project will be the only such choice in South Florida. The selection preference effectuates the mandate of the Florida legislature regarding LIHTC allocation that is designed to guarantee that individuals with Developmental Disabilities do not live in unnecessarily restrictive settings and instead have access to stable affordable housing options located in community settings with coordinated access to appropriate community-based healthcare and supportive services. As described below, financial support for the services derives in part from Florida's Medicaid HCBS waiver, which is another integral part of Florida planning to comply with the integration mandate of Section 504 and the ADA. The requested program waiver and remedial action approval are required to realize the promise of *Olmstead* – providing housing and supports in the most integrated setting appropriate to an individual's needs and choices in accordance with Florida's planning to implement affirmative efforts to comply with the integration mandate.

(b) The Proposed Preference is Authorized by Federal Statute. HUD's Section 504 regulations recognize that persons without disabilities may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with disabilities. A specific class of individuals with disabilities may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals. See 24 CFR § 8.4(c). In this case, we have two relevant federal statutes that require the selection preference proposed for the Project.

First, many of the individuals with disabilities expected to seek to live at the Project receive long-term services and supports through HCBS programs funded by the federal Medicaid program administered by the Centers for Medicare and Medicaid Services ("**CMS**") under Florida's HCBS Developmental Disabilities Individual Budgeting Waiver program authorized under Section 1915(c) of the Social Security Act (the "**HCBS Waiver**"). HCBS must be delivered in community-based settings, rather than in institutional settings, to ensure that these individuals have full access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate to their needs and choices.

A community-based setting is a place that is "integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS." 42 C.F.R. §441.301(c)(4). Florida's HCBS waivers are limited to specific target populations of people with disabilities, such as people with mental illnesses, people with ID/DD, or groups of people identified by age, diagnosis, or disability. See 42 C.F.R. §441.301 (b)(2) and (6). The Project is anticipated to be an accepted residential setting under the federal home and community-based settings requirements where individuals who receive the HCBS Waiver can utilize their funding to receive needed personal supports and services in their own home. See 42 C.F.R. § 441.301(c)(4), (5). Medicaid does not, however, pay for housing, though it does pay for housing related services. For HCBS, housing related services may include an extensive array of "housing transition and tenancy sustaining services, such as: assessing the participant's housing needs and presenting options, assisting in securing housing, including the completion of housing applications and securing required documentation (e.g., Social Security card, birth certificate, prior rental history), searching for housing, communicating with landlords, coordinating the move, providing training on how to be a good tenant, and establishing procedures and contacts to retain housing" and "environmental modifications to install necessary accommodations for accessibility." CMCS Informational Bulletin, Coverage of Housing-Related Activities and Services for Individuals with Disabilities (Center for Medicaid and CHIP Services, June 26, 2015). The statutorily-authorized HCBS Waiver limits its program to a class of individuals with a specific disability. The requested waiver of 24 C.F.R. §982.207(b)(3) and §983.251(d) and remedial action approval are necessary in order to effectively use PBVs to collaborate with this system of care to offer community-based services in an integrated setting in compliance with *Olmstead*.

Second, Section 42(m) of the Internal Revenue Code requires that each state allocating agency responsible for the allocation and distribution of LIHTC in that state adopt a qualified allocation plan ("**QAP")** that includes certain priorities and selection criteria. FHFC, as Florida's statutorily-designated allocating agency, has adopted a QAP that includes priorities for high-priority affordable housing project and projects targeting persons who have a disabling condition and implements these priorities through competitive processes to issue and allocate LIHTC, such as the FHFC RFA. As discussed above, under the FHFC RFA, LIHTC and other sources are awarded to applicants proposing the development of independent supportive housing for persons with Developmental Disabilities. But in order to carry out this goal, which aligns with the goals of *Olmstead*, rental subsidies such as PBVs are generally required in order to create permanent supportive housing opportunities for the target population of the QAP and FHFC RFA. Again, here, the requested waiver and remedial action approval are necessary to successfully combine PBVs with the capital sources provided under the RFA to create the housing contemplated by the QAP.

