STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Fletcher Black II, LLC FHFC Case No.: 2022-62VW

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ORDER GRANTING WAIVER OF RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on December 9, 2022. On November 21, 2022, Florida Housing received a Petition for Waiver of Rule 67-48.002(96), F.A.C. (the "Petition") from Fletcher Black II, LLC (the "Petitioner") to allow Petitioner to exchange its 2021 housing credits now instead of waiting until the end of the second calendar quarter of 2023. Notice of the Petition was published on November 22, 2022, in Volume 48, Number 227, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for competitive housing credits in RFA 2020-201 to assist in the construction of a 64-unit family, affordable

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Ashley Glanton DATE: 12/9/2022

housing development named Fletcher Black II in Bay County, Florida (the "Development").

3. Rule 67-48.002(96), Fla. Admin. Code, defines and incorporates Florida Housing's Qualified Allocation Plan ("QAP").

4. Subsection II.K of the 2020 QAP, in relevant part, states:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and the Applicant has returned its Housing Credit Allocation after the end of the second calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the [certain] conditions have been met...

5. Petitioner requests a waiver of the above cited Rule and QAP provision to allow Petitioner to exchange its housing credits now rather than after the end of the second calendar quarter of 2023. Petitioner was invited to credit underwriting on May 7, 2021. On September 1, 2021, Petitioner executed a Carryover Allocation Agreement ("Carryover") which set the following deadlines: site control documentation and the 10% test deadline is

March 31, 2022; commencement of construction deadline is June 30, 2022; and placed in service deadline is December 31, 2023.

6. On May 9, 2022, pursuant to Petitioner's request, Florida Housing extended the deadline for the site control documentation and 10% test to December 31, 2022. On October 17, 2022, pursuant to Petitioner's request, Florida Housing extended the deadline for commencement of construction and other associated deliverables to January 31, 2023.

7. Petitioner states that the cumulative effect of the following events requires an extension of the 10% test deadline, and thus requires a credit exchange:

a) Due to Hurricane Michael's devastation of the affordable housing developments in Bay County, Petitioner and its affiliates have been working on rebuilding affordable housing in the area. Due to Panama City Housing Authority's mandate, the first phase of the project is a HUD mixed-finance development. Petitioner states that all party's worked diligently in satisfying HUD's requirements, but such approval was only recently secured. The Development cannot close until construction has commenced on the first phase of the construction project.

b) Petitioner states that despite having to wait for the first phase, Petitioner has worked diligently towards a closing for the Development and such closing is anticipated to occur at the end of the first quarter of 2023. According to Petitioner, the Development's civil and architectural plans are complete, and permits are ready to be acquired. Petitioner states that the 10% Test requires approximately $1,368,000 in expenditures, and to date, Petitioner has already incurred over $300,000 in such expenses. Petitioner asserts that with lumber costs trending downward this quarter, it is prudent to wait to purchase lumber and other construction materials, and that there are limited options to incur additional construction hard costs. Furthermore, the petitioner states that the Development will not incur substantial acquisition costs to meet the 10% Test since the acquisition is structed as a 65-year land lease with a one-time payment of $100,000. Thus, Petitioner believes it will not meet the 10% test until the Development's construction commences.

8. Petitioner states that the delays experienced above were unforeseen and outside the control of Petitioner. Accordingly, Petitioner is unable to meet the 10% test deadline, and therefore unable to meet the requirements of the 2020 QAP. Thus, Petitioner requests this waiver of the

above cited Rule and QAP provision. According to Petitioner, denial of the waiver request would cause Bay County to lose the benefit of these 64 affordable units for to assist in replacing the public housing destroyed by Hurricane Michael.

9. Section 120.542(2), Florida Statutes, provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

11. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver were not granted.

12. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for waiver of Rule 67-48.002(96), Fla. Admin. Code and Subsection II.K of the 2020

Qualified Allocation Plan, is hereby **GRANTED** to allow Petitioner to exchange its 2021 housing credits now rather than after the end of the second calendar quarter of 2023, for an allocation of 2022 housing credits.

DONE and ORDERED this 9th day of December 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.