STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

IN RE: ST. JOHN PLAZA APARTMENTS, LLC

FHFC CASE NO.: 2021-023VW

_____/

ORDER GRANTING WAIVER OF RULE 67-21.027(6), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on April 30, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on April 1, 2021, from St. John Plaza Apartments, LLC ("Petitioner"). Notice of the Petition was published on April 6, 2021, in Volume 47, Number 66, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

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

2. Petitioner has applied for an award of 4% non-competitive Housing Credits, in conjunction with a local government bond allocation, the assist in the financing of the development described above.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/s/ Hamons /DATE: 4/30/2021

3. Rule 67-21.027(6), Fla. Admin Code (Rev. 6-23-20) provides:

> The Final Cost Certification Application Package (Form FCCAP) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in rule 67-21.026, F.A.C. Such form package shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files of the Microsoft Excel spreadsheets for the HC Development Final Cost Certification (DFCC and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries if requested by the Corporation, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter for both the DFCC and GCCC, an unmodified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit Allocation will not be issued until such time as all required items are received and processed by the Corporation…

4. Petitioner also requests relief provided under two related rules, for which Board consent is required. Rule 67-21.026(13)(f), Fla. Admin. Code (Rev. 6-23-2) imposes a limitation on the percentage of construction costs that may be subcontracted (the "31% Subcontractor Cap"):

> (13) The General Contractor must meet the following conditions:
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> . . .
>
> (f) For Developments with a Development category of new construction, unless otherwise approved by the Board for a specific

Development, ensure that not more than 20 percent of the construction cost, not to include the General Contractor fee or pass-through fees paid by the General Contractor, is subcontracted to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor, with the exception of a subcontractor (or any group of entities that have common ownership or are Affiliates of any other subcontractor):

. . .

2. Contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Board for a specific Development...

5. Rule 67-21. 003(8)(b), Fla. Admin. Code provides:

The Principals of the Developer(s) may be changed only by written request of an applicant to Corporation staff and approval of the Board after the Petitioner has been invited to enter Credit Underwriting.

6. The 4% Non-Competitive Application Form (Rev. 04-2020) ("NCA"), incorporated by reference within Rule 67-21.003(1)(b), provides:

For purposes of (1) and (2) below, a material change shall mean 33.3 percent or more of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant, and a non-material change shall mean less than 33.3 percent of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant.

For Applicants requesting Non-Competitive Housing Credits only: The Applicant entity shall be the recipient of the Housing Credits and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any way (materially or non-materially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any material change in the ownership structure of the named Applicant will require Board approval prior to the change, and (b) any non-material change in the

ownership structure of the named Applicant will require Corporation approval prior to the change.

The Principals of each Developer identified in the Application, including all co- Developers, may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter Credit Underwriting.

7. Petitioner requests the above Rule waiver and associated relief to:

- submit a final cost certification based on Agreed Upon Procedures in lieu of the required audit;
- exceed the "31% Subcontractor Cap" by 0.42%; and,
- permit a change in the Principals of its Applicant and Developer.

8. Petitioner reports that the above changes are necessary due to ongoing litigation with its General Contractor, in which Petitioner is the plaintiff, and for a variety of reasons as set forth in the Petition. Petitioner filed suit on July 30, 2020, and subsequently terminated its contract with the General Contractor on August 6, 2020.

9. As a result of these circumstances, and lack of cooperation with the General Contractor, Petitioner cannot complete the final cost certification with a full audit, and instead proposes to submit an Agreed Upon Procedures (AUP) auditing standard. Without a final cost certification, Petitioner cannot close on its permanent financing, resulting in a substantial financial hardship.

10. The circumstances have also resulted in a 0.42% increase in the subcontractor fee, which now exceeds the Subcontractor Cap. Due to the minimal increase, the Credit Underwriter has made no changes to its recommendation.

11. In an unrelated matter, Petitioner requests Board consent to change the Principals of its Applicant and Developer entities, due to errors made in its non-competitive Application.

12. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

13. 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.

14. Petitioner has demonstrated that the waiver is needed to efficiently serve elderly persons. 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.

15. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this

request furthers Florida Housing's statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver Rule 67-21.027(6), Fla. Admin. Code, and the relief request under 67-21.003(8)(b) and 67-21.026(13)(f), Fla. Admin. Code and the NCA, is hereby **GRANTED** to permit Petitioner to: submit a final cost certification based on AUP in lieu of an audit; to exceed the subcontractor fee limit by 0.42%; and to change its Applicant and Developer Principals as set forth in the exhibits to the Petition.

DONE and ORDERED this 30th day of April, 2021.

Florida Housing Finance Corporation

By: _____
Chair

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.