(c) Approval of the Waiver and Remedial Action is Necessary to Assure Qualified People with Disabilities Equally Effective Access to Assisted Housing. The purpose of the proposed selection preference is to facilitate access to stable affordable housing and coordinated services for individuals who, because of their disabilities, experience difficulty locating a housing choice that provides them with the most integrated setting appropriate to their needs. The Section 504 rules allow that a housing provider may, solely on the

basis of disability, provide separate housing to individuals with disabilities or to any class of individuals with disabilities from that provided to others if such housing "is necessary to provide qualified individuals with" disabilities "with housing, aid, benefits, or services that are as effective as those provided to others." 24 CFR § 8.4(b)(1)(iv). The HUD Olmstead Statement is based in part on Title II of the ADA. ADA regulations are themselves derived from Section 504. They permit "services or advantages" to "a particular class of individuals." 28 C.F.R. §35.130(c). The purpose of the ADA rule is "to clarify that State and local governments may provide special benefits beyond those required by" disability discrimination laws "that are limited to individuals with disabilities or a particular class of individuals with disabilities." 56 Fed. Reg. 35694, 35705 (July 26, 1991) (preamble to ADA regulations). Using funding targeting individuals with Developmental Disabilities originating under Florida's QAP and the FHFC RFA, as well as Florida's HCBS Waiver, in conjunction with the ground lease from the County requiring that the Project serve individuals with Developmental Disabilities, the Project provides "special benefits" to people with disabilities that are "necessary" to provide "housing, aid, benefits or services that are as effective as those provided to others."

The Project will provide many individuals with disabilities a community-based housing option that represents the most integrated setting appropriate to their needs. The Project, located in the Kendall neighborhood, will provide opportunities for residents to be integrated into the community, offering growth, socialization and independence. Choice is at the heart of *Olmstead*, recognizing that different people will require or prefer different housing settings. For many, the Project, and its proposed tenant selection preference, is necessary to provide them with a choice of housing that is as effective as that provided to others and with the opportunity to receive services that are as effective as those provided to others.

As demonstrated above, if necessary, good cause exists to waive the rules. There is no statutory bar to a waiver. The Owner therefore respectfully requests a waiver of 24 C.F.R. §982.207(b)(3) and §983.251(d) and a remedial action approval as contemplated under the HUD Olmstead Statement.

4. Conclusion.

The financial closing for the Project is expected to occur in the summer of 2021. Adoption of the selection preference is anticipated to be a closing requirement for both FHFC and Miami-Dade County. We greatly appreciate your attention to this request. Please do not hesitate to contact me at (202) 926-3409 or eblumberg@kleinhornig.com if we can address any questions or concerns. Thank you in advance for your assistance.

Respectfully yours,



Emily Blumberg

Cc (via email): Charles President, HUD FHEO
Vickie Johnson, Director, Miami FHEO Center
Chris Hornig, Klein Hornig LLP
Michael Fincher, Atlantic Pacific Communities
Greg Griffith, Atlantic Pacific Communities
Brian Jaffe, Atlantic Pacific Communities
Marc Plonskier, Casa Familia, Inc.
Deborah Lawrence, Casa Familia, Inc.
Anay Abraham, Casa Familia, Inc.
Michael Liu, Director, PHCD

EXHIBIT C

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

November 5, 2021

Emily Blumberg
Klein Hornig LLP
1325 G Street, NW Suite 770
Washington, DC 20005

Via Email to eblumberg@kleinhornig.com

Re: The Village of Casa Familia
Request for HUD Approval of Tenant Selection Preference

Dear Ms. Blumberg:

This letter is in response to your May 17, 2021 letter on behalf of The Village of Casa Familia, Ltd. (Owner) to the U.S. Department of Housing and Urban Development (the Department or HUD). In particular, the Owner is seeking information on whether it may adopt a "proposed selection preference for households eligible for voluntary services that are designed to be beneficial to individuals with 'Developmental Disabilities'" if the Owner receives Section 8 Project-Based Vouchers (PBV) from the Miami-Dade Public Housing and Community Development (PHCD). The proposed preference would apply at the Village of Casa Familia (Project), a planned new construction residential community consisting of fifty-seven (57) total rental dwelling units.[1] Based on available information, HUD is offering the following general guidance and identifying fair housing and programmatic concerns with this proposal.

