STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: RGC Phase I, LLC FHFC Case No.: 2022-064VW

_____/

ORDER GRANTING WAIVER
OF RULE 67-48.0072(21)(b), F.A.C.

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on December 9, 2022. On November 21, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(21)(b), F.A.C. (6/23/20) (the "Petition") from RGC Phase I, LLC (the "Petitioner") to grant Petitioner an extension of the firm loan commitment deadline. Notice of the Petition was published on November 23, 2022, in Volume 48, Number 228, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on 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
/DATE: 12/9/2022

2. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL") funding and four percent housing tax credits in RFA 2021-208 to assist in the construction of a 310-unit (increased from 299 with Florida Housing approval) named Rainbow Village to be located in Miami-Dade County, Florida (the "Development").

3. Rule 67-48.0072(21)(b), Fla. Admin. Code (2020), in relevant part, provides:

> (21) Information required by the Credit Underwriter shall be provided as follows:
>
> ...
>
> (b) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within twelve (12) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm

> loan commitment process beyond the initial twelve (12) month deadline is approved. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

4. Petitioner requests a waiver of the above-cited rule to allow Petitioner to extend the firm loan commitment issuance deadline. Petitioner accepted an invitation to credit underwriting on July 12, 2021, which provided a firm loan commitment issuance deadline of July 15, 2022. At Petitioner's request, the firm loan commitment issuance deadline was extended to January 15, 2023. Petitioner now requests an additional 180-day firm loan commitment extension to July 15, 2023.

5. Petitioner states that several obstacles have prevented it from obtaining a firm loan commitment: a) The Development's location required an ordinance change before submitting its final site plan; b) Cost escalation has required Petitioner to seek and secure additional funding sources for construction; c) the ongoing ripple effects of COVID-19 have slowed the permitting approval process.

6. 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.

7. 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.

8. 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 is not granted.

9. 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 that Petitioner's request for a waiver of Rule 67-48.0072(21)(b), Fla. Admin. Code (2020), is hereby **GRANTED** to allow Petitioner to extend its firm loan commitment issuance deadline from January 15, 2023 to July 15, 2023.

DONE and ORDERED this 9th day of December 2022.

Florida Housing Finance Corporation

By: _____

Chairperson

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, PA
bmcdonough@swmwas.com

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.