STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2024-023VW

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FLORIDA HOUSING
FINANCE CORPORATION

CITADELLE VILLAGE, LLC,

Petitioner,

vs.

FHFC Application Nos. 2018-033BS and 2023-261V
RFA: 2017-108 and 2023-211

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(26), FLORIDA ADMINISTRATIVE CODE

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner Citadelle Village, LLC ("Citadelle") submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of rule 67-48.0072(26) (May 24, 2017) which was in effect at the time the Petitioner submitted its application in response to Florida Housing's Request for Applications 2017-108, SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits. Citadelle Village seeks to extend the time allowed under the Rule to close the mortgage loans and other loans related to the development of Citadelle Village (the "Development"). In support of this Petition, Citadelle Village states:

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is: Citadelle Village, LLC, 1022 W. 23rd Street, 3rd Floor, Panama City, FL 32405, 850-769-8981,

jim.boyd@royalamerican.com. For purposes of this proceeding, the contact information for Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is: James A. Boyd, Jr., General Counsel, Royal American Development, Inc., 1022 W. 23rd Street, 3rd Floor, Panama City, FL 32405; 850-769-8981; jim.boyd@royalamerican.com.

The following background information regarding Citadelle Village is provided to facilitate staff's preparation of memorandum to the Florida Housing Board of Directors ("Board"):

Development Name: Citadelle Village – Located in the Little Haiti area of Miami
Developer, including at least one natural person Principal: Citadelle Village Developer, LLC and Jeannette B. Chapman
County of Development: Miami-Dade
Number of Units: 96
Type: High Rise
Set Asides: 15 Units @30% AMI, 63 Units @ 60% AMI and 18 Units ar 80% AMI
Demographics: Family
Funding Amounts: SAIL - $3,600,000; ELI - $600,000; Annual 4% Housing Credits - $2,093,871; and MMRN - $23,250,000, $4,300,000 Viability Loan

B. BACKGROUND

3. Florida Housing issued RFA 2017-108 on August 31, 2017. On December 8, 2017, the Florida Housing Board of Directors ("Board") approved recommendations to fund certain applicants. Following litigation, the Board on May 4, 2018, approved a Final Order that resolved all pending litigation, which allowed staff to proceed with all necessary credit underwriting activities. Staff issued a preliminary commitment letter and invitation to enter credit underwriting to Citadelle Village on May 4, 2018.

4. On February 1, 2019, the Board approved the request to extend the firm loan commitment issuance deadline from February 4, 2019 to August 4, 2019. Thereafter, the Board approved Rule waivers to extend the firm loan commitment issuance deadline to June 26, 2023.

5. On May 1, 2023, Florida Housing issued Request for Applications RFA 2023-211 for Construction Inflation Response Viability Funding (Viability Loan) to provide financial assistance to competitive projects in the development pipeline impacted by cost increases related to market inflation. Viability Loan funding was intended to assist by filling the funding gap caused by the increased construction costs.

6. On June 9, 2023, the Board approved staff's recommendation to offer Petitioner a Viability Loan under RFA 2023-211 and directed staff to proceed with credit underwriting. Staff issued a notice of preliminary award to Petitioner on June 29, 2023 which was accepted on June 30, 2023.

7. On July 21, 2023, the Board approved the final credit underwriting report, and on July 24, 2023, staff issued a firm commitment to Petitioner with a loan closing deadline of January 22, 2024.

8. On February 2, 2024, the Board approved a ninety-day extension of the deadline to close from January 22, 2024 to April 22, 2024.

9. In accordance with rule 67-48.0072(26), Florida Administrative Code, the deadline to close is April 22, 2024 and may not be extended without a Rule waiver.

10. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

11. Rule 67-48.0072(26) (2017) provides:

> **For SAIL, EHCL, and HOME, that is not in conjunction with Competitive HC, 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. 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.

(Emphasis supplied).

D. STATUTES IMPLEMENTED BY THE RULE

12. Rule 67-48.0072(26) implements section 420.5087 (State Apartment Incentive Loan Program), section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund), and section 420.5099 (allocation of the low-income housing tax credit program). All of these programs are part of the Florida Housing Finance Corporation Act, found at sections 420.501-420.517, Florida Statutes. One of the purposes of the Act is "to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families." § 420.502(8), Fla. Stat.

E. JUSTIFICATION FOR REQUESTED WAIVER

13. Section 120.542(1), Florida Statutes, provides that "[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation." That procedure requires those seeking a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. *Id.*, § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

14. Petitioner submitted plans for permitting the Development with the City of Miami on April 5, 2023. The plan review and permitting process in Miami is very slow. Petitioner and the City have gone through multiple rounds of comments and revisions. Petitioner's third plan revision set has been submitted and is currently under review by the City. Petitioner expects the permits to be approved or issued in July of 2024, and Petitioner will close on the Development as soon as possible thereafter.

15. The issues described above have created a "substantial hardship" for Citadelle that justifies a waiver of rule 67-48.0072(26). Citadelle believes an additional extension of 180 days would allow Citadelle sufficient time to close all financing.

16. The requested waiver will not adversely affect any party, including any other party that applied to receive SAIL funding in the RFA or Florida. Housing. A denial of the requested waiver, however, would result in substantial economic hardship to Citadelle Village, as it has incurred significant costs to date in an effort to ensure that the proposed development proceeds to completion. Additionally, denial of the waiver would deprive Miami-Dade County and the Little Haiti community of much-needed new affordable rental units. If this Petition is not granted, Citadelle will be unable to close by the deadline, which would cause the proposed development to be infeasible.

17. The statutes underlying rule 67-48.0072(26) will be served by the approval of Citadelle Village's waiver request. One of the statutory goals of the Florida Housing Finance Corporation Act is for proceeds of a SAIL loan to be used to facilitate the availability of decent, safe, and sanitary housing in Florida to low-income persons and households. § 420.502(4), Fla. Stat. This Act was passed to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. By granting this waiver request, Florida

Housing would further the goal of increasing the supply of affordable housing units through the construction of new developments.

F. ACTION REQUESTED

18. For the reasons expressed, Citadelle Village respectfully requests that the Florida Housing Board grant the requested waiver of rule 67-48.0072(26), as Citadelle has demonstrated a "substantial hardship." Citadelle Village is specifically requesting an additional 180 days - up to and including October 22, 2024 – to close on all financing.

Respectfully submitted on April 23, 2024.

James A. Boyd, Jr.
Florida Bar No. 994405
General Counsel
ROYAL AMERICAN DEVELOPMENT, INC.
1022 W. 23rd Street, 3rd Floor
Panama City, FL 32405
Tel: (850)769-8981
Email: jim.boyd@royalamerican.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy by U.S. Mail) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301 this 23rd day of April, 2024. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us

James A. Boyd, Jr.