STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2023-068VW

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FLORIDA HOUSING
FINANCE CORPORATION

COLLEGE PRESERVATION, LP

Petitioner,

vs.

FHFC Application No. 2022-195BS/2021-522C
REQUEST FOR APPLICATIONS: 2021-205

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, ("F.S.") and rule 28-104.002, Florida Administrative Code, ("F.A.C.") Petitioner, College Preservation, LP ("College") submits this Petition to Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of rule 67-48.0072(21)(b) F.A.C. (5/18/2021), which was in effect at the time the Petitioner submitted its Application in response to Florida Housing's Request for Applications 2021-205, SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "RFA"). College seeks an additional extension allowed under the rule for the issuance of a firm loan commitment. In support of this Petition, College states:

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is: College Preservation, LP, 1022 W. 23rd Street, Suite 300, 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, Suite 300, Panama City, FL 32405; 850-769-8981; jim.boyd@royalamerican.com.

B. BACKGROUND

3. Florida Housing issued the RFA on August 17, 2021. On December 10, 2021, the Florida Housing Board of Directors ("Board") approved recommendations to fund certain Applicants. On March 1, 2022, staff issued an invitation to enter credit underwriting to College.

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

- Development Name: College Arms Apartments, located at 2305 Husson Ave., Palatka, Florida
- Developer, including at least one natural person Principal: Royal American Properties, LLC., Jeannette B. Chapman
- County of Development: Putnam
- Number of Units: 108
- Type: Acquisition/Rehabilitation - Garden Apartments
- Set Asides: 10% at 40% AMI; 90% at 60% AMI
- Demographics: Family
- Funding Amounts: SAIL - $4,999,860; ELI - $522,100; Annual 4% Housing Credits - $834,462; and MMRB - $10,000,000

5. The College development consist of the acquisition and rehabilitation of two contiguous apartment complexes – College Arms Phase I (completed in 1973) and College Arms Phase II (completed in 1982). 100% of the units in College are covered by project based rental assistance (PBRA), specifically three separate HUD HAP contracts. In addition, College Arms Phase II has an outstanding RD515 loan that will be satisfied at closing. College represents the preservation of 108 PBRA units in the small, rural Florida county of Putnam – a small rural county in desperate need of PBRA units.

6. In accordance with rule 67-48.0072(21)(b), F.A.C. and the preliminary commitment letter to College, the firm loan commitment was to be issued within twelve months of the acceptance to enter credit underwriting. The acceptance of the Invitation to Enter Credit Underwriting was acknowledged on March 7, 2022, which gave College a firm loan commitment issuance deadline of March 7, 2023.

7. Rule 67-48.0072(21)(b), F.A.C. allows Applicants to ask for one extension of up to six months to secure a firm loan commitment. On February 13, 2023, Florida Housing received an extension request from College to extend the firm loan commitment issuance deadline to September 7, 2023. The letter cited delays related to HUD's processing of the three HAP contract assignment and assumptions due to HUD's Covid remote work policy and its associated slowdown in HUD's processing of requests. Based on the staff recommendation the Board approved the request at its Board meeting on March 10, 2023. Consistent with the extension approval, College paid a non-refundable extension fee of one percent of the loan amount as required by rule 67-48.0072(21)(b), F.A.C.

8. At this time College is in need of an additional 6 months extension of the time to obtain a firm loan commitment, up to and including March 7, 2024, for the reasons discussed below. Because Rule 67-48.0072(21)(b), F.A.C. allows only one six-month extension 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

10. Rule 67-48.0072(21)(b), F.A.C. (5/18/2021) provides:

> (b) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must issued within twelve (12) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve 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 twelve (12) month deadline is approved. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

D. STATUTES IMPLEMENTED BY THE RULE

11. Rule 67-48.0072(21)(b), F.A.C. implements section 420.5087, F.S. (State Apartment Incentive Loan Program), section 420.5089, F.S. (HOME Investment Partnership Program and HOME Investment Partnership Fund), and section 420.5099, F.S. (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, F.S. 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), F.S.

E. JUSTIFICATION FOR REQUESTED WAIVER

12. Section 120.542(1), F.S. 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), F.S. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

13. The development team has diligently pursued the development process towards College's closing – plans are finalized; permits are ready to be picked up; initial due diligence has begun with lender and syndicator; and the request for the payoff of the RD515 loan and the request for three new 20 year Mark-up-to-Market HAP contracts are in process. Unfortunately, due to the time required for addressing the RD and HUD components of the development, College's current third-party reports required for the Credit Underwriting Report ("CUR") have gone stale. Due to the current timeline for updating the third-party reports, College's CUR will not be ready in time to meet College's current Firm Commitment deadline of September 7, 2023. However, College's CUR is on track to be approved this year and College will be ready to close immediately thereafter.

14. The issues described above have created a "substantial hardship" for College that justifies a waiver of Rule 67-48.0072(21)(b), F.A.C. College believes an additional extension of 6 months would allow College sufficient time to secure the firm loan commitment.

15. 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 College, 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 Putnam County of much-needed substantial rehabilitation of Section 8 units. If this Petition is not granted, College will be unable to obtain SAIL funding, which would cause the proposed development to not be viable.

16. The statutes underlying rule 67-48.0072(21)(b), F.S. will be served by the approval of College'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), F.S. This Act was passed to create inducements and opportunities for private and public investment in rental housing to preserve the supply of affordable housing for low-income persons and households. By granting this waiver request, Florida Housing would further the goal of preserving the supply of affordable housing units.

F. ACTION REQUESTED

17. For the reasons expressed, College respectfully requests that the Florida Housing Board grant the requested waiver of rule 67-48.0072(21)(b), F.A.C. as College has demonstrated a "substantial hardship." College is specifically requesting an additional 6 months - up to and including March 7, 2024, to secure the firm loan commitment.

Respectfully submitted on August 21, 2023

James A. Boyd, Jr.
Florida Bar No. 994405
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Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Ana McGlamory, Agency Clerk (CorporationClerk@Floridahousing.org) and Betty Zachem, Interim General Counsel (Betty.Zachem@floridahousing.org) for the Florida Housing Finance Corporation, at 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, and that a copy served via electronic transmission on the Joint Administrative Procedures Committee, at (JAPC@leg.state.fl.us), at 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399, this 21st day of August 2023.

/s/ James A. Boyd, Jr.
James A. Boyd, Jr.