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STATE OF FLORIDA
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HTG Oasis, Ltd,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2023-066VW
App. No. 2022-099C/2023-268C/2023-241V

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(h), F.A.C. (5/18/21)

HTG Oasis, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.004(3)(h), Florida Administrative Code ("F.A.C.") effective May 18, 2021 (the "Rule"), which prohibits revising the demographic commitment identified in the application it submitted in response to RFA 2021-203 Housing Credit Financing For Affordable Housing Developments Located In Miami-Dade County ("RFA"). After Petitioner submitted its application, Petitioner determined that it needs to qualify for an exemption provided under Section 196.1975, Florida Statutes, for property used by nonprofit homes for the aged ("Tax Exemption"). The Tax Exemption will allow the Petitioner to leverage a sufficient amount of permanent debt to be financially feasible. Petitioner therefore respectfully requests a waiver in order to change its demographic commitment from "family" to "elderly." Neither Florida Housing, nor any applicant, will be prejudiced if this petition is granted because the development is funded under the Tier 1 Urban District Goal, which is not tied to a specific demographic set aside. In support, Petitioner states as follows:

A. THE PETITIONER

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

Matthew A. Rieger
HTG Oasis, Ltd.
3225 Aviation Ave., 6th Floor
Coconut Grove, FL 33133
Telephone: (305)860-8188
Fax: n/a
Email: mattr@htgf.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's Application No. 2022-099C/2023-268C/2023-241V (the "Application"):

- Development Name: Oasis at Aventura
- Development Address: NE 25th Ave, NE 25th Ave and NE 187th St
- County: Miami-Dade
- Developers: HTG Oasis Developer, LLC
- Number of Units: 95 new construction
- Type: High-Rise

- Set Asides: 10 units (10%) at or below 25% AMI, and 85 units (90%) at or below 60% AMI; 50% of the ELI units will be set-aside for Persons with Special Needs

- Demographics: Family

- Funding: 9% HC request of $2,266,000 annually; Viability Loan of $4,300,000

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.004(3)(h), effective May 18, 2021, which provides in pertinent part:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
>
> ***
>
> (h) Demographic Commitment

Id.

E. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-48.004, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.5087, State Apartment Incentive Loan Program;

- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund; and

- Section 420.5099, Allocation of the low-income housing tax credit.

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

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner timely submitted its Application on August 26, 2021.

9. In the Application, Petitioner identified "family" as the demographic commitment and intended to provide the following resident programs: (a) Adult Literacy; (b) Employment Assistance Program; and (c) Financial Management Program.

10. Petitioner subsequently experienced substantial increases in construction costs and operating expenses outside of Petitioner's control that required Petitioner to explore additional ways to make the Development financially feasible. Petitioner determined that it must change the demographic commitment from "family" to "elderly" in order to qualify for the Tax Exemption (62+) and to leverage a sufficient amount of permanent debt to be financially feasible.[1] Furthermore, the Development features all 1-bedroom units which caters more to the

[1] Petitioner anticipates it would be liable for real estate taxes amounting to more than $1,100,000 of lost permanent debt proceeds. If Petitioner qualifies for the exemption, its paid fee would decrease from approximately 61% (excludes real estate taxes) to approximately 38% (includes RE taxes). Both scenarios assume the full $4,300,000 in viability loan proceeds and 1.15x debt service coverage ratio for the permanent loan. Petitioner's current appraisal estimates the Operating Expense Savings realized with the exemption would amount to $86,640 for the year 1 stabilized real estate taxes (*i.e.*, the realized year 1 savings to the Development). Excluding real estate taxes would allow Petitioner to underwrite up to approximately $7,340,000 of permanent debt proceeds (subject to approval from the credit underwriter). Even with the exemption and viability loan proceeds, the Development has almost 40% of the developer fee deferred. Without the waiver, Petitioner would have to reduce its permanent loan by more than $1,100,000 and offset the funding gap with additional deferral of the developer fee. Petitioner's deferred fee would increase from approximately 40% to approximately 61% without the waiver. Petitioner has already sized its permanent loan with the real estate taxes excluded from the operating expenses. Petitioner also entered into an Early Index Lock Agreement with the permanent lender to remove all permanent debt interest rate risk from the transaction. In doing this, Petitioner can only modify the loan amount by +/- 10%. If Petitioner is required to underwrite real estate taxes,

elderly demographic. If this petition is granted, and the demographic commitment is changed to "elderly," Petitioner will provide the following resident programs: (a) Daily Activities; (b) Assistance with Light Housekeeping, Grocery Shopping and/or Laundry; and (c) Resident Assurance Check-In Program. Petitioner will also incorporate all of the required construction features in the RFA for the Elderly demographic (*e.g.*, 20% of the newly constructed units will have roll-in showers).

11. Neither Florida Housing, nor any applicant, will be prejudiced if this petition is granted because the development is funded under the Tier 1 Urban District Goal, which is not tied to a specific demographic set aside. If the Application had included the requested Demographic Commitment (*i.e.*, elderly), it would not have changed Petitioner's scoring, ranking, or funding.

12. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[2] 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.

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this would result in more than a 10% reduction of the permanent loan and trigger breakage/unwinding fees with Freddie Mac.

[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 significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), Fla. Stat.

13. If the Rule is imposed, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Specifically, denial of this petition will prevent Petitioner from qualifying for the Tax Exemption and from being able to leverage a sufficient amount of permanent debt. In contrast, granting the petition will promote the financial feasibility of the Development.

14. As discussed above, Petitioner meets the standards for granting the requested waiver.

15. The requested waiver will ensure that 95 affordable housing units will be made available for the target population in Miami-Dade County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because the change in the demographic commitment is necessary to make the Development financially feasible. Granting the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would deny Miami-Dade County these much-needed affordable housing units.

G. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule such that Petitioner is able to amend the Demographic Commitment from family to elderly; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 17th day of August, 2023.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.