I. Admission Preference for Persons who Qualify for Voluntary Supportive Services, including Disability-specific Services

Section 106(a)(7) of the Housing Opportunities Through Modernization Act of 2016 (HOTMA) provides that a Public Housing Agency (PHA) may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan. As explained in HUD's Notice implementing Section 106 of HOTMA (HUD's Jan. 18, 2017 HOTMA Notice), this preference must be operated consistent with federal nondiscrimination requirements: There are unique requirements regarding the selection preference when considered in the context of providing services for individuals with disabilities. In particular, the statutory language permitting a

[1] The planned residential component at this stage consists of fifty-nine (59) total dwelling units in two (2) new construction buildings. Fifty-seven (57) units will be low-income rental units, and the remaining two (2) units will be manager units providing on-site support.

preference for individuals who qualify for voluntary services, including disability-specific services, must be read consistent with Federal laws that provide protections against discrimination based on disability and segregation of individuals with disabilities as well as the affirmative requirement that programs, services, and activities be provided in the most integrated setting appropriate to the needs of individuals with disabilities.[2]

All recipients of federal financial assistance from the Department are subject to Section 504 of the Rehabilitation Act (Section 504) and HUD's implementing regulation. 24 C.F.R. part 8. Section 504 prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance. 29 U.S.C. § 794. Under Section 504, limiting participation in programs or activities to persons with specific disabilities is only permitted in limited circumstances, including when there is express federal statutory authority to do so. *See* 24 CFR § 8.4(c)(1). When no such authority exists for the HUD assisted program, programs or activities that restrict access based on a specific disability may exclude and thus discriminate against individuals with other types of disabilities who are otherwise qualified to participate in and benefit from the federally assisted program.

Accordingly, while HUD's project-based voucher (PBV) regulations permit adopting an admission preference for families that include a person with disabilities, the regulation prohibits adopting a preference for persons with a specific disability. 24 C.F.R. § 982.207(b)(3). HUD's Jan. 18, 2017 HOTMA Notice reiterates this prohibition ("Note, however, that the prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply."). 82 Fed. Reg. 5458, 5470 (Jan. 18, 2017).

Your letter seeks information on whether the Owner may implement an admission preference for this Project for "households eligible for voluntary services that are designed to be beneficial to individuals with 'Developmental Disabilities' as that term is described in Florida Statute Section 393.063(12)" for all 57 rental units.[3] Based on available information, it appears that the preference may operate as a de facto preference for individuals with developmental and intellectual disabilities (IDD). The Project is being marketed as an "affordable housing community for adults with IDD in South Florida."[4] Moreover, according to your letter, the preference as described above is "mandated" by the Florida Housing Finance Corporation (FHFC) in connection with a reservation of Low-Income Housing Tax Credits (LIHTC) awarded under Florida Housing Finance Corporation (FHFC) Financing to Develop Housing for Persons with a Disabling Condition or Developmental Disabilities.[5] It is unclear whether LIHTC funding would be jeopardized if units

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[2] 82 Fed. Reg. 5458, 5470 (Jan. 18, 2017).

[3] "Developmental disability means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely." 2021 Florida Statutes, Section 393.063(12), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0393/Sections/0393.063.html.

[4] https://casafamiliainc.org/creating-solutions/.

[5] FHFC RFA 2019-107 Financing to Develop Housing for Persons with Disabling Conditions /

were occupied by individuals other than persons with IDD as defined by the Florida statute, or whether the preference in effect requires all units to be occupied by individuals with IDD.

Additionally, based on available information, residents of Casa Familia will be required to maintain independent support services either through a Medicaid Waiver Program or private pay services program. The supportive services offered at the Project will be coordinated by United Community Options of South Florida. Moreover, based on available information, residents would be required to complete an "Independent Living Screening Approval" process – a process that raises significant Fair Housing Act concerns. As general guidance, residents of PBV projects must be able to receive services from different service providers or choose not to participate in services at all. Similarly, an individual who chooses to no longer participate in a service or who no longer qualifies for services one qualified for at the time of initial occupancy cannot subsequently be denied a continued housing opportunity under the PBV program. In sum, placing any conditions or restrictions on occupancy on the basis of one's disability may be discriminatory, *e.g.*, mandatory services, restrictive visitor policies, *etc*.

There is also a significant integration concern given the size of the project and the targeted population. Under this proposal, 100% of the fifty-seven (57) rental units would be occupied by individuals with disabilities, and depending on the implementation of the preference, 100% may be exclusively occupied by individuals with IDD. As general guidance, pursuant to HUD's integration mandate, "Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs" of qualified individuals with disabilities. 24 C.F.R. § 8.4(d). This integration mandate is defined as "a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."[6] HUD has provided guidance on integrated settings in the housing context:

Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.[7]

Relatedly, given the size and description of the Project, it is unclear whether this structure meets Medicaid's home and community-based settings requirements (HCBS) such that residents would be able to select the services at the Project to be paid for with Medicaid funding. Because it

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Developmental Disabilities.

