

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2015-029VW
Application No. 2014-421S

OASIS AT RENAISSANCE PRESERVE I, LP

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004 (4) AND RFA 2014-111,
FOR A CHANGE IN DEVELOPMENT TEAM/APPLICANT STRUCTURE**

Petitioner, Oasis at Renaissance Preserve I, LP, a Florida limited partnership (“Oasis” or the “Applicant”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of:

- (a) Florida Housing’s prohibition on changes in an applicant’s ownership structure prior to loan closing, which is set forth in Exhibit D to the Request for Applications to which Oasis submitted a response (*See* Section 1(a) of Exhibit D to RFA 2014-111 (the “RFA”)); and
- (b) the provisions of Section 67-48.004(4), F.A.C., which mandate that a development will be withdrawn from funding and any outstanding commitments for funds will be rescinded if, at any time, Florida Housing determines that an applicant’s development team is no longer the development team described in its application and the changes made are prejudicial to the development or the market to be served by the development (See Section 67-48.004(4), F.A.C. (the “Rule”)).

Oasis requests a waiver of certain provisions of Exhibit D to the RFA and the Rule, in order to:

- (i) allow for the replacement of the “majority member” of the Applicant’s general partner with a new “majority member” entity, that will be owned by:
 - (a) the current majority member of general partner, as to 70%; and
 - (b) an affiliate of the management company which will provide on-site management for the Development, as to 30%(which change will not result in a mathematical change in the overall ownership of Oasis that would equal or exceed 33.3%); and
- (ii) allow for the correction of certain inadvertent errors in the description of the Development team provided to Florida Housing with the Application submitted by Oasis in response to the RFA and designated as Application No. 2014-421S (the “Application”).

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Oasis and its qualified representatives for the Application are:

Oasis at Renaissance Preserve I LP
Attention: Dorothea L. Garland
191 Peachtree Street, Suite 4100
Atlanta, GA 30303
Telephone: 404-391-9909
Facsimile: 404-224-1899
E-mail: sgarland@integral-online.com

2. The name, address, telephone and facsimile numbers, and e-mail address of Oasis’s attorney, for purposes of this Petition, are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler

Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT

3. Oasis submitted its Application for SAIL and ELI funds in response to the RFA and was selected for funding. The SAIL and ELI funds to be awarded to Oasis, together with other loan sources, will provide funds for the construction of a 100-unit assisted living facility in Lee County, Florida, to be known as “Oasis at Renaissance Preserve I” (the “Development”).

4. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Oasis; (b) could result in delay in completing, or possibly a complete failure to construct, the Development; (c) could deprive Lee County, Florida of essential elderly assisted-living facilities in a timely manner and (d) would violate principles of fairness¹. § 120.542(2), Fla. Stat. (2013).

5. The waiver being sought is permanent in nature.

C. RFA AND RULE FROM WHICH RELIEF IS REQUESTED, AND STATUTE IMPLEMENTED BY THE RULE

6. Oasis realleges and incorporates Paragraphs 1 through 5 as though fully set forth herein.

7. Although Oasis believes that the requested change in its structure will not result in an actual change of ownership which exceeds 33.3% of the general partner interests in Oasis, as detailed below, Oasis requests a waiver of that part of Exhibit D of the RFA which addresses the

¹“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when 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. Section 120.542(2), Florida Statutes.

“Applicant Requirements” because facially, the change for which approval is sought will result in a new majority member of the general partner being installed, in lieu of the current majority member of the general partner. The relevant portion of Exhibit D to the RFA provides as follows:

The following criteria pertains to ALL Applications submitted under this RFA:

a. The SAIL Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3 percent or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to loan closing shall result in disqualification from funding...

8. Oasis admits an error included in Attachment 2 to the Application, which incorrectly identified one of the members of its general partner as a “non-managing general partner” of the Applicant itself, and desires to correct that error. However, such correction may lead to the inference that Oasis is changing its development team from that described in its Application, and therefore Oasis seeks a waiver of the Rule, which provides, in relevant part:

67-48.004 (4): For all funding programs outlined in this rule chapter, a Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if, at any time, the Board determines that the Applicant’s Development or Development team is no longer the Development or Development team described in the Application or to the Credit Underwriter, and the changes made are prejudicial to the Development or to the market to be served by the Development.

