STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2020-070VW
Application No. 2018-074C/2019-441C

HOGAN CREEK REDEVELOPMENT PARTNERS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.002(95) AND THE 2016 QAP

Petitioner, Hogan Creek Redevelopment Partners, LLC, a Florida limited liability company (the "Petitioner" or "Applicant"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the timing provisions of the 2016 Qualified Allocation Plan ("2016 QAP") as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code ("F.A.C.") (2017) (collectively, the "Rule") pertaining to a tax credit exchange and certain other matters as further set forth herein. Due to forces outside of Petitioner's control, Petitioner cannot meet the deadlines required by the 2019 Carryover Allocation Agreement. In support, Petitioner states as follows:

A. THE PETITIONER

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

Hogan Creek Redevelopment Partners, LLC
205 E. Central Blvd.

Suite 304
Orlando, FL 32801
Attn.: Kevin Fitzpatrick
Telephone: 352-636-5129
E-mail: kfitzpatrick@gardnercapital.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

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3. On December 14, 2017, Petitioner timely submitted its Application in response to RFA 2017-114 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") and was assigned Application No. 2018-074C (the "Application") seeking Housing Credits in the annual amount of $1,660,000 to assist in the rehabilitation of a 183 unit elderly development located in Duval County, Florida (the "Development"). On December 18, 2018, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits (the "2018 Carryover"). Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development must be placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made. As such, under the 2018 Carryover Agreement, the federally-mandated placed-in-service date for the Development was December 31, 2020. Furthermore, pursuant to 26 U.S.C. 42(h)(1)(E)(ii), and Florida Housing's requirements, the Petitioner's deadline to meet the 10% test was June 30, 2019. On July 1, 2019, Florida Housing granted 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 (FHFC

Case No. 2019-096VW) requesting an exchange of credits to extend all carryover deadlines as it became clear that Petitioner would not be able to close by December 18, 2019 to meet the 2018 Carryover deadlines. At its December 13, 2019 meeting of the Board of Directors of Florida Housing (the "Board"), the Board approved the request conditioned upon the notice of commencement being recorded within six months of the new carryover agreement and the Petitioner entered into a 2019 Carryover Allocation in December 2019 (the "2019 Carryover").

4. Pursuant to the 2019 Carryover, Petitioner had to meet site control, the 10% test, construction commencement, credit underwriting report, and closing on the partnership agreement no later than June 30, 2020. Further, the federally-mandated placed-in-service date for the Development 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 Florida Housing stated would require Board approval given the Board's condition on the first credit exchange. For this transaction to move forward to a closing, the notice of commencement must be extended from its current expiration date of June 30, 2020 as the Petitioner did not meet the notice of commencement deadline for the reasons set forth below, and the remaining deadlines in the 2019 Carryover currently set to expire on December 31, 2020 must also be extended as it is not likely that Petitioner will meet the deadlines by December 31, 2020.

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 Subsection II.K. of the 2016 QAP. At the time the Application was submitted, Rule 67-48.002(95), F.A.C. (2017) provided:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2016 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's Website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from http://www.flrules.org/Gateway/reference.asp?No=Ref-07355.

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.
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> (Emphasis added).

7. The process found in the 2016 QAP requires an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of 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 the Executive Director, or the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2021.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP

8. The 2016 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. (2017)* (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER

9. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2021. Petitioner cannot satisfy the requirement in the 2019 Carryover, as extended, to spend 10% of the reasonably expected basis of the Development, by December 20, 2020. Moreover, Petitioner is not likely to place the Development in service by December 31, 2021 as it is not likely to close by the end of this year.

10. Over the last years the Development has suffered unforeseen events and hardships that make it clear that the Development will not be placed in service by the end of 2021. These challenges are summarized as follows:

(a) In 2019, the Petitioner requested an extension of the 2018 Carryover Deadlines and subsequently a credit swap due to delays in the design and permitting process. The Development was originally constructed in 1970, and, as with many buildings constructed in the early 70s, asbestos and lead based paint were suspected to be present. The development team enlisted professionals to ascertain the extent of the remediation that would be needed and incorporate it

into the scope of the rehabilitation. Further, there were many design and architectural hardships early on in the process, such as a lack of original plans for the building, which had to be re-created from "scratch". Additionally, the Development is part of a joint venture with a Public Housing Authority (here, the Jacksonville Housing Authority) and will be participating in the HUD RAD Conversion Program, which requires multiple levels of review and approval by HUD, including the submission of pertinent closing documents, such as the partnership agreement and the core construction loan documents.