[6] 56 Fed. Reg. 35694 (1992), codified at 28 C.F.R. pt. 35, app. B.

[7] Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead,* https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF ("By contrast, segregated settings are occupied exclusively or primarily by individuals with disabilities. Segregated settings sometimes have qualities of an institutional nature, including, but not limited to, regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, limits on individuals' ability to engage freely in community activities and manage their own activities of daily living, or daytime activities primarily with other individuals with disabilities").

appears the Project relies on this funding source, HUD recommends that the Owner consult with the relevant agencies to determine whether the housing qualifies as a HCBS under the CMS regulations to allow for State Medicaid funding to be accessed at the site.

II. **Programmatic Issues**

Based on available information, HUD is also concerned that there may also be programmatic issues with the proposal to use PBVs at the Project. HUD is taking this opportunity to briefly identify these issues and is available to discuss further.

PBV program regulations permit PHAs to attach PBVs to units in assisted living facilities. 24 C.F.R. § 983.53(a)(3). "Assisted living facility" is defined at 24 C.F.R. § 983.3(b) as: "A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria: (1) The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision; (2) The facility makes available supportive services to assist residents in carrying out activities of daily living; and (3) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents." Only in assisted living facilities may the owner require families to pay charges for supportive services; such charges are prohibited to be charged to families in all other PBV units. 24 C.F.R. § 983.354(a).

It is unclear whether the Project meets the definition of an assisted living facility. However, according to your letter, "an individual living in the Project could choose the 'disability-specific services' available at the Project as their Medicaid-funded" HCBS. Therefore, such an arrangement in which there is a charge for services would necessitate classification as an assisted living facility.

As previously stated, where preference is given to disabled families who need services offered at a particular PBV project, families must not be required to accept the services. 24 C.F.R. § 983.251(d)(2); *see also* 82 Fed. Reg. 5458, 5471 (Jan. 18, 2017). Further, where a project claims an exception to the PBV program's income-mixing requirement for units housing households eligible for supportive services available to all families receiving PBV assistance in the project, participation in supportive services must be voluntary. 82 Fed. Reg. 5458, 5467 (Jan. 18, 2017), *as amended in* 82 Fed. Reg. 32461, 32462 (Jul. 14, 2017). Given the intention to project-base 100% of the fifty-seven (57) rental units in the Project with no apparent eligibility for another exception, it appears the intention is for the Project to qualify under the supportive services exception to the income-mixing requirement. Accordingly, it is a significant concern that, based on available information, residents of Casa Familia will be required to maintain independent support services either through a Medicaid Waiver Program or private pay services program.

HUD notes that throughout your letter, you refer to "owner" implementation of a selection preference. Current PBV rules do not allow an owner to operate a waiting list for a PBV project; the waiting list must instead be operated by the PHA. 24 C.F.R. § 983.251(c). The PHA also establishes preferences for family admission to the PBV program. 24 C.F.R. §§ 982.207(a)(1), 983.2. The owner must adopt written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to

program eligibility and an applicant's ability to perform the lease obligations. 24 C.F.R. § 983.253(a)(2).

On Oct. 8, 2020, HUD proposed regulatory changes to implement a provision of HOTMA, Pub. L. 114-201, 130 Stat. 782, that would allow owner-maintained waiting lists for PBV units. 85 Fed. Reg. 63664, 63720. Per the terms of that proposed rule, and in accordance with Section 106(b) of HOTMA, the proposed regulations will not be effective until HUD publishes a final rule. HUD further notes that if the proposed regulation is retained in the final rule, it would require preferences to be approved by the PHA.

Finally, HUD notes that your letter indicated the PHA intends to award PBVs to the Project non-competitively, but later states selection will be on the basis of 24 C.F.R. § 983.51(b)(2). HUD offers clarification that the Project may be eligible for selection based on a previous competition, if the Project meets all criteria at 24 C.F.R. § 983.51(b)(2), but the Project likely would not be eligible for non-competitive selection. Non-competitive selection is reserved for projects in which the PHA has an ownership interest or control and the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. 82 Fed. Reg. 5458, 5471 (Jan. 18, 2017), *as amended in* 82 Fed. Reg. 32461, 32463 (Jul. 14, 2017).