The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designates Florida Housing as the agency responsible for the allocation of SAIL funds. See Section 420.5087, F.S.

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

9. Oasis realleges and incorporates Paragraphs 1 through 8 as though fully set forth herein.

10. 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 these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would 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. (2011).

11. In this instance, Oasis meets the standards for a waiver.

12. Oasis requests a waiver of the RFA in order to avoid any conclusion that the reconstitution of its general partner by replacing the majority member thereof with another entity, which will be owned in part by the current majority member, violates the prohibition on changing 33.3% or more of the Applicant's general partner's structure prior to loan closing.

13. Oasis is comprised of one general partner and one limited partner. The sole general partner is Oasis at Renaissance Preserve GP I, LLC (the "GP"), which holds 99.99% of all the interests in the Applicant. That is not changing on account of the circumstances giving rise to the requested waiver.

The GP is, in turn, currently comprised of two members:

- (a) Integral Renaissance Preserve I, LLC ("Integral"), which owns 65% of the GP, and
- (b) Oasis RP, LLC ("Oasis RP"), which owns 35% of the GP.

Oasis desires to cause a transfer of the 65% membership interest in the GP currently held by Integral to a new entity, Oasis Renaissance Preserve JV I, LLC (the “New GP Member”) which would, in turn, be owned by:

- (a) Integral, as to 70%, and
- (b) A new member, MIA Senior Management II, LLC (“MIA”) as to 30%.

The interest of Oasis RP as the 35% minority member of the GP itself is not being changed.

The mathematical effect of the contemplated transfer is this:

- Prior to the requested transfer, Integral owns **65%** of the GP.
- Following such transfer, Integral will be the owner of **70%** of the New GP Member, which, in turn, will own **65%** of the GP.
- 70% of 65% is equal to **45.5%**. Therefore, following the transfer, Integral will have an effective ownership equal to **45.5%** of the GP in which it previously owned 65%. The ultimate ownership in the GP held originally by Integral will only have changed by **19.5%**, which is well below the threshold of 33.3% by which a general partner can be changed.

14. The addition of MIA as the non-managing member of the New GP Member (which is not affected by the 33.3% limit, because it is not a change in the general partner of the Applicant) is being required by HUD as a condition to the Section 232 financing of the Development, for which Oasis has obtained a commitment. HUD requires that the entity whose affiliate will be charged with the management duties for the Development have (a) healthcare facility experience and (b) an ownership stake in the Development itself. The business arrangement between the Applicant and the non-profit entity which owns Oasis RP, and is

serving as the co-developer, prohibited the interjection of MIA directly into the GP itself as a member thereof, so it was necessary to create a new entity in which MIA and Integral would serve as co-members. Ultimately, unless MIA is admitted as a member of the New GP Member, the HUD financing for the Development will become unavailable and the Development will fail to be constructed. Restructuring the HUD loan, or seeking other funds to replace it, would create time delays resulting in, among other things, a failure to be able to close the SAIL and ELI loans by the December 31, 2015 deadline, resulting in the loss of these much-needed funds. Approval of the requested waiver is necessary to preserve all of the committed construction funds, adhere to the proposed construction schedule, and retain the professionals engaged to complete the Development.

15. Oasis further desires to correct the error in Attachment 2 appended to the Application which was approved by Florida Housing, to avoid any perception that the Development team proffered by Oasis is not remaining constant, even giving effect to the foregoing requested waiver². A copy of Attachment 2 submitted with the Application (the “Original Attachment”) is appended hereto as Exhibit “A”. In the Original Attachment, it appears as if there were two general partners of the Applicant; Oasis RP is erroneously identified as a “Non-Managing GP” of the Applicant, but in fact (a) the Applicant now has, and has always had, a sole general partner and (b) RP Oasis is not a partner of the Applicant. It is a non-managing member of the GP.

