STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2022-037VW

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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: Citadelle 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. On January 6, 2021 Florida Housing Finance Corporation received a fourth extension request Petition from Citadelle Village, LLC. Notice of the Petition was published on January 7, 2021 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, 2021.

9. On July 14, 2021 Florida Housing Finance Corporation received a fifth extension request Amended Petition from Citadelle Village, LLC. Notice of the Amended Petition was published July 15, 2021 with no comments regarding the petition. After review from the corporation, the request was approved by the Board of Directors extending the date to December 31, 2021.

10. On November 22, 2021 Florida Housing Finance Corporation received a sixth extension request Amended Petition from Citadelle Village, LLC. Notice of the Amended Petition was published November 23, 2021 with no comments regarding the petition. After review from the corporation, the request was approved by the Board of Directors extending the date to June 30, 2022.

11. Citadelle Village is in need of an additional 180-day extension of the time to obtain a firm loan commitment, up to and including December 27, 2022, 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.

12. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

13. 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

14. 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

15. 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.*

16. Several obstacles have prevented Citadelle Village from obtaining a firm loan commitment. Due to a variety of market conditions and the Covid-19 Pandemic, construction costs have increased across all trades. Due to these increased costs, Citadelle has to significantly revise hard cost

estimates, resulting in an increase of over $4,000,000, approximately 20% over similar costs just three years ago. Despite these increases, Citadelle is still within the Total Development cost per Unit Limitation described in pages 67-68 of the RFA.

17. 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 City of Miami set-aside GOB fund to be used for affordable housing in the Little Haiti area of Miami. In addition to the $1,000,000 in County Surtax Citadelle was initially awarded as part of its FHFC application, Miami-Dade County has awarded an additional commitment of $2,400,000 to Citadelle.

18. While Citadelle Village has been awarded Miami-Dade Surtax Funding totaling $3,400,000.00, 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 shortly.

19. 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 Watson. 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 December 2021.

20. On October 29, 2021, the Housing and Commercial Loan Committee for the City of Miami approved Citadelle Village's request for the $3,000,000 in gap financing from the GOB set aside. Citadelle Village expects final approval by the City of Miami Commission within the next 30 days. For reasons beyond Citadelle Village's control, City of Miami Commission reduced the GOB request to $2,000,000 and finally approved the commitment of the additional funds at the February 10, 2022 Board meeting. (See attached Exhibit A)

21. In addition, Michael Liu, Director of Miami-Dade County Public Housing, is willing to commit twenty-five (25) Project Based Vouchers to Citadelle Village as long as Citadelle Village receives this requested extension. Between the additional funds referenced in Paragraph 19 above and the commitment of Project Based Vouchers, Citadelle Village can now move forward to a firm commitment.

22. Since securing the final tranche of funds necessary for the development, Citadelle has moved forward as rapidly as possible. Since February of 2022, Citadelle has spent or committed approximately $641,090 in funds for various third-party reports and on professional fees. These expenditures include, but are not limited to, environmental reports, geotechnical reports, market study, attorney's fees, civil plans and architectural plans. While some of the reports have been completed – environmental and geotechnical for example – other development items will take several months to complete – i.e., architectural, and civil plans. However, based on the timeline developed with FHFC's underwriters, Citadelle is projecting it's CUR will be presented to the Board for approval at the October 28th, 2022 Board meeting. 23. 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.

24. 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.

25. 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

26. 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 December 27, 2022– to secure the firm loan commitment.

Respectfully submitted on June 1st, 2022

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 1stday of June, 2022. The document is also being served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us

James A. Boyd, Jr.

Exhibit A

City of Miami

Resolution R-22-0043

Legislation

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

File Number: 11381 **Final Action Date: 2/10/2022**

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), ALLOCATING FUNDING ON A REIMBURSEMENT BASIS TO CITADELLE VILLAGE, LLC, A FLORIDA LIMITED LIABILITY COMPANY ("DEVELOPER"), IN AN AMOUNT NOT TO EXCEED TWO MILLION DOLLARS ($2,000,000.00) FROM THE PROPOSED TRANCHE 2 MIAMI FOREVER AFFORDABLE HOUSING LIMITED AD VALOREM BONDS FOR THE AFFORDABLE HOUSING COMPONENTS OF A TWELVE (12) STORY, MIXED-USE MULTIFAMILY RENTAL PROJECT TO BE LOCATED AT 181 NORTHEAST 82 STREET TO BE KNOWN AS "CITADELLE VILLAGE" BEING DEVELOPED BY THE DEVELOPER; SUCH ALLOCATION MUST BE IN COMPLIANCE WITH THE HOUSING AND COMMERCIAL LOAN COMMITTEE MEMORANDUM, AS AMENDED, ATTACHED AND INCORPORATED AS EXHIBIT "A," AND ALL APPLICABLE FEDERAL, STATE OF FLORIDA, LOCAL, AND CITY OF MIAMI ("CITY") LAWS, RULES, AND REGULATIONS FOR AFFORDABLE HOUSING PROJECTS, INCLUDING BUT NOT LIMITED TO THE CITY'S AFFORDABLE HOUSING BONDS PROJECTS STRATEGIES, THE TRANCHE 2 AFFORDABLE HOUSING INTENT TO REIMBURSE RESOLUTION, AND THE TRANCHE 2 MIAMI FOREVER AFFORDABLE HOUSING LIMITED AD VALOREM BONDS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS, INCLUDING AMENDMENTS, EXTENSIONS, AND MODIFICATIONS, ALL IN FORMS ACCEPTABLE TO THE CITY ATTORNEY AND BOND COUNSEL, FOR SAID PURPOSE; PROVIDING FOR AN EFFECTIVE DATE.

