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HTG ORCHID LAKE, LTD.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-067VW
Application No. 2021-293CSN

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(e), F.A.C. (6-23-20)

HTG Orchid Lake, 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)(e), Florida Administrative Code ("F.A.C.") effective June 23, 2020 (the "Rule"), which prohibits changing the site for the development identified in the application it submitted in response to RFA 2021-103 Housing Credit And SAIL Financing To Develop Housing For Homeless Persons ("RFA"). Petitioner respectfully requests this Rule waiver to change the development location point and development site to nearby land that is less expensive, and more suitable for the development. Petitioner and its principals are wholly unrelated to the seller of the land underlying the current location, as well as the seller of the proposed location. If this request is denied, it is unlikely Petitioner will be able to overcome the excess total development cost resulting from an unexpected post-application increase in construction cost caused by forces outside of Petitioner's control. 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:

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HTG Orchid Lake, 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 is:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's Application No. 2021-293CSN (the "Application"):

- Development Name: Orchid Lake
- Development Address: Michigan Ave, Michigan Ave and Cocoa Lakes Drive, Cocoa
- County: Brevard
- Developers: HTG Orchid Lake Developer, LLC
- Number of Units: 90 new construction
- Type: Garden
- Set Asides: 85% of units at or below 60% AMI and 15% at or below 33%.

- Demographics: Homeless individuals and families

- Funding: 9% HC request of $1,700,000 annually; $4,751,050 SAIL; $380,000 ELI; $556,500 NHTF.

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)(e), effective June 23, 2020, 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:
>
> ***
>
> (e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter credit underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased provided the Development Location Point is on the site and, if applicable, the total proximity points awarded during scoring are not reduced. In addition, if the increase or decrease of the site is such that the proposed Development now meets the definition of a Scattered Site, then the Applicant shall be required to provide such Scattered Sites information and meet all Scattered Sites requirements as required by Corporation staff. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation;

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; 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 March 9, 2021.

9. Nearly a year prior, Petitioner began negotiations with unaffiliated sellers of potential sites for the Development. Unfortunately, the seller of the proposed alternative location would not provide the terms required for a tax credit application. Accordingly, Petitioner moved forward with purchasing the current location instead. Petitioner participated in arm's-length negotiations with the seller to reach an agreed upon price for the present Development location. The seller was not related in any way to the Petitioner or its principals.

10. Petitioner learned from its environmental consultant that wetlands on the current Development location will require additional site work, such as fill material and bulkheading. These costs will push the Development cost on the current site above that typically found on an upland site with good drainage. While this additional estimated cost of $750k - $1 million was included in the original budget, those amounts must now be reallocated due to unforeseen material and labor escalations that have occurred over the past 6 to 8 months.

11. Faced with industry-wide cost increases, Petitioner must now mitigate its Development cost by changing the Development location. The seller of the proposed development location is now willing to provide the terms necessary for the Application. The benefits of the new location will better serve the special needs Homeless population of this Development, as access to public transit and community services will be improved. At a minimum, the score on the Access to Community Based Services and Resources section of the Application would remain unchanged, if not improved. *Compare* Exhibit A (comparing the

location of the present development location to the proposed development location); and Exhibit B (comparing the proximity to services between the present development location and the proposed development location).

12. Moreover, neither FHFC nor any other applicant will be prejudiced by the requested waiver as Petitioner was the only qualifying medium County application submitted in RFA 2021-103. Thus, no other applicants' interest could be affected by granting this Petition.

13. If the Petition is granted, and the Development location point and site are changed, the Application will score even higher. If the Petition is denied, Petitioner will suffer a substantial hardship in that it will be unable to mitigate the construction costs that unexpectedly increased after the Application deadline, and thus be unable to overcome the excess total development cost.

14. 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,[1] 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.

15. Petitioner meets the standards for granting the requested waiver as explained above. The need for the waiver was requested early in the process and will not prejudice the

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

Development, Florida Housing, nor any other applicant. Even if Petitioner had been able to negotiate the purchase of the proposed Development location prior to the Application deadline, it still would have been selected for funding.

16. The requested waiver will ensure that 90 affordable housing units will be made available for the target population in Brevard County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because the change in the Development location point and Development site is necessary to ensure the Development remains financially feasible. Granting the waiver will benefit the residents by moving the Development closer to amenities, such as public transportation. Further, 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 Brevard County these much-needed affordable housing units.

G. ACTION REQUESTED

17. 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 change the Development location point and Development site identified in the Application; (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
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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 25th day of August, 2021.

By:___/s/ Brian J. McDonough_____
Brian J. McDonough, Esq.

Exhibit A – Map Comparing Proximity of Development Locations



Exhibit B – Map Comparing the Proximity to Services

