STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATIC

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CASE NO. 2024-078VW

RGC Phase I, LLC,
a Florida limited liability company,

Petitioner,

FHFC CASE NO. _____
Application No. 2021-315S/2023-246V
RFA 2021-208 & RFA 2023-211

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

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

Petitioner, RGC Phase I, LLC (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) (the "Rule") so that it may extend the SAIL & Viability Loan Closing Deadline of November 4, 2024 by another 90 days. The Board previously granted a 90-day extension of the loan closing deadline to Petitioner on August 23, 2024, in response to delays caused by forces beyond Petitioner's control. Though Petitioner has diligently made progress, Petitioner is in need of a second extension of the loan closing deadline through and including February 2, 2025. 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:

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

Bilzin Sumberg Baena Price & Axelrod LLP
Attention: Terry M. Lovell, Esquire
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E-mail: tlovell@bilzin.com

2. DEVELOPMENT BACKGROUND

The following information pertains to the development (the "Development") underlying Petitioner's Application Nos. 2021-315S/2023-246V (the "Application"):

- Development Name: Rainbow Village
- Development Address: 2000 NW 3rd Ave, Miami, FL
- County: Miami-Dade
- Developer: RGC Phase I Developer, LLC
- Number of Units: 310 newly constructed units
- Type: High-Rise 8 Story
- Set Asides: Average Income Test

  For SAIL and 4% Housing Credits: 52 units (16.8%) at or below 30% AMI; 42 units (13.5%) at or below 50% AMI; 60 units (19.4%) at or below 60% AMI; for SAIL, 4% Housing Credits and Workforce: 114 units (36.8%) at or below 70% AMI; 42 units (13.5%) at or below 80% AMI

  For ELI

# of Bedrooms/Bathrooms per unit	
0 Bedroom / 1 Bathroom	0 ELI Set-Aside (of 30)
1 Bedroom / 1 Bathroom	6 ELI Set-Aside (of 163)
2 Bedroom / 2 Bathroom	23 ELI Set-Aside (of 85)

3 Bedroom / 2 Bathroom	20 ELI Set-Aside (of 28)
4 Bedroom / 2 Bathroom	3 ELI Set-Aside (of 4)
Total	52 ELI Set-Aside (16.7%)

- Demographics: Workforce, serving general occupancy at the Area Median Income (AMI) described in 6.d of RFA 2021-208.

- Funding: $6,000,000 State Apartment Incentive Loan (SAIL); $8,319,446 Housing Credits (4% HC); $9,000,000 Construction Inflation Response Viability Funding Request; $88,000,000 Local HFA 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

[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.

> 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 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 No. 2021-315S for the Development on April 19, 2021, in response to RFA 2021-208 (SAIL and Housing Credit 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 15, 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 firm loan issuance commitment deadline from July 15, 2022, to January 15, 2023. Petitioner paid the extension fee

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

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. A second Rule waiver for the firm loan commitment issuance deadline to be extended to January 15, 2024, was approved by the Board on June 9, 2023. Florida Housing's Board approved the credit underwriting report on February 2, 2024.

d. The extension was requested due to a multitude of issues beyond the Petitioner's control that caused a significant delay in the timeline for this Development which include rising construction costs, interest rates, insurance costs, and Davis Bacon/prevailing wages. To address the Development's financing gap, Petitioner pursued HUD Subsidy Layering Review approved for 77 Project-Based Vouchers and re-underwriting the development using 2024 LIHTC rents. The delay in obtaining additional funding delayed getting the final HUD approvals and Petitioner was unable to close on its anticipated timeline.

e. The Development is located in the City of Miami and is subject to the zoning laws and regulations dictated by the Planning Department and Commission. The Development's unique location required an ordinance change for final site plan submission. While the site plan was submitted on December 16, 2020, it was not accepted until March 14, 2022 and was not approved until March 23, 2023, after the new ordinance was enacted. Furthermore, the City of Miami Fire Department had continuous delays in fire review and approval of construction documents needed for acquiring the building permit. Additionally, the City of Miami Public Works department required Petitioner to resubmit permitting to the County Public Works department over an area for which it had either direct jurisdiction or an ability to disprove. Petitioner obtained the permit-ready letter on October 22, 2024.

f. Despite these delays, the Development has fully completed construction documents. The Development also negotiated a Contract with the General Contractor, completed the Plan and Cost Review and finalized the Credit Underwriting Report.

g. Pursuant to RFA 2021-208, the loan was required to close within 180 calendar days of the date of the firm commitment (*i.e.*, the closing deadline was August 5, 2024). However, pursuant to the Rule, an extension of that closing deadline of 90 calendar days was approved by Florida Housing on August 23, 2024, extending the loan closing deadline to November 4, 2024.

h. While Petitioner has worked diligently to resolve the issues necessitating the prior extension request, Petitioner does not believe it will be able to satisfy the current loan closing deadline and seeks this extension in an abundance of caution.

i. Because Petitioner exercised the single extension allowed under the Rule, Petitioner files this petition for a waiver of the Rule to allow an additional 90-day extension.

j. 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.

k. 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 310 affordable housing units.

l. 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 310 affordable housing units much faster than would

reallocating the funding to a new development in light of the progress Petitioner has made to date.

m. 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.

n. 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 310 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 310 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.

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[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.

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

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

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 February 2, 2025); (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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By: /s/ Terry M. Lovell
Terry M. Lovell, 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 25th day of November, 2024.

By:/s/ Terry M. Lovell
Terry M. Lovell, Esq.