III. Conclusion

I hope this guidance regarding admission preferences in housing programs utilizing HUD's Section 8 Project-Based Vouchers is helpful as you consider the development and program design of the Village of Casa Familia. Thank you for your interest in HUD programs.

Sincerely,



Lynn M. Grosso
Director, Office of Enforcement

EXHIBIT D

From:	Deborah Lawrence
To:	william.f.lynch@hud.gov; jeanine.lafratta@hud.gov; charles.e.president@hud.gov; Staci.Gilliam@hud.gov; mliu88@miamidade.gov; aaron.d.levine@hud.gov; krysha.r.chatman@hud.gov
Cc:	Marc Plonskier; Michael Fincher; Emily Blumberg; Chris Hornig; Greg Griffith; Brian Jaffe; Anay Abraham
Subject:	The Village of Casa Familia Action Items Completed
Date:	Monday, February 14, 2022 4:23:00 PM
Attachments:	image.png Casa Familia Inc CMS Approval Letter - 1_24_2022.pdf

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All:

Thank you for your November 5, 2021 guidance and participation in our joint meeting on November 9, 2021 regarding the Village of Casa Familia ("Village"). We have now incorporated all of the changes that we discussed on that call in response to your guidance, more specifically:

1. Per your technical guidance, the "IDD set-aside" has been replaced with a preference for ANY disabled person who can benefit from the voluntary services offered, as follows:

   For the Project-Based Voucher (PBV) units in the Project, the PHA (or the Owner, if HUD issues a final rule implementing owner-maintained waiting lists) will give a preference to individuals with disabilities who qualify for the voluntary services offered in conjunction with the assisted units.

   As such, no applicant will be discriminated against, or excluded, based on their disability, but rather individuals who can benefit from the features, amenities, and voluntary services offered at the Village will be provided greater opportunity for tenancy. Such a preference will offer opportunities to vulnerable citizens with disabilities who may be unable to reside independently in a community-based setting, and are at risk of institutionalization without these feature, amenities, and services.

2. As you requested, the following additional action steps have been taken:

   - We requested and have received confirmation (letter attached) from the Agency for Persons with Disabilities (APD) that based on the above referenced preference, the Village of Casa Familia, as proposed, is in compliance with the Center for Medicaid and Medicare Services (CMS) Home and Community Based Services (HCBS) Settings Rule.

   - The Casa Familia, Inc. website ([www.casafamiliainc.org]www.casafamiliainc.org) has been updated to conform to the above referenced preference for the Project.

   - A petition has been submitted to the Florida Housing Finance Corporation (FHFC) requesting confirmation that the above preference is acceptable in lieu of a set-

aside. We expect to receive that confirmation at the next FHFC Board of Directors meeting.

We are grateful for your technical guidance and look forward to working with Miami-Dade County Public Housing and Community Development on this project.

Sincerely,

Deborah Lawrence
Senior Housing Director



EXHIBIT E

U. S. Department of Housing and Urban Development
Region IV, Office of Fair Housing and Equal Opportunity
Five Points Plaza
40 Marietta Street.
Atlanta, Georgia 30303-2806
(http://www.hud.gov)

CASA FAMILIA, INC., THE VILLAGE OF CASA FAMILIA
11025 SW 84th STREET, MIAMI, FL

SPECIAL ASSURANCES OF COMPLIANCE WITH FEDERAL NONDISCRIMINATION REQUIREMENTS

Background

Casa Familia, Inc. (Casa Familia) provides these Special Assurances of Compliance with Federal Nondiscrimination Requirements (Special Assurances) as part of its efforts to develop The Village of Casa Familia, a planned new construction affordable housing community consisting of fifty-seven (57) total rental dwelling units (The Village of Casa Familia or the Project). According to its website, Casa Familia is a "non-profit organization dedicated to creating sustainable, enriched and affordable housing communities, with features, amenities and services designed to benefit adults with intellectual, developmental, and other related disabilities." Casa Familia has sought to lease land owned by Miami-Dade County for the purpose of constructing the Project. Casa Familia also received low-income housing tax credits from the Florida Housing Finance Corporation (FHFC), and based on available information, is also interested in applying for Section 8 Project-Based Vouchers (PBV) administered by Miami-Dade Public Housing and Community Development and provided by the U.S. Department of Housing and Urban Development (Department or HUD).