16. Attached hereto as Exhibit B is a revised schedule showing the correct constitution of the Applicant, its GP and the members of the GP (taking into effect the transfer

²This Petition does not consider the question of whether the correction of the error set forth in the Original Attachment, which might be perceived as a change in the Development team, would be “prejudicial to the Development” because that is a question of fact to be determined in another forum; this Petition seeks to ensure the correct presentation of information regarding the Applicant so that the question need not be raised.

requested for approval pursuant to this Petition, and correcting the designation of Oasis RP as a partner of the Applicant), for substitution in lieu of the Original Attachment. The identification of Oasis RP as a “non-managing general partner” of the Applicant pursuant to the Original Attachment was a benign error that would be easily discerned by a reading of the Applicant’s organizational documents, and the inadvertent error, as corrected on Exhibit B attached hereto, should not give rise to any claim that the Applicant’s Development team is no longer the Development team described in the Application. To hold otherwise would be inequitable and result in a hardship to Oasis if its allocation of SAIL and ELI funds were rescinded, resulting in the failure of the Development.

17. If the relief sought pursuant to this Petition is not granted, Oasis will suffer substantial hardship. The consequences resulting from the Applicant’s inability to make the changes described herein to the GP’s ownership structure will cause the Development to fail for lack of sufficient construction funding sources, because HUD will rescind its commitment. Further, to the extent interest rates are favorable at this time they are predicted to trend upward, and any delay will cause the Development to lose advantage in pricing of its funds, as well as adversely impact the tax credit delivery schedule. Further, construction costs will likely escalate, making it even more difficult to deliver the Development as contemplated.

E. CONCLUSION

18. Controlling statutes and Florida Housing’s Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when (a) the applicant subject to the rule demonstrates that strict application would

create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2011).

19. The requested waiver will not adversely impact Oasis, the Development, or the GP.

20. A denial of the requested waiver could result in a substantial hardship for Oasis which would cause the loss of the financial contributions committed to be made to the Development by HUD, could cause the interest rates on its financing to become unfavorable, could adversely impact the tax credit delivery schedule, and will result in budget challenges as construction costs escalate. The feasibility of the Development will be jeopardized.

21. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing for seniors in need of assistance. The goal of providing one hundred units of elderly assisted-living housing in Lee County, Florida will be achieved through the approval of the transfers of member interests and correction of inadvertent errors requested in this Petition, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to households of limited means.

22. Should Florida Housing require additional information, Oasis is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner, Oasis at Renaissance Preserve I, LP respectfully requests that the Florida Housing Finance Corporation provide the following relief:

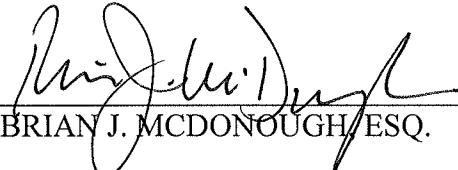
A. Grant the Petition and all relief requested herein;

B. Approve the transfer of the current membership interest in the GP to the New GP Member, approve the ownership of the New GP Member by Integral and MIA in the percentages set forth above, approve the correction of Attachment 2 to the Application as set forth in Exhibit B attached hereto; and

C. Grant such further relief as may be deemed appropriate.

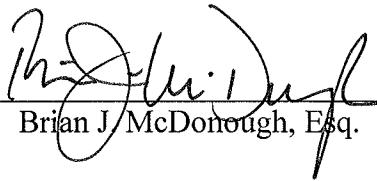
Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Oasis at Renaissance Preserve I LP
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

By: 
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 18 day of August, 2015.

By: 
Brian J. McDonough, Esq.

Project Name: Oasis at Renaissance Preserve

Applicant/ Developer Principals

Approved
FHFC Advance Review

8/26/14

Applicant: Oasis at Renaissance Preserve I, L.P.

