STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: HTG Orchid Lake, LTD FHFC Case No.: 2021-067VW

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ORDER GRANTING WAIVER FROM RULE 67-48.004(3)(e), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 22, 2021. On August 25, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.004(3)(e), F.A.C. (6-23-20). On October 6, 2021, Florida Housing received an Amended Petition for Waiver of Rule 67-48.004(3)(e), F.A.C. (6-23-20) (the "Petition") from HTG Orchid Lake, Ltd. (the "Petitioner"). Notice of the Petition was published on August 26, 2021, in Volume 47, Number 166, 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 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
Anne Alamong DATE: 10/25/2021

2. Petitioner successfully applied for competitive housing credits, State Apartment Incentive Loan ("SAIL") funding, Extremely Low Income ("ELI") loan funding, and National Housing Trust Fund ("NHTF") funding in RFA 2021-103 to assist in the construction of a 90-unit homeless, housing development named Orchid Lake to be located in Brevard County, Florida (the "Development").

3. Rule 67-48.004(3)(e), Fla. Admin. Code (2020), in relevant part, states:

> (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:
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> ...
>
> (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;

4. Petitioner requests a waiver of the above quoted Rule to allow it to change the development location point and the development site to nearby land that, according to Petitioner, is less expensive and more suitable for development. Petitioner states that it is forced to relocate the Development to a different site due to potential flood plain and wetland impact uncertainties, which jeopardize the National Housing Trust Fund ("NHTF") units on the original site.

5. According to Petitioner, it can quickly move forward on the new Development site and does not anticipate any delays or the need for any future extensions. Petitioner states that the benefits of the new location will better serve the special needs Homeless population as access to public transit and community services will improve. Also, Petitioner states that zoning is available and the application has entered into an eligible contract on the proposed Development site.

6. The proposed Development site, according to Petitioner, is not located in a flood plain and is void of any potential wetland impacts which allows Petitioner to obtain final development approvals and commence construction in a more expeditious manner, thus ensuring delivery of NHTF units.

7. Additionally, Petitioner states that neither Florida Housing nor any other applicant will be prejudiced by the requested waiver because Petitioner was the only qualifying medium County application submitted in the RFA.

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

> 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.

9. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

10. The Board also finds that 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 were not granted.

11. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-48.004(3)(e), Fla. Admin. Code (2020), is hereby **GRANTED** to

allow Petitioner to change the Development site identified in its application to the Development site identified in its Petition subject to the following conditions: 1) Petitioner will not seek Corporation Viability Loan funding for the Development, and 2) in future RFAs, any awards involving NHTF funding may be deobligated if the applicant cannot meet the requirements for the NHTF award commitments.

DONE and ORDERED this 22nd day of October 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE 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.