STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Citadelle Village, LLC FHFC Case No.: 2022-037VW

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

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on June 17, 2022. On June 1, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(21)(b), Florida Administrative Code (the "Petition") from Citadelle Village, LLC. (the "Petitioner") to allow Petitioner to extend the firm loan commitment issuance deadline. Notice of the Petition was published on June 2, 2022, in Volume 48, Number 107, 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") funding, Extremely Low Income ("ELI") funding, non-

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competitive housing credits, and Multifamily Mortgage Revenue Bonds ("MMRB") in RFA 2017-108 to assist in the construction of a 96-unit affordable housing development named Citadelle Village to be located in Miami-Dade County, Florida (the "Development").

3. Rule 67-48.0072(21)(b), Fla. Admin. Code (2017), 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 that is not in conjunction with competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and 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 nine (9) month deadline is approved. 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 May 4, 2018, which provided a firm loan commitment issuance deadline of February 4, 2019.

5. At Petitioner's request, the firm loan commitment issuance deadline was extended to August 4, 2019. In August 2019, the Board granted a petition to extend Petitioner's firm loan commitment issuance deadline to January 31, 2020. In January 2020, the Board granted a second petition to extend Petitioner's firm loan commitment issuance deadline to July 31, 2020. In July 2020, the Board granted a third petition to extend Petitioner's firm loan commitment issuance deadline to January 31, 2021. In January of 2021, the Board approved a fourth petition to extend Petitioner's firm loan commitment issuance deadline to July 31, 2021. In July 2021, the Board approved a fifth petition to extend Petitioner's firm loan commitment issuance deadline to December 31, 2021. In December 2021, the Board approved a sixth petition to extend Petitioner's firm loan commitment issuance deadline to June 30, 2022. Petitioner now requests an additional 180-day firm loan commitment extension.

6. Petitioner states that several obstacles have prevented it from obtaining a firm loan commitment. Due to increased construction costs, Petitioner asserts that it had to significantly revise hard cost estimates resulting in an increase of over $4,000,000. As a result, Petitioner was required to seek further financing from other sources to address the cost increases. Petitioner explains that it received final approval of the additional financing needed to proceed with the development in February 2022.

7. Petitioner has developed a timeline in conjunction with Florida Housing's underwriters and anticipates that its credit underwriting report will be presented to the Board for approval at the October 2022 Board meeting. Since receiving the funding commitment in February 2022, Petitioner has moved forward with its enabling activities and has spent/committed approximately $641,090 on attorney fees, environmental and geotechnical reports, market study(s), and development plans.

8. 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.

9. 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.

10. 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.

11. 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 (2017), is hereby **GRANTED** to allow Petitioner to extend its firm loan commitment issuance deadline from June 30, 2022 to December 27, 2022.

DONE and ORDERED this 17th day of June 2022.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

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.