Managing General Partner: OASIS AT RENAISSANCE PRESERVE GP I LLC

Sole Manager & Member: Integral Renaissance Preserve I, LLC

Manager: Egbert Perry
Member: Integral Realty, LLC

Manager: ELJP Real Estate LLC
Members: Egbert Perry
Vicki Lundy Wilbon
Valerie Edwards
Carl Powell

Non-Managing GP: Oasis RP, LLC

Sole Manager & Member: Southwest Florida Affordable Housing Choice Foundation, Inc.

Officer: Marcus Goodson,
Executive Director

Directors: Peter Routsis-Arroyo
Joseph P. D'Alessandro
William H. Barnwell
Mattie Young
Douglas A. Hogg
Lemuel A. Teal
E. Bruce Strayhorn

Shareholders: None (Non-profit Corporation)

Limited Partner: Integral Renaissance Preserve I, LLC (To Be replaced with TAX Credit Syndicator)

Manager: Egbert Perry
Member: Integral Realty, LLC

Manager: ELJP Real Estate LLC
Members: Egbert Perry
Vicki Lundy Wilbon
Valerie Edwards
Carl Powell

Exhibit A

Project Name: Oasis at Renaissance Preserve

Applicant/ Developer Principals

Approved
FHFC Advance Review
8/26/14

Developer: Integral Development LLC

Sole Manager: Egbert Perry
Member: The Integral Group LLC

Manager: Egbert Perry
Members: Vicki Lundy Wilbon
Valerie Edwards
Carl Powell

Co-Developer: Southwest Florida Affordable Housing Choice Foundation, Inc.

Officer: Marcus Goodson,
Executive Director

Directors: Peter Routsis-Arroyo
Joseph P. D'Alessandro
William H. Barnwell
Mattie Young
Douglas A. Hogg
Lemuel A. Teal
E. Bruce Strayhorn

Shareholders: None (Non-profit Corporation)

EXHIBIT "B" TO PETITION

Project Name: Oasis at Renaissance Preserve

Applicant/ Developer Principals

Applicant: Oasis at Renaissance Preserve I, L.P.

General Partner: OASIS AT RENAISSANCE PRESERVE GP I LLC

Co-Member/

Manager: Oasis Renaissance Preserve JV I, LLC – 65%

Member/

Manager: Integral Renaissance Preserve I, LLC – 70%

Manager: Egbert Perry

Member: Integral Realty, LLC

Manager: ELJP Real Estate LLC

Members: Egbert Perry

Vicki Lundy Wilbon

Valerie Edwards

Carl Powell

Member: MIA Senior Management II, LLC - 30%

Manager: Concepcion Bretos and Pilar Carvajal

Sole member: MIA Consulting Group, Inc.

Co-Member: Oasis RP, LLC – 35%

Sole Manager & Member:

**Southwest Florida Affordable Housing Choice
Foundation, Inc.**

**Officer: Marcus Goodson,
Executive Director**

**Directors: Peter Routsis-Arroyo
Joseph P. D'Alessandro
William H. Barnwell
Mattie Young
Douglas A. Hogg
Lemuel A. Teal
E. Bruce Strayhorn**

Shareholders: None (Non-profit Corporation)

Limited Partner: Integral Renaissance Preserve I, LLC (To Be replaced with Tax Credit Syndicator)

Manager: Egbert Perry
Member: Integral Realty, LLC

Manager: ELJP Real Estate LLC
Members: Egbert Perry
Vicki Lundy Wilbon
Valerie Edwards
Carl Powell

Project Name: Oasis at Renaissance Preserve

Applicant/ Developer Principals

Developer: Integral Development LLC

Sole Manager: Egbert Perry
Member: The Integral Group LLC

Manager: Egbert Perry
Members: Vicki Lundy Wilbon
Valerie Edwards
Carl Powell

Co-Developer: Southwest Florida Affordable Housing Choice Foundation, Inc.

Officer: Marcus Goodson,
Executive Director

Directors: Peter Routsis-Arroyo
Joseph P. D'Alessandro
William H. Barnwell
Mattie Young
Douglas A. Hogg
Lemuel A. Teal
E. Bruce Strayhorn

Shareholders: None (Non-profit Corporation)