SPONSOR(S): Commissioner Christine King

WHEREAS, on March 14, 2019, pursuant to Resolution Nos. R-19-0062 and R-19-0111, the City Commission authorized the initiation of validation proceedings for the November 7, 2017 Bond Referendum ("Voter Referendum") and the issuance of the City of Miami's ("City") taxable and tax-exempt bonds in the aggregate principal amount not exceeding Four Hundred Million Dollars ($400,000,000.00) in one or more separate series of City Tax-Exempt and Taxable Limited Ad Valorem Tax Bonds (collectively, "Miami Forever Bonds"), including tax-exempt and taxable bonds in one or more separate series not exceeding One Hundred Million Dollars ($100,000,000.00) for affordable housing and economic development capital projects ("Affordable Housing and Economic Development Bonds"); and

WHEREAS, the City Commission expects to provide for the issuance by the City of its Tranche 2 taxable and tax-exempt limited ad valorem bonds payable from ad valorem taxes, provided that the capital projects debt millage not exceed the rate of 0.5935 mills in accordance with the November 7, 2017 bond referendum approved by the voters, initially in an expected not to exceed total maximum principal amount of Forty Million Dollars ($40,000,000.00), in order to, among other things, reimburse the City for funds advanced by the City for certain expenses

incurred with respect to capital projects to be undertaken by the City to improve affordable housing within the City's limits (collectively, "Tranche 2 Miami Forever Affordable Housing Limited Ad Valorem Bonds"), all as indicated in a separate Resolution, the related City Manager's Memorandum, and the seven (7) Tranche 2 Affordable Housing Bonds Projects Strategies attached and incorporated therein and thereby (collectively, "Tranche 2 Affordable Housing Bonds Intent to Reimburse Resolution"); and

WHEREAS, the City's Housing and Commercial Loan Committee ("HCLC") has approved certain terms and conditions set forth in the attached and incorporated memoranda ("HCLC Memo") for a loan to be disbursed on a reimbursement basis to construct the affordable housing components of a twelve (12) story mixed use multifamily residential affordable housing complex to be located at 181 Northeast 82 Street and to be known as "Citadelle Village" that will be developed by Citadelle Village, LLC, a Florida limited liability company ("Developer"); and

WHEREAS, the Developer participated in the City's pipeline affordable housing projects continuing requests for proposals which was presented to and approved by HCLC; and

WHEREAS, since the HCLC Memo was approved, the Developer, pursuant to its January 19, 2022 letter, amended its loan request to $2,000,000.00 in Miami Forever Bond funds; and

WHEREAS, pursuant to Resolution No. R-21-0046, which is the City's intent to reimburse resolution for Tranche 2 Miami Forever Affordable Housing Limited Ad Valorem Bonds, the City Commission authorized $40,000,000.00 to be the not to exceed total maximum principal amount of Tranche 2 Miami Forever Affordable Housing Limited Ad Valorem Bonds; and

WHEREAS, for Tranche 2, the City Commission has allocated an amount not to exceed Seven Million Five Hundred Thousand Dollars ($7,500,000.00) to the development of the residential complex to be located at 249 Northwest 6th Street known as "Sawyer's Landing" or "Block 55" in District 5, a total amount not to exceed Two Million Two Hundred Sixty-Six Thousand Fifty Seven Dollars and Fifty Cents ($2,266,057.50) for the development of single-family affordable housing in District 3, a total amount not to exceed Five Million Dollars ($5,000,000.00) for the development of the affordable housing rental project known as "Essence Miami" in District 3, and a total amount not to exceed One Million Five Hundred Five Thousand Dollars ($1,505,00.00) for land acquisition for affordable housing in District 4; and

WHEREAS, the Developer has requested and the City Commission has determined that it is in the best interests of the City to authorize and direct the City Manager in accordance with the HCLC Memo, as amended, attached and incorporated as Exhibit "A", to fund, on a reimbursement basis, an amount not to exceed Two Million Dollars ($2,000.000.00) from the proposed Tranche 2 Miami Forever Affordable Housing Limited Ad Valorem Bonds for the affordable housing components of the Citadelle Village project being developed by the Developer; and

WHEREAS, such allocation shall be in compliance with all applicable Federal, State of Florida ("State"), local, and City laws, rules, and regulations for affordable housing projects, including but not limited to the City's Tranche 2 Affordable Housing Bonds Projects Strategies, the Tranche 2 Affordable Housing Intent to Reimburse Resolution, and the Tranche 2 Miami Forever Affordable Housing Limited Ad Valorem Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as fully set forth in this Section.

Section 2. The City Commission hereby authorizes[1] and directs the City Manager to allocate in accordance with the terms and conditions of the HCLC Memo, as amended, funding on a reimbursement basis in an amount not to exceed Two Million Dollars ($2,000,000.00) from the proposed Tranche 2 Miami Forever Affordable Housing Limited Ad Valorem Bonds for the Citadelle Village project being developed by Developer, subject to compliance with the HCLC Memo, attached and incorporated as Exhibit "A," and all applicable Federal, State, local, and City laws, rules, and regulations for affordable housing projects, including but not limited to, the City's Tranche 2 Affordable Housing Bonds Projects Strategies, the Tranche 2 Affordable Housing Intent to Reimburse Resolution, and the Tranche 2 Miami Forever Affordable Housing Limited Ad Valorem Bonds.

Section 3. The City Manager is authorized[1] to negotiate and execute any and all necessary documents, including amendments, extensions, and modifications, all in forms acceptable to the City Attorney and Bond Counsel, for said purpose.

Section 4. This Resolution shall take effect immediately upon its adoption.

APPROVED AS TO FORM AND CORRECTNESS:

[1] The herein authorization is further subject to compliance with all legal requirements that may be imposed, including but not limited to, those prescribed by City Charter and City Code provisions.