STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

CASE NO. _____

AMC HTG 2, Ltd.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2024-026VW
Application No. 2021-323S/2020-528C/2023-257V
RFA 2021-208/2023-211

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(26) F.A.C. (6/23/20)

Petitioner, AMC HTG 2, Ltd. (the "Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.0072(26), Florida Administrative Code ("F.A.C.") (June 23, 2020) so that it may extend the SAIL closing deadline of June 10, 2024. Petitioner experienced a series of delays beyond its control, as outlined in more detail below. Accordingly, Petitioner is requesting another 90-day extension of the loan closing deadline. In support, Petitioner states as follows:

1. THE PETITIONER

The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

Matthew A. Rieger
AMC HTG 2, Ltd.
3225 Aviation Ave., 6th Floor
Coconut Grove, FL 33133
Telephone: (305) 860-8188
Fax: (305) 639-8427
Email: mattr@htgf.com

The address, telephone number, facsimile number, and e-mail address of Petitioner's counsel are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

2. DEVELOPMENT BACKGROUND

The following information pertains to the development (the "Development") underlying Petitioner's application:

- Development Name: Courtside Apartments, Phase II
- Development Address: NW 17th Street, NW 17th Street and NW 3rd Avenue, Miami; and NW 4th Avenue, NW 4th Avenue and NW 17th Street, Miami
- County: Miami-Dade
- Developer: AMC HTG 2 Developer, LLC
- Number of Units: 120 newly constructed units
- Type: Mid-Rise 5-6 Stories
- Set Asides: 15% @ 30% AMI (SAIL & 4% HC); 10% @ 50% AMI (SAIL & 4% HC); 20% @ 60% AMI (SAIL & 4% HC); 55% @ 70% AMI (SAIL & 4% HC) (Workforce)
- Demographics: Workforce
- Funding: $2,750,000 State Apartment Incentive Loan (SAIL); $25,726,580 Housing Credits (4% HC); $4,300,000 Viability; $30,000,000 HFAMD Bonds

3. WAIVER IS PERMANENT

The waiver being sought is permanent in nature.

4. THE RULE FROM WHICH WAIVER IS REQUESTED

Petitioner seeks a waiver of Rule 67-48.0072(26),[1] effective June 23, 2020, which provides:

> For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. **Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days**. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

Id. (emphasis added).

5. STATUTES IMPLEMENTED BY THE RULE

The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership

[1] RFA 2021-208 states: "Workforce SAIL loans must meet the credit underwriting, firm loan commitment, and loan closing timeframes outlined in paragraph 67-48.0072(4)(c), F.A.C., and subsections 67-48.0072(21) and (26), F.A.C." *Id*. at p. 90. The RFA also states: "The SAIL loan must close within the timeframe outlined in Rule Chapter 67-48, F.A.C." *Id*. at p. 103.

Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[2]

6. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

a. Petitioner timely submitted the Application for the Development on April 20, 2021 in response to RFA 2021-208 (SAIL Financing for the Construction of Workforce Housing) (the "RFA").

b. The Development received an allocation of the 2021 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986 as amended ("Tax Credits") and Petitioner accepted an invitation to enter credit underwriting dated July 12, 2021.

c. 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 Florida Housing's 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. Petitioner received Board approval for a Petition for Waiver of Rule 67-48.0072(21)(b), F.A.C. (6/23/20) on December 9, 2022 for an additional extension for the deadline for firm loan commitment issuance deadline from January 15, 2023 to July 15, 2023. The firm loan commitment issuance deadline was extended to January 15, 2024 as approved by the Board on June 9, 2023.

d. The extension was requested due to a multitude of issues beyond the Petitioner's control which have caused a significant delay in the timeline for this Development which include rising construction costs, interest rates, insurance costs, and prevailing wages. The project's

[2] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

financing gap has risen substantially. To address the financing gap, Petitioner applied for 30 LIHTC Project Based Voucher Units through the HUD Subsidy Layering Review process which has been approved.

e. 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, which is underway in a lengthy review process.

f. On September 11, 2023, Florida Housing issued a firm commitment for the SAIL. Pursuant to RFA 2021-208, the loan was required to close within 180 calendar days of the date of the firm commitment (*i.e.*, March 11, 2024). However, pursuant to the Rule, an extension of that closing deadline of 90 calendar days was approved by Florida Housing's Board on March 26, 2024, extending the loan closing deadline to June 10, 2024.

g. Because Petitioner exercised the single extension allowed under the Rule, Petitioner must request via this Petition a waiver of the Rule to allow an additional extension. The need for the extensiona was created by forces outside of Petitioner's control.

h. Specifically:

- Petitioner was required to obtain an Agreement to Enter into a Housing Assistance Payments ("AHAP") Contract from Miami-Dade County in order to close. Unfortunately, prerequisites for AHAP approval included time-consuming subsidy layer review and environmental clearances.
- Obtaining comments with regard to its ground lease from the underwriters was also very time-consuming.

- Permitting at the City of Miami was delayed based upon an apparent lack of coordination amongst major departments.

i. Due to delays related to requirements of the City of Miami, Petitioner does not believe it will be able to satisfy the current loan closing deadline.

j. Thus, Petitioner is in need of a Rule waiver to obtain a second 90-day extension of the loan closing deadline.

k. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development towards construction.

l. If the Petition is denied, the firm loan commitment will be deemed void and the funds de-obligated per Rule 67-48.0072(26), F.A.C. Because the Development cannot move forward without this funding source, the denial would cause Miami-Dade County to lose these 120 affordable housing units.

m. This Petition should be granted, as opposed to de-obligating the award, because Miami-Dade County is currently experiencing a shortage of affordable housing units. Granting the Petition will result in the delivery of 120 affordable housing units much faster than would reallocating the funding to a new development in light of the progress Petitioner has made to date.

n. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the

application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[3] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

o. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 120 affordable housing units will be preserved and made available for the target population in Miami-Dade County, Florida. The strict application of the Rule would cause the preliminary commitment to be withdrawn. Further, the waiver will serve the purposes of the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. By granting this waiver, and further ensuring the development of 120 affordable housing units in Miami-Dade County, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

p. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

q. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

[3] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. *See* § 120.542(2), Fla. Stat.

7. ACTION REQUESTED

For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to extend the loan closing deadline an additional 90 days (*i.e.*, through and including June 10, 2024); (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of June, 2024.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.