STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: AMC HTG 2, LTD. FHFC Case No.: 2022-065VW

_____/

ORDER GRANTING WAIVER
OF RULE 67-48.0072(21)(b), 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 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 AMC HTG 2, Ltd. ("Petitioner"), to allow Petitioner to extend the firm loan commitment issuance 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.

2. Petitioner successfully applied for Florida Housing's Request for Applications 2021-208 SAIL And Housing Credit Financing for The

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/s/ Adams Hamons /DATE: 12/9/2022

Construction of Workforce Housing via Application Number 2021-323S, to assist in the construction of a 120-unit workforce housing development named Courtside Apartments, Phase II to be located in Miami-Dade County, Florida (the "Development").

3. Rule 67-48.0072(21)(b), Florida Administrative Code (6/23/20) (the "Rule"), in relevant part, provides:

> (21) Information required by the Credit Underwriter shall be provided as follows:
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> ...
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> (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 Rule to allow Petitioner to extend the firm loan commitment issuance deadline from January 15, 2023, to July 15, 2023.

5. Petitioner accepted an invitation to enter credit underwriting dated July 12, 2021. Although the Rule provides that the firm loan commitment must be issued within twelve months of acceptance to enter credit underwriting, it also provides that Petitioner may request one extension of up to six months. Petitioner exercised this right and the Board approved the extension request on June 17, 2022, to extend the deadline from July 15, 2022, to January 15, 2023. Petitioner paid the extension fee required by the Rule.

6. Because Petitioner was previously granted a six-month extension of the firm loan commitment deadline, the requested extension may not be granted without a waiver of the Rule.

7. Petitioner is requesting an extension of the firm loan commitment deadline from January 15, 2023, to July 15, 2023, to allow sufficient time to finalize underwriting. Petitioner's timeline to achieve firm loan commitment issuance is by January 15, 2023, or an earlier Board meeting.

8. Petitioner states that its need for the requested extension was created by circumstances beyond Petitioner's control:

a. The Development is located on a Miami-Dade County owned site with existing structures and is adjacent to a City of Miami owned site with shared parking and access. This has required the Petitioner to solve an array of legal and planning issues between the County and City. These legal issues have affected the Petitioner's ability to attain timely site plan approval from the City of Miami.

b. The unprecedented demand in development activities, coupled with the rippling effects of COVID-19 on the labor market, have put immense strain on municipal departments, resulting in limited resources to review, comment, and approve building permits. This reduction in operational capacity has led to municipal approvals being backlogged, causing delays in the development process.

c. Additionally, construction costs have escalated simultaneously with interest rates and insurance costs, which have created an even greater financing gap. Petitioner has identified sources to address the financial gap, which include the City of Miami and the Southeast Overtown Park West Community Redevelopment Agency. Identifying and working to secure these additional funding sources has

lengthened the development timeline. As a result of these delays, the timing of permitting review comments, the design team's implementation of city comments, and the subsequent re-reviews, the interruption in the development timeline has been further exacerbated. The Development is currently in the design of construction documents phase, which will be followed by bidding, General Contractor selection, and the Plan and Cost Review, after which it will be able to finalize the Credit Underwriting Report.

Due to these reasons, Petitioner indicates that it does not anticipate the ability to meet the firm loan commitment deadline of January 15, 2023.

9. Petitioner is requesting more time to be able to coordinate its design and engineering teams to garner the necessary City and County approvals.

10. Petitioner argues that the requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RF A, or Florida Housing. A denial of the Petition, however, would: A denial of the Petition, however, would: (a) result in substantial economic hardship to Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Miami-Dade County of essential affordable rental units set aside

for Workforce individuals, who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness.

11. Petitioner further argues that if the Petition is not granted, the preliminary commitment will be withdrawn and the Development will not be constructed. Further, Petitioner argues that the requested waiver will ensure the availability of SAIL and housing credit financing which will otherwise be lost as a consequence of the delays and that the foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver.

12. 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.

13. 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.

14. 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.

15. 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), Florida Administrative Code (6/23/20), 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:

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Joint Administrative Procedures Committee
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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.