Casa Familia and The Village of Casa Familia are subject to Section 504 of the Rehabilitation Act of 1973 (Section 504), and HUD's implementing regulations at 24 CFR Part 8, in addition to all other applicable civil rights and nondiscrimination requirements. 24 C.F.R. § 5.105(a). Section 504 prohibits discrimination on the basis of disability in all programs or activities receiving federal financial assistance. 29 U.S.C. § 794.

Region IV's Office of Fair Housing and Equal Opportunity (FHEO) has been in communication with Casa Familia and interested stakeholders to discuss concerns regarding noncompliance with civil rights and nondiscrimination laws in the development of the Project, including in particular, compliance with the prohibition against discrimination on the basis of disability under Section 504 and 24 CFR part 8. In response to a request for technical assistance, the Department reviewed the planned proposal for The Village of Casa Familia, and responded via a November 5, 2021, letter, offering, based on information available at that time, general guidance regarding both fair housing and programmatic concerns. FHEO informed Casa Familia that the initial proposal to utilize county-owned land and potentially utilize PBVs at the Project while

planning to restrict occupancy to individuals with developmental disabilities was inconsistent with Section 504. FHEO also raised significant fair housing concerns with, among other issues, requiring applicants to complete an independent living screening approval process, requiring residents to maintain support services, integration issues given the intended restrictions on occupancy and the size of the project, and compliance with the Centers for Medicare and Medicaid Services (CMS) home and community-based settings requirements (HCBS).

Accordingly, consistent with discussions between Casa Familia and FHEO, Casa Familia agrees to these Special Assurances.

Special Assurances

1. Casa Familia and The Village of Casa Familia will comply with all applicable federal nondiscrimination and civil rights requirements, as set forth in 24 C.F.R. § 5.105(a) (federal nondiscrimination requirements). This includes, among others, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and all other applicable civil rights laws and implementing regulations, as well as the specific provisions set forth in these Special Assurances.

2. Casa Familia acknowledges it has reviewed the Department's November 5, 2021, letter (attached), which identifies both fair housing and programmatic issues with the proposed Project. These issues must be addressed during the program design and development of the Project, and The Village of Casa Familia will be in compliance with all applicable requirements. The letter also provides additional general guidance on implementing preferences, including preferences based on offered services. For any questions on programmatic issues, please contact HUD program staff.

3. Casa Familia and The Village of Casa Familia shall comply with all provisions of Section 504 and HUD's implementing regulations at 24 C.F.R. Part 8. HUD's Section 504 regulations provide that no person in the United States shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. Casa Familia, Inc. will not exclude from residency at The Village of Casa Familia any eligible households based upon their disability status (*i.e.*, persons with disabilities or persons without disabilities) or based upon the type of disability the individual has. Casa Familia, Inc. will not designate, set aside, or offer a selection preference for any units at The Village of Casa Familia for occupancy exclusively by persons with intellectual or developmental disabilities, or persons with disabilities more generally.

4. Casa Familia acknowledges that FHFC is aware of the fair housing and programmatic concerns identified by the Department in its November 5, 2021, letter. FHFC is not requiring as a condition of funding a set aside or preference for a certain percentage of units to be occupied by individuals with intellectual or developmental disabilities, or for persons with disabilities more generally.

5. Casa Familia, Inc. will prohibit any of its employees, heirs, successors and assignees, and all others in active concert with them in the operation of The Village of Casa Familia, including through potential future refinancing, from excluding eligible individuals from residency based upon their disability status (*i.e.*, persons with disabilities or persons without disabilities) or based upon the type of disability the individual has. Casa Familia acknowledges and will comply with HUD's Section 504 duration of obligation requirements. 24 C.F.R. § 8.50.

6. Though Casa Familia, Inc. owns and operates The Village of Casa Familia, this development is separate and distinct from Casa Familia, Inc., a non-profit entity. Casa Familia, Inc. will ensure its website, and all marketing materials distinguish between the non-profit entity and the Project and will make clear that the development is marketed to all eligible persons, regardless of disability status. Casa Familia, Inc. will not market, promote, or otherwise hold out The Village of Casa Familia as affordable housing for individuals with intellectual and developmental disabilities, or affordable housing for persons with disabilities more generally. Casa Familia acknowledges that changes are needed to its website and marketing materials to comply with this provision.

