STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: HOGAN CREEK REDEVELOPMENT PARTNERS, LLC

Case No.: 2020-070VW

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ORDER GRANTING WAIVER FROM RULE 67-48.002(95), 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 4, 2020. On November 18, 2020, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(95) and the 2016 QAP (the "Petition"). Notice of the Petition was published on November 19, 2020, in Volume 46, Number 226, 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 under RFA 2017-114 (the "RFA") to finance the acquisition and rehabilitation of an affordable housing complex for the elderly to be known as Hogan Creek, in Jacksonville, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION

DATE: 12/4/2020

3. Rule 67-48.002(95), Fla. Admin. Code (2017), in relevant part, adopted and incorporated the 2016 Qualified Allocation Plan (the "2016 QAP").

4. Subsection II.K. of the 2016 QAP provided:

> K. Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

(Emphasis added).

5. Petitioner requests waiver of the above cited Rule and Section II.K of the 2016 QAP to allow Petitioner to exchange tax credits now rather than the last calendar quarter of 2021.

6. On December 18, 2018, Petitioner entered into a Carryover Agreement for the allocation of its tax credits (the "2018 Carryover") and the placed-in-service deadline was December 31, 2020 and Petitioner's deadline to meet the 10% test was June 30, 2019. On July 1, 2019, Florida Housing granted Petitioner's request for an extension of the 10% test to December 18, 2019. On November 19, 2019, Petitioner filed a Petition for Waiver of Rule 67-48.002(95) and the 2016 QAP requesting an exchange of tax credit and an extension of all carryover deadlines. Petitioner's request was approved by the Board of Directors of Florida Housing (the "Board") on December 13, 2019, conditioned upon the notice of commencement being recorded within six months of the new carryover agreement. Petitioner then entered into a 2019 Carryover Allocation in December of 2019 (the "2019 Carryover").

7. Pursuant to the 2019 Carryover, Petitioner's deadline to meet site control, the 10% test, construction commencement, credit underwriting report, and closing on the partnership agreement was June 30, 2020 and the placed-in-service deadline is December 31, 2021. On May 18, 2020, Petitioner requested an extension of the 2019 Carryover deadlines through December 31, 2020, which Florida Housing approved with the exception of the notice of commencement which required Board approval given the condition on the first credit exchange. Petitioner asserts that for the deal to

move forward to a closing, the notice of commencement must be extended from its current expiration date of June 30, 2020, and the remaining deadlines in the 2019 Carryover, which are currently set to expire on December 31, 2020, must also be extended as it is likely Petitioner will not meet those deadlines.

8. In support of its request, Petitioner asserts that the Development has suffered unforeseen events and hardships, as summarized below, that make it clear that the Development will not be placed in service by the end of 2021:

> (a) In 2019, Petitioner received an extension of the 2018 Carryover deadlines and a credit swap due to delays in the design and permitting process. According to Petitioner, due to the Development's age, asbestos and lead based paint were suspected to be present, which required professionals to ascertain the extent of the remediation required and incorporate such remediation into the scope of the rehabilitation. Petitioner also asserts that the lack of original building plans, and multiple reviews and approvals by HUD to participate in the HUD RAD program caused hardships early in the process. Additionally, Petitioner asserts that the Development is part of a joint venture with the Jacksonville Housing Authority ("JHA").
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> (b) In February 2020, during the COVID-19 pandemic, Petitioner's investor and lender, Bank of America, withdrew from the transaction. Petitioner secured another lender and investor, Citi Community Capital ("Citi") in April, but Citi withdrew as an investor due to COVID-19 issues but remained committed to provide construction and permanent debt for the Development. Petitioner asserts that it then secured Alliant Capital ("Alliant") as the new equity investor with a timeline to achieve a year end closing by submitting the RAD package to HUD, including the substantially final core construction loan documents and partnership agreement, by early October.

(c) Petitioner states that in October 2020, Citi informed Petitioner that due to additional COVID-19 changes, in order to achieve the fastest closing possible, Citi needed JHA to serve as lead developer, manager of Petitioner, and guarantor for the Development in lieu of affiliates of Gardner Capital as originally planned. On November 2, 2020, Petitioner requested Florida Housing's approval of the ownership structure changes. While ownership structure changes are not typically included in a petition for rule waiver, Florida Housing requested that Petitioner include those changes in this Petition to allow the Board to review the request for a credit exchange in a succinct and practical manner. On pages 7 and 8 of its Petition, Petitioner outlines the proposed ownership structure changes.

(d) If approved by the Board, JHA will take the lead role as member and manager of the Applicant and as lead developer and the Gardner Capital team will take a lesser role in the transaction and the partnership agreement will be finalized and submitted to HUD in the RAD submission package. Additionally, Joseph Chambers and Martin Moore are being removed as Principals to all Gardner affiliated entities and several Board members of JHA are being replaced. Dwayne Alexander is also being documented as the acting Interim President and CEO of JHA and will act as the Authorized Principal Representative for Hogan Creek going forward. Petitioner states that it anticipates receiving HUD approval and proceeding to closing within 60 days after the HUD submission, and will be able to close the transaction before March 31, 2021.

9. According to Petitioner, given the rehabilitation timeframe of 11 months, and closing expected to occur in early 2021, it is unlikely that Petitioner will meet its placed-in-service deadline of December 31, 2021. Petitioner states that with a credit swap, it is confident it can complete the credit underwriting prior to March 31, 2021, close on the tax credit

partnership, commence construction, and meet its 10% test, as those deadlines will be extended if this credit swap is approved.

10. Petitioner is aware that Florida Housing staff and the Board have extended the deadlines for this Development multiple times before, however, according to Petitioner, it is crucial for Petitioner, the closing team invested in the success of the Development, and most importantly, the elderly residents of Hogan Creek that the rehabilitation proceed and the 183 units be preserved for the next 50 years. Petitioner states that the extension being requested is approximately three additional moths of the 2019 Carryover deadlines to get to a closing (and nine months for the Notice of Commencement) and six additional months for the placed-in-service deadline through June 30, 2022.

11. 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.

12. 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.

13. 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 is not granted.

14. 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" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-48.002(95), Fla. Admin. Code (2017), the timing provisions in Subsection II.K of the 2016 QAP, and the changes to the applicant structure as outlined in the Petition is hereby **GRANTED** to allow the Petitioner to exchange its credits now rather than wait until the last calendar quarter of 2021 with the condition that Principals and affiliates of the Jacksonville Housing Authority and the Gardner Capital group will not be awarded any competitive funding by Florida Housing until Hogan Creek receives its 8609s[1]. In the event that Hogan Creek does not receive 8609s and the housing credits are returned to Florida Housing, the Principals and affiliates would be eligible to compete for the next year's funding.

DONE and ORDERED this 4th day of December 2020.

[1] This condition does not apply to Anders DB Developer, LLC and DB GP Anders Development, LLC.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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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.