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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

FLETCHER BLACK II, LLC

Petitioner,

FHFC CASE NO. 2022-062VW
Application No. 2021-127C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

PETITION FOR WAIVER OF RULE 67-48.002(96)

Petitioner Fletcher Black II, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the timing provisions of the 2020 Qualified Allocation Plan ("2020 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone and facsimile numbers for Petitioner and its qualified representative are:

Fletcher Black II, LLC
1022 West 23rd Street,
Suite 300
Panama City, FL 32405
Attn: Joseph F. Chapman, IV
Telephone: 850-769-8981
E-mail: joey.chapman@royalamerican.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

James A. Boyd, Jr., General Counsel
Royal American Development, Inc.
1022 West 23rd Street
Suite 300
Panama City, FL 32405
850-769-8981 (Phone)
Email: jim.boyd@royalamerican.com

3. On November 5, 2020, Petitioner timely submitted its Application in response to RFA 2020-201 for Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (the "RFA") to construct Fletcher Black II, a 64-unit Garden Style, new construction development located in Panama City, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of $1,100,000. The Development received an allocation of 2021 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on May 7, 2021. On September 1, 2021, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Pursuant to the Carryover Agreement, the Petitioner must submit site control documentation and its 10% test certification by March 31, 2022; the Development must commence construction by June 30, 202; and the Development must be placed in service no later than December 31, 2023.

4. On March 9, 2022, pursuant to a written request from the Petitioner, Florida Housing extended the Petitioner's deadline for submitting its 10% Test and site control documentation to December 31, 2022. In addition, on October 17, 2022, pursuant to a written request from the Petitioner, Florida Housing extended Petitioner's deadline for final underwriting report, submittal of notice of commencement and delivery of the closed tax credit partnership agreement to January 31, 2023.

B. WAIVER IS PERMANENT

5. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

6. Petitioner requests a waiver of Rule 67-48.002(96), F.A.C. and Subsection II.K. of the 2020 QAP, which provides that Housing Credits may be returned only after the second calendar quarter of the year in which a development is required to be placed in service:

> ". . . 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 of the year after the year in which the Development was otherwise required to be placed in service . . ."

QAP at Section II.K.

7. The process found in the 2020 QAP requires an applicant to return its allocation of housing tax credits after the second calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be granted by Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange, to allow a credit exchange to be approved by Florida Housing, at this time rather than after the end of the second calendar quarter of 2023.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2019 QAP

8. The 2020 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutes relating to the allocation of Low-Income

Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See §420.5099, Fla. Stat. (2020)* (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.K OF THE 2020 QAP.

9. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2020 QAP to permit Florida Housing to approve the tax credit exchange prior to the third quarter of 2023.

10. The culminative effect of the following events necessitate an extension of the December 31, 2022 10% Test deadline, thereby requiring a credit exchange.

    a) On October 10, 2018, Hurricane Michael, a category 5 storm, made landfall in Bay County, Florida devasting the area. Affordable housing was disproportionately impacted by Hurricane Michael. Specifically, the Panama City Housing Authority (the "PCHA") suffered a 100% loss of two of its public housing developments including the original Fletcher Black public housing development. Due to the size of the rebuilding of PCHA's Fletcher Black development, the redevelopment plan consists of two phases. The first phase of Fletcher Black is going to be constructed by Fletcher Black Redevelopment, LLC ("FB Phase I"). FB Phase I was awarded financing pursuant to Florida Housing's RFA 2019-111 Rental Recovery Loan Program under which 100 units of new construction will be built. Pursuant to PCHA's mandate, FB Phase I is a HUD mixed-finance development including LIHTC units, PBRA units and Public Housing units. Despite every party's diligence in satisfying HUD's

requirements for mixed-finance approval, HUD's approval for final submission was only recently secured. Currently, FB Phase I is scheduled to close December 2022. Accordingly, the Development can not close until construction has commenced on FB Phase I.

b) Despite having to wait for the closing of FB Phase I, Petitioner has continued to diligently work towards a closing for the Development with the closing on the Development currently anticipated end of 1st quarter 2023. At this time, the Development's civil and architectural plans are complete and permits are ready to be acquired. Despite the Development already incurring over $300,000 in development construction hard costs – specifically, the purchase of siding for $283,000 and the purchase of roofing shingles for $64,000, the Development is unable to mee the 10% Test by December 31, 2022. In addition, it would be detrimental to the Development to prematurely incur other construction hard costs such as lumber due to the fact lumber has been trending down in costs this quarter. Furthermore, the Development is a second phase consisting of only 64 units, leaving limited options for additional construction hard cost expenditures. Traditionally, in order to meet the 10% Test a Development would purchase the property; however, in this case, the property acquisition is structured as a 65-year land lease with a one-time payment of $100,000. The Development's 10% Test requires approximately $1,368,000 in expenditures and, due to the above enumerated facts, the

Development will not meet the 10% Test until the Development's construction commences.

11. As discussed above, the delays have been caused by circumstances outside the control of the Petitioner. The delays related to HUD's approval of FB Phase I were unforeseen and unanticipated by the Petitioner. Accordingly, the Petitioner is unable to meet 10% Test deadline and; therefore, Petitioner is unable to meet the requirements of the 2020 QAP.

12. Under Section §120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[1] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. §120.542(2), *Fla. Stat.* (2016).

13. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2020 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 64 new affordable family housing units replacing public housing units destroyed by Hurricane Michael will be made available for the target population in Bay County, Florida. The strict application of the 2020 QAP and the timing on the credit swap will create substantial hardship for Petitioner because it will not be able to build the Development. Further, the waiver will serve the purposes of the

[1] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. 120.542(2), Fla. Stat. (2016)

Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

14. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of adding new affordable housing to the current supply of affordable housing through private investment in persons of low-income and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. See §420.5099(2), *Fla. Stat.* (2020).

F. ACTION REQUESTED

WHEREFORE, Petitioner Fletcher Black II, LLC respectfully requests Florida Housing:

A. Grant this Petition and all of the relief requested herein;

B. Grant the requested waiver of the timing requirements found in the 2020 QAP and all the requested credit exchange before the third calendar quarter of Development's Placed in Service date;

C. Grant a corresponding extension of deadlines relative to those credits; and

D. Grant such further relief as it may deem appropriate.

Respectfully submitted on November 21, 2022

James A. Boyd, Jr.
Florida Bar No. 994405
General Counsel
ROYAL AMERICAN DEVELOPMENT, INC.
1022 West 23rd Street, Suite 300
Panama City, FL 32405
Tel: (850)769-8981
Email: jim.boyd@royalamerican.com

Counsel for Petitioner, Fletcher Black II, LLC

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 21st day of November 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.