

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: HTG RAINBOW HOUSING, LTD.

FHFC Case No.: 2019-101VW

**ORDER GRANTING WAIVER OF RULE 67-48.002(95),
FLORIDA ADMINISTRATIVE CODE (2017) AND SUBSECTION
II.K OF THE 2016 QUALIFIED ALLOCATION PLAN**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 23, 2020. Florida Housing Finance Corporation (“Florida Housing”) received the Petition for Waiver of R. 67-48.002(95), Fla. Admin. Code (2017) and section II.K of the 2016 Qualified Allocation Plan, (“Petition”) on December 20, 2019, from HTG Rainbow Housing, Ltd., (“Petitioner”). The Notice of the Petition was published on December 24, 2019, in Volume 45, Number 248, of the *Florida Administrative Register*. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (“Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas Ramon

/DATE:

1/23/2020

2. Petitioner successfully applied for an allocation of competitive housing credits in RFA 2018-102 to assist in the construction of Father Marquess-Barry Apartments, a 60-unit, Elderly (non-ALF) affordable housing development in Miami-Dade County, Florida (the “Development”).

3. R. 67-48.002(95), Fla. Admin. Code (2017), adopts and incorporates by reference the 2016 Qualified Allocation Plan (“2016 QAP”), which provides, in Section II.K:

Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the 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, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (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.

(Emphasis supplied).

4. Pursuant to R. 67-48.028(1), Fla. Admin. Code (2017) if an Applicant cannot complete its development by the end of the year in which the preliminary allocation of housing credits is issued, the applicant must enter into a carryover allocation agreement with Florida Housing by December 31 of the year in which the preliminary allocation is issued. Petitioner and Florida Housing entered into the carryover allocation agreement on November 9, 2018, which required the Development to be placed in service by December 31, 2020.

5. Petitioner was granted extensions to the 10% test, notice of commencement, credit underwriting report and tax credit partnership agreement submission to December 31, 2019, but retained the placed-in-service date of December 31, 2020.

6. The Board finds that Petitioner is unable to meet the December 31, 2020 placed-in-service deadline due to delays outside of Petitioner's control. Progress on the Development has been delayed by the discovery of a sewer main requiring removal, a process that took a year but is now complete. Additionally, Florida Power and Light (FPL) planned to remove and replace overhead power transmission lines, a process which took over one year to complete.

7. In August 2019, Petitioner worked to close on the financing of the Development by December 2019, but by August 20 it became apparent that this was not possible given the delays described above.

8. Based on the foregoing, the Board finds that Petitioner is unable to commence construction and requests an exchange of its 2018 housing credits for an allocation of 2020 housing credits now, rather than wait until the last quarter of 2020, which would effectively extend the placed-in-service date of the Development until December 31, 2021.

9. Section 120.542(2), *Florida Statutes*, provides in pertinent part:

Variations 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.

10. Granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing.

11. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

12. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income

housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner’s request for a waiver of R. 67-48.002(95), Fla. Admin. Code (2017) and section II.K of the 2016 QAP, is hereby **GRANTED**, to permit Petitioner to return its 2018 housing credit allocation and immediately receive an allocation of 2020 housing credits, with a placed-in-service date of December 31, 2021.

DONE and ORDERED this 23rd day of January, 2020.



Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.