STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: RGC PHASE I, LLC FHFC Case No.: 2023-039VW

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ORDER GRANTING WAIVER OF RULE 67-48.0072(21)(b), FLORIDA ADMINISTRATIVE CODE (2020)

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on June 9, 2023. On May 16, 2023, 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, ("Petitioner") to allow Petitioner to extend the firm loan commitment issuance deadline. Notice of the Petition was published on May 17, 2023, in Volume 49, Number 96, 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 State Apartment Incentive Loan ("SAIL") and 4% housing credits in Request for Applications 2021-208

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Jennifer LeMarshall /DATE: 6/15/2023

SAIL And Housing Credit Financing for The Construction of Workforce Housing (the "RFA"), to assist in the construction of a 310-unit workforce housing development named Rainbow Village, in Miami-Dade County, Florida (the "Development").

3. Rule 67-48.0072(21)(b), Florida Administrative Code (2020), 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 Rule 67-48.0072(21)(b) to allow Petitioner to extend the firm loan commitment issuance deadline from July 15, 2023, to January 15, 2024.

5. Petitioner accepted an invitation to enter credit underwriting, dated July 12, 2021. Although Rule 67-48.0072(21)(b) 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. On June 17, 2022, the Board approved Petitioner's request to extend the deadline from July 15, 2022, to January 15, 2023, and Petitioner paid the required extension fee. On December 9, 2022, Petitioner's petition for an additional extension of the deadline for firm loan commitment issuance was granted to extend the deadline from January 15, 2023, to July 15, 2023.

6. Petitioner is requesting an additional extension of the firm loan commitment deadline from July 15, 2023, to January 15, 2024, to allow sufficient time to finalize underwriting. Petitioner is requesting a six-month extension in an abundance of caution.

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

a. Per Petitioner, increases in construction costs, interest rates, insurance costs, and Davis Bacon wages caused a significant delay. Also, the Development's financing gap has risen substantially. To address the financing gap, Petitioner applied for additional funds from the Southeast Overton Park West Community Redevelopment Agency and plans to apply for additional funding from Florida Housing when such funds are made available. Once these funds are obtained, Petitioner will be able to get the final underwriting approvals and close in late 2023.

b. The Development is located in the City of Miami and is subject to their zoning laws and regulations. The Development's unique location required an ordinance change for final site plan submission. The site plan was submitted on December 16, 2020, and was accepted on March 14, 2022, after the new ordinance was enacted. Furthermore, the City of Miami Fire Department has had continuous delays in fire review and approval of construction documents needed for acquiring the building permit.

8. Due to these reasons, Petitioner does not anticipate the ability to meet the current firm loan commitment deadline of July 15, 2023. Petitioner

anticipates that the Credit Underwriting Report will be finalized in September 2023.

9. Petitioner states that the requested waiver will not adversely affect Petitioner, the Development, any other party that applied in the RFA, or Florida Housing. 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.

10. 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.

11. 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.

12. 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.

13. 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 (2020), is hereby **GRANTED** to allow Petitioner to extend its firm loan commitment issuance deadline from July 15, 2023, to January 15, 2024.

DONE and ORDERED this 9th day of June 2023.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.