STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2021-001VW

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FLORIDA HOUSING
FINANCE CORPORATION

CITADELLE VILLAGE, LLC,

Petitioner,

vs.

FHFC Application No. 2018-033BS
REQUEST FOR APPLICATIONS: 2017-108

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), 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(21)(b) (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 (the "RFA"). Citadelle Village seeks to extend the time allowed under the rule for the issuance of a firm loan commitment. 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.

B. BACKGROUND

3. Florida Housing issued the RFA 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.

4. In accordance with rule 67-48.0072(21)(b), Florida Administrative Code, the preliminary commitment letter to Citadelle Village stated that the firm loan commitment must be issued within nine months of the acceptance to enter credit underwriting. The acceptance was acknowledged on May 4, 2018, which gave Citadelle Village a firm loan commitment issuance deadline of February 4, 2019.

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: Citadalle Village – Located in the Little Haiti area of Miami
- Developer, including at least one natural person Principal: Citadelle Village Developer, LLC.
- Jeannette B. Chapman
- County of Development: Miami-Dade
- Number of Units: 96
- Type: High Rise
- Set Asides: 10% at 28% AMI; 90% at 60% AMI
- Demographics: Family
- Funding Amounts: SAIL - $3,600,000; ELI - $600,000; Annual 4% Housing Credits - $754,301; and MMRB - $12,050,000

5. Rule 67-48.0072(21)(b) allows Applicants to ask for one extension of up to six months to secure a firm loan commitment. On January 4, 2019, Florida Housing received an extension request from Citadelle Village to extend the firm loan commitment issuance deadline to August 4, 2019. The letter cited rising construction cost creating a gap in funding projections. Based on the staff recommendation that the extension request was in compliance with the RFA, the Board approved the request at its Board meeting on February 1, 2019. *See* Consent Agenda, p. 39, Board Agenda, February 1, 2019. Citadelle Village paid a non-refundable extension fee of one percent of the loan amount after approval of the extension, as required by rule 67-48.0072(21)(b). On July 17, 2019 Florida Housing Finance Corporation received a Petition from Citadelle Village, LLC. Notice of the Petition was published on July 18, 2019 with no comments regarding the petition. After review from the corporation the request was approved by the Board of Directors extending the date to January 31, 2020.

6. On January 7, 2020 Florida Housing Finance Corporation received a second extension request Petition from Citadelle Village, LLC. Notice of the Petition was published on January 8, 2020 with no comments regarding the petition. After review from the corporation the request was approved by the Board of Directors extending the date to July 31, 2020.

7. On July 1, 2020 Florida Housing Finance Corporation received a third extension request Petition from Citadelle Village, LLC. Notice of the Petition was published on July 2, 2020 with no comments regarding the petition. After review from the corporation, the request was approved by the Board of Directors extending the date to January 31, 2021.

8. Citadelle Village is in need of a an additional 180-day extension of the time to obtain a firm loan commitment, up to and including July 31, 2021, for the reasons discussed below. Because rule 67-48.0072(21)(b) allows only one six-month extension of up to six months to secure a firm loan

commitment, which has already been approved, an additional rule waiver is now required and is requested through this Petition.

9. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

9. Rule 67-48.0072(21)(b) (2017) provides:

> (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 he 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.

(Emphasis supplied).

D. STATUTES IMPLEMENTED BY THE RULE

9. Rule 67-48.0072(21)(b) 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

10. 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.*

11. Several obstacles have prevented Citadelle Village from obtaining a firm loan commitment. In general, construction costs have increased across the all trades. In addition, President Trump's announcement of tariffs, both threatened and enacted, has also resulted in subcontractors refusing to commit to hard cost pricing. Current market conditions have required Citadelle to significantly revise hard cost estimates, resulting in an increase of over $4,000,000, approximately 20% over similar costs just two years ago. Despite these increases, Citadelle is still within the Total Development cost per Unit Limitation described in pages 67-68 of the RFA.

12. In an effort to address the significant cost increases facing the project, Citadelle Village is pursuing financing from several local government sources including Miami-Dade Surtax Funding and a new set-aside fund to be used for affordable housing in the Little Haiti area of Miami. This is still an ongoing process with Miami-Dade County. While Citadelle Village has received confirmation via e-mail dated November 17, 2019 from Clarence Brown, Public Housing Community Development ("PHCD") Manager, stating Citadelle Village's Surtax "application is being recommended for full funding." (see Attached Exhibit A) the PHCD has not issued funding commitment yet.

13. While Citadelle Village has been awarded additional Miami-Dade Surtax Funding in the amount of $2,400,000.00, the process for the new General Obligation Fund Affordable Housing ("GOB") set-aside fund has been put on hold due to the Covid-19 pandemic. The GOB contains a $100,000,000 set aside for the development of affordable housing in the City of Miami. The first $15,000,000 of the GOB was awarded at the beginning of 2020. However, due to the impact of Covid-19 upon the City of Miami, the remaining $85,000,000 has not been distributed and the process for allocating the remaining funds – up to now – has been put on hold. Citadelle Village anticipates receiving the final tranche of funding necessary to move forward with the project once the City of Miami reopens the allocation process for the GOB funding. Citadelle Village anticipates the allocation process for the GOB funds to restart with the January meeting of City of Miami's Housing and Commercial Loan Committee ("HCLC").

14. To further complicate the GOB award process, Citadelle Village has been working with its respective City Commissioner to facilitate the award of the GOB funds in his district. Unfortunately, this commissioner has moved on to become a Dade County Commissioner and Citadelle Village had to "restart the conversation" with its new City Commissioner – Jeffrey Wilson. Accordingly, on December 15, 2020 Citadelle Village had a virtual meeting with Commissioner Wilson and anticipate his support in awarding an allocation of GOB funds to close the funding gap. Citadelle Village anticipates a firm commitment of the GOB funds from the City of Miami by the end of March.

15. The issues described above have created a "substantial hardship" for Citadelle that justifies a waiver of rule 67-48.0072(21)(b). Citadelle believes an additional extension of 180 days would allow Citadelle sufficient time to secure the firm loan commitment.

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 obtain SAIL funding, which would cause the proposed development to be infeasible.

15. The statutes underlying rule 67-48.0072(21)(b) 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

16. For the reasons expressed, Citadelle Village respectfully requests that the Florida Housing Board grant the requested waiver of rule 67-48.0072(21)(b), as Citadelle has demonstrated a "substantial hardship." Citadelle Village is specifically requesting an additional 180 days - up to and including July 31, 2021 – to secure the firm loan commitment.

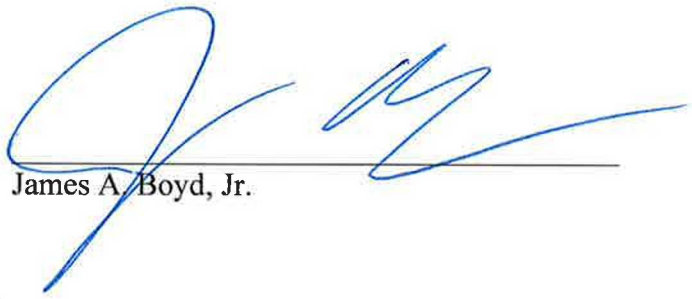
Respectfully submitted on January 6, 2021

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 6th day of January, 2021. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us



James A. Boyd, Jr.