7. The Village of Casa Familia will not require residents to maintain independent support services either through a Medicaid Waiver Program or private pay services program. The Village of Casa Familia will not require residents to participate in an "Independent Living Screening Approval" process. In sum, placing any conditions or restrictions on occupancy on the basis of one's disability may be discriminatory, *e.g.*, mandatory services, restrictive visitor policies, etc.

8. Casa Familia and The Village of Casa Familia will comply with the Fair Housing Act, which prohibits discrimination on the basis of federally protected classes. Accordingly, the applicant and tenant selection process at the Project will not discriminate based on sex, familial status, or based on any other federally protected class.

For Casa Familia, Inc.:

_____ _____

Anay Abraham
Executive Director
Casa Familia, Inc.

Date

APPROVAL:

_____ _____

Staci N. Gilliam
Programs and Compliance Division Director
Region IV, Office of Fair Housing and Equal Opportunity

Date

EXHIBIT F

OFFICE OF THE VICE CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
DISTRICT 1

THE HONORABLE
Oliver Gilbert

October 4, 2022

Alan Williams
Department of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

Dear Mr. Williams,

I am writing to you today regarding the Village of Casa Familia (the Village), a planned affordable housing community in Miami-Dade County which features amenities and services designed to benefit adults with intellectual, developmental, and other related disabilities. Casa Familia has been working with Miami-Dade County's Department of Public Housing and Community Development (PHCD) to have Project Based Vouchers (PBV) awarded to the project. However, these efforts have been stalled due to questions regarding whether the PBV program would allow Casa Familia to apply a tenant selection preference (TSP) for individuals who can benefit from the amenities the Village will offer.

The memorandum of assurance Casa Familia and PHCD initially received from the Office of Fair Housing and Equal Opportunity (FHEO) left the County unsure as to PHCD's authority to permit a tenant selection preference for a project receiving PBVs. However, the explanation given in the August 30th, 2022, email sent by HUD FHEO staffer Krysha Chatman, attached for your reference, has provided the clarification needed for the County to move forward.

In order to proceed with certainty, we are requesting confirmation that the clarification given in the August 30th email represents HUD's position. Thank you for your kind attention to this matter.

Sincerely,

Vice Chairman Oliver G. Gilbert, III
Miami-Dade County, District 1

WE ARE RISING

Stephen P. Clark Center
111 NW 1st Street
Suite 220
Miami, FL, 33128

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Downtown Office | 305.375.5694
OG3@miamidade.gov

C: The Honorable Mario Diaz-Balart, Congressman for Florida's 25th Congressional District
Adarianne Todman, Deputy Secretary, Housing and Urban Development
Joe Carlisle, Sr. Advisor to the Secretary on Budget, Policy and Programs
Alan Williams, Deputy Assistant Secretary, Intergovernmental Affairs US Housing and urban Development
Morris Copeland, Miami-Dade County Chief Community Services Officer
Michael Liu, Director, Miami-Dade Public Housing and Community Development

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From: Chatman, Krysha R <Krysha.R.Chatman@hud.gov>
Sent: Tuesday, August 30, 2022 1:09 PM
To: Deborah Lawrence <dlawrence@casafamiliainc.org>
Cc: Gilliam, Staci N <Staci.Gilliam@hud.gov>; President, Charles E <Charles.E.President@hud.gov>; Levine, Aaron D <aaron.d.levine@hud.gov>
Subject: FW: <External Message> Language for our lease

Good Afternoon, Debbie.

Thank you for your question.

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) made multiple changes to HUD's project-based voucher (PBV) program, including allowing for a tenant selection preference (TSP) for individuals who can benefit from the amenities, accessibility features, accommodations, and voluntary services offered in conjunction with an affordable housing unit. This preference is not in conflict with civil rights and nondiscrimination requirements.

The Office of Fair Housing and Equal Opportunity (FHEO) neither operates nor oversees project-based voucher (PBVs) programs. Rather, PBV programs are administered through the Office of Public and Indian Housing and local public housing authorities. In your case, Miami-Dade Public Housing and Community Development (MDPHCD) has authority to award PBVs to The Village of Casa Familia and to permit the aforementioned TSP. FHEO recommends that Casa Familia, Ltd. consult the assigned PIH portfolio specialist at Miami-Dade Public Housing for further guidance as needed.

Regards,

Krysha Chatman, Equal Opportunity Specialist