

CASE NO. 2019-065VW

RECEIVED
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: Royal American Development, Inc.; 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).

6. Citadelle Village is in need of a 180-day extension of the time to obtain a firm loan commitment, up to and including January 31, 2020, 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, a rule waiver is now required and is requested through this Petition.

7. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

8. 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 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.

(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.

13. 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 extension of 180 days would allow Citadelle sufficient time to secure the firm loan commitment.

14. 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.

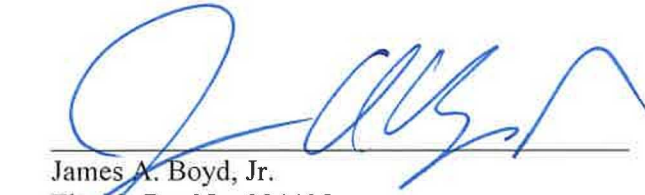
15. The statutes underlying rule 67-48.0072(21)(b) will be served by the approval of Citadelle Village's waiver request. One of the statutory goals of the Florida Housing Finance Corporation Act is for proceeds of a SAIL loan to be used to facilitate the availability of decent, safe, and sanitary housing 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 January 31, 2020 – to secure the firm loan commitment.

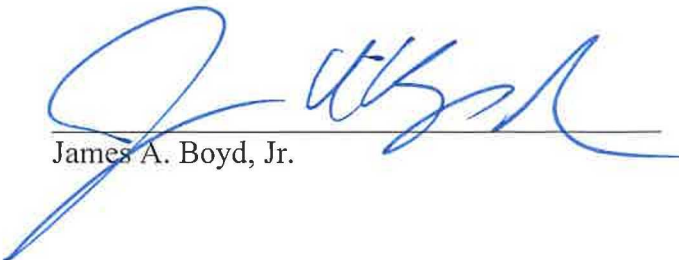
Respectfully submitted on July 16, 2019



James A. Boyd, Jr.
Florida Bar No. 994405
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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 16th day of July, 2019. Petition for Waiver is being served electronically to the Joint Administrative Procedures Committee at corporationclerk@floridahousing.org and joint.admin.procedures@leg.state.fl.us



James A. Boyd, Jr.