(b) In February 2020, with market turbulence increasing due to the COVID-19 pandemic, Petitioner's investor and lender, Bank of America, withdrew from the transaction. The Petitioner then secured Citi Community Capital ("Citi") as lender and investor. In April, with only two months left before the notice of commencement deadline, Citi informed Petitioner that they also needed to withdraw as investor due to COVID-19 operational and economic issues. However, Citi remained committed to provide construction and permanent debt to the Development. Petitioner diligently secured Alliant Capital ("Alliant") as the new equity investor, and has been working diligently with Citi and Alliant to achieve a December 31, 2020 closing. The timeline to achieve a year end closing was contingent on submitting the RAD submission package to HUD no later than early October. However, to finalize the RAD submission package, substantially final core construction loan documents and partnership agreement are required.

(c) In October 2020, Citi informed the Petitioner that due to additional COVID-19 changes in Citi's project approval process, to achieve the fastest

possible closing, Citi would need the Jacksonville Housing Authority ("JHA") to serve as lead developer, manager of the Petitioner, and guarantor for the Development in lieu of affiliates of Gardner Capital as originally contemplated. On November 2, 2020, Petitioner requested Florida Housing's approval of the changes requested by Citi. While these requested ownership structure changes are not typically included in a petition for rule waiver, Florida Housing has requested the changes to be detailed in this Petition to allow the Board to review the request for a credit exchange in a succinct and wholesome manner. The changes being requested to the Applicant and developer entities are as follows:

i. Applicant – Current and proposed ownership structure changes:

Current Structure			**Proposed Structure**		
Entity	**Ownership Percentage**	**Role**	**Entity**	**Ownership Percentage**	**Role**
Hogan Creek GP, LLC (Gardner Entity)	.007%	Managing Member	Hogan Creek GP, LLC (Gardner Entity)	.003%	Member
Hogan Creek Redevelopment, LLC (JHA Entity)	.003%	Member	Hogan Creek Redevelopment, LLC (JHA Entity)	.007%	Manager and Member
Alliant Credit Facility II, LLC (Equity Investor)	99.98%	Investor Member	Alliant Credit Facility II, LLC (Equity Investor)	99.98%	Investor Member
Alliant Credit Facility ALP II, LLC	.01%	Administrative Member	Alliant Credit Facility ALP II, LLC	.01%	Administrative Member

ii. Applicant also requested a few changes within the structure of the Applicant and co-developers due to personnel changes within JHA and Gardner Capital. Namely, (1) the removal of James Allen, Emilio Zeller, Susan Verbeck, and Richard N. Weber as Commissioners of the JHA, the addition of Soo Gilvarry, Anabel Fernandez, and Jonathan Mcgowan as Commissioners of the JHA,

the removal of Fred McKinnies as Executive Director and the addition of Dwayne Alexander as Officer in his capacity as Interim President & CEO, and to designate Dwayne Alexander as the new Contact Person and Authorized Representative for the Applicant; and (2) the removal of two former employees, Joseph J. Chambers and Martin W. Moore, as managers of Gardner Capital and affiliates, and as Principals and Authorized Representatives of the Applicant and co-developer (Jacksonville Redevelopment Partners, LLC) within Florida Housing's records.

(d) Upon approval of this Petition 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. Moreover, the partnership agreement will be finalized and submitted to HUD in the RAD submission package. Similarly, once the Petition is approved, Citi will be able to move forward on their underwriting and the core construction loan documents will be substantially finalized for submission to HUD. Petitioner anticipates receiving HUD approval and proceeding to closing within 60 days after the HUD submission. Given this timeframe, Petitioner believes it will be able to close the transaction before March 31, 2021.

11. Given the rehabilitation timeframe of 11 months, and closing expected to occur in early 2021, it is unlikely that Petitioner will meet its place in service date of December 31, 2021. With a credit swap, Petitioner is confident it can complete credit underwriting prior to March 31, 2021, close on the tax credit partnership, commence construction, and meet its 10% test, as such

deadlines will be extended if the credit swap is approved. Petitioner is aware that Florida Housing and the Board have extended the deadlines for this Development multiple times before, however, it is crucial for Petitioner, the closing team invested in the success of this Development, but most importantly, the elderly residents of Hogan Creek that the rehabilitation proceed and these 183 units be preserved for the next 50 years. The extension being requested is approximately three additional months 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.

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. 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.* (2017).

13. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 183 affordable units will be preserved and made available for the elderly residents in Duval County, Florida. Further, the waiver will serve the purposes of the 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

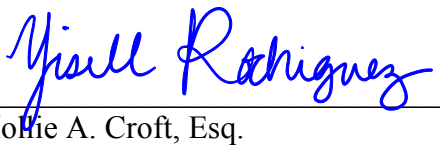
sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable 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.* (2017).

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F. ACTION REQUESTED

15. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) approve the changes in the principals of the Applicant and co-developers, to the extent required, (ii) grant the requested waiver of the timing requirements found in the 2016 QAP to allow the requested credit exchange to be approved before the fourth calendar quarter of 2021; and (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 18th day of November, 2020.

Yisell Rodriguez

Yisell Rodriguez, Esq.
Fla. Bar No. 117915