MORE RED SAND IN THE HOURGLASS OF OZ: IRS NOTICE 2020-39 PROVIDES RELIEF IN RESPECT TO CERTAIN KEY QOZ DEADLINES

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Qualified Opportunity Zones (“QOZs”) are low-income population census tracts situated in urban, suburban or rural areas that have been specifically designated as QOZs by the governors of the various states and U.S. territories in which such QOZs are situated, and certified as such by the U.S. Treasury. The legislative framework for QOZs was added to the Internal Revenue Code by the Tax Cuts and Jobs Act signed into law by President Trump on December 22, 2017. The QOZ legislation is designed to incentivize the migration of equity capital into QOZs for purposes of the formation and establishment of new businesses, the development and redevelopment of real estate, and other forms of economic stimuli, with the ultimate goal of job creation and poverty reduction in the QOZs. On Thursday, June 4, 2020, the Internal Revenue Service (the “IRS”) released Notice 2020-39 (the “Ozone Deadline Relief Notice”) which provides substantial relief to existing and prospective investors in qualified opportunity funds ("QOFs") to mitigate potential degradation of their investments resulting from disruptions to construction and development operations of QOZ projects attributable to the COVID-19 pandemic.

Pursuant to the Ozone Deadline Relief Notice, extended regulatory deadlines apply to the following QOF/QOZ regulatory milestones:

1. 90% QOZ Property Investment Standard. Existing QOZ regulations generally mandate a bi-annual review be performed to measure compliance with the so-called ‘90% test’ which generally requires that 90% of QOF assets be invested in QOZ property. As a result of the Ozone Deadline Relief Notice, all QOFs are in effect exempt from application of the ‘90% test’ in 2020. Thus, QOFs and QOF investors are permitted to hold those QOF assets until June 30, 2021 without prejudice to qualification as a QOF or to qualifying investment status of an investment in a QOF.

2. 30-month QOZ Property Substantial Improvement Requirement. Existing QOZ regulations generally establish a 30-month period in which QOF fund managers were required to make substantial improvements to their QOZ property as a condition precedent to qualification for the tax benefits accorded to QOF investors. As a result of the Ozone Deadline Relief Notice, the 30-month period was extended to 39-months.

3. 180-day QOF Investment Window. Existing QOZ regulations generally provide a 180-day period for QOF Investors to invest an amount up to their eligible capital gains attributable to the sale of a capital asset in a QOF. As a result of the Ozone Deadline Relief Notice, if the last day of a QOF investors 180-day investment

period falls on or after April 4, 2020 and before December 31, 2020, then such a QOF investor now has until the end of December of 2020 to invest those capital gains in a QOF without prejudice to such investor's eligibility to qualify for the QOF tax benefits.

4. 31-month QOZ Equity Capital Deployment Period. Existing QOZ regulations generally provide for a 31-month period in which QOF fund managers and real estate developers are required to commence construction of QOZ projects and to deploy equity capital into the QOZ. As a result of the Ozone Deadline Relief Notice, Treasury has extended the 31-month period by an amount up to 24-months.

5. 12-month Period for QOF to Reinvest Certain Interim Proceeds. Existing QOZ regulations generally provide that if a QOF has proceeds from the return of capital or the sale or disposition of some or all of its QOZ property, and if the QOF's plans to reinvest such proceeds are delayed due to a Federally declared disaster, then the 12-month period of time in which the QOF is required to reinvest is extended by 12-months so long as the QOF ultimately invests the proceeds in the manner originally intended before the disaster, and the reinvested proceeds are continuously held in cash, cash equivalents, or debt instruments with a term of 18 months or less. The Ozone Deadline Relief Notice confirms the 12-month extension for QOFs to reinvest certain proceeds applies to all QOFs that otherwise qualify so long as the original 12-month reinvestment period included January 20, 2020 (the date identified in the federal disaster declarations issued under the authority of the Stafford Act).

We are cautiously optimistic this relief will provide QOF / QOZ stakeholders, projects, and businesses sufficient time to meet these critical QOZ / QOF regulatory requirements, timelines, and thresholds, and thereby enable nascent QOZ businesses to ride out the COVID-19 storm and proceed to thrive during the widely anticipated post-Pandemic economic recovery era.

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