STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ST. JOHN PLAZA APARTMENTS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case No.: 2021-023VW

APPLICATION NO. 2020-509C

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FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-21.027(6), F.A.C. (6/23/2020) AND REQUEST FOR BOARD APPROVAL PURSUANT TO RULES 67-21.026(13)(f)2., AND 67-21.003(8)(b), F.A.C. (6/23/20) AND NCA (Rev. 04-2020)**

Petitioner, St. John Plaza Apartments, LLC, a Florida limited liability company (the "Petitioner") pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code ("F.A.C."), submits its Petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-21.027(6), F.A.C., effective June 23, 2020 (the "Rule"). Petitioner was forced to terminate its General Contractor for a breach of contract that is currently being litigated. Due to the General Contractor's lack of responsiveness, Petitioner is unable to complete the General Contractor Cost Certification ("GCCC") and Petitioner's certified public accountant ("CPA") is unable to provide an opinion letter or audit report for the GCCC without any modifications. Accordingly, Petitioner seeks a waiver to allow the Final Cost Certification Application Package to contain only a CPA agreed upon procedures ("AUP") report, instead of an audit. The AUP report provides stronger assurances than would be provided via an audit. If this Petition is granted, Petitioner will not be required to submit a GCCC.

Separately, Petitioner seeks Board approval: (1) to exceed by approximately 0.42% the

limitation imposed on the percentage of construction costs that may be subcontracted pursuant to Rule 67-21.026(13)(f)2., F.A.C. (6/23/20); and (2) to change the principals of the Petitioner and Developer as permitted by Rule 67-21.003(8)(b), F.A.C. (6/23/20) and NCA (Rev. 04-2020).

In support of this Petition for Rule Waiver, Petitioner states as follows:

**A. Petitioner and the Development.**

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

St. John Plaza Apartments, LLC
c/o Boston Capital
11 Beacon Street, Suite 325
Boston, MA 02108
Attention: Eric Haynes
Telephone: 305-372-0682
Facsimile: 305-381-9574
Email: ehaynes@stjohncdc.org

2. The name, address, telephone, and facsimile numbers of Petitioner's counsel are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: (305)789-3350
Facsimile: (305)789-3395
E-mail: bmcdonough@stearnsweaver.com

Bridget Smitha, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
106 E. College Ave. Ste 700
Tallahassee, Florida 32301
Telephone: (850)329-4852
Facsimile: (850)329-4864
E-mail: BSmitha@stearnsweaver.com

3. This Petition is submitted on behalf of the following development:

- Development Name: St. John Plaza ("Development")
- Developer: St. John CDP-BC Developer, LLC
- County of Development: Miami-Dade

- Number of Units: 90 units (new construction)
- Type: Mid-Rise 5-6 Stories
- Set Asides: 100% at 60% AMI or less
- Demographics: Family
- Funding Request: 4% Non-Competitive Housing Credit allocation to be used for Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Finance Authority (*i.e.*, Housing Finance Authority of Miami-Dade County) in the annual amount of $1,105,000; Housing Finance Authority of Miami-Dade County will issue Multifamily Housing Revenue Bonds ("MHRB") in the amount of $13,750,000 and Miami-Dade County Department of Public Housing and Community Development ("PHCD") will award Request for Applications for 2014 Documentary Surtax Funding (Gap Funding) ("Surtax") in the amount of $2,700,000 to SJP Apartments, LLC, and $10,000,000 Overtown CRA funding.

**B. Rule from which Waiver is Sought.**

4. The Rule provides:

> (6) 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. The Final Cost Certification Application Package (Form FCCAP) is adopted and incorporated herein by reference, effective 04-2020, and is available on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-12017, or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1321.

*See* Rule 67-21.027(6), F.A.C. (6/23/2020).

**C. Rules Pursuant to Which Board Approval is Sought.**

5. Rule 67-21.026(13)(f)2., F.A.C. (6/23/20) pertains to the HC Credit Underwriting Procedures and imposes a limitation on the percentage of construction cost that may be subcontracted (the "31% Subcontractor Cap"):

> ((13) The General Contractor must meet the following conditions:: . . .
>
> (f) For Developments with a Development category of new contruction, 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 othere 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 . . . . .
>
> With regard to said approval, the Board shall require an analysis from the Credit Underwriter and consider the facts and circumstances of each Applicant's request, inclusive of construction costs and the General Contractor's fees. For purposes of paragraph (f), "Affiliate" has the meaning given in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "subcontractor";

6. Rule 67-21.003(8)(b), F.A.C. (6/23/20) states: "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."

7. NCA (Rev. 04-2020), incorporated by reference within Rule 67-21.003(1)(b), F.A.C., 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.
>
> (1) 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 ownership structure of the Applicant entity may be changed without Corporation or Board approval after a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must still be notified in writing of the change. Changes to the ownership structure of the Applicant entity prior to the issuance of the Preliminary Determination or without Board approval or Corporation approval, as applicable, prior to the approval of the Final Housing Credit Allocation and issuance of the IRS Forms 8609 shall result in a disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to the issuance of the Preliminary Determination to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or the limited partner of an investor limited partnership or an investor member of a limited liability company owning the syndicating interest therein will not result in disqualification, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval. . . .
>
> 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.

**D. Statute Implemented.**

8. The Rule from which waiver it sought implements the statute governing the allocation of federal low-income housing tax credits (Section 420.5099, Florida Statutes). The rules under which Board approval is sought also implement this statute, as well as the statute

governing revenue bonds (Section 420.509, Florida Statutes)..

**E. Justification for the Requested Waiver**

9. Petitioner submitted its application for Multifamily Housing Revenue Bond Financing to the Housing Finance Authority of Miami-Dade County on September 6, 2013.

10. Petitioner submitted its Non-Competitive Application Form, Application No. 2020-509C (the "Application"), to the Corporation on September 8, 2020.

11. Burke Construction Group, Inc. was disclosed in the 2013 application, as well as the 2020 Application, and served as, the General Contractor for the Development ("GC").

12. Petitioner attempted at all times to move the Development expediently towards completion. The Development nonetheless suffered extraordinary construction delays attributable primarily to the non-performance of the GC and, to a lesser extent, Hurricane Irma. Petitioner also experienced problems with the GC regarding scheduling, staffing, performance, and quality of work. The schedule delays were persistent throughout the course of construction and resulted in the delivery of temporary certificates of occupancy more than 22 months after the scheduled completion date. Compounding this issue, staffing turnover was high throughout the course of construction. Similarly, issues with the quality of work performed also existed throughout construction. For example, the Petitioner had to hire its own subcontractor to replace the roof on the West building after the GC attempted corrective work on the roof.

13. During the delays, Boston Capital Corporation ("BCC") funded various budgeted and unbudgeted costs arising from such delays throughout the course of construction in an effort to get the Development completed.

14. Accordingly, Petitioner determined that it was in its best interests to terminate the GC due to breach of contract. Petitioner sent the GC a notice of intent to terminate on July 29,

2020, followed by a termination notice delivered on August 6, 2020.

15. Petitioner filed a complaint against the GC on July 30, 2020 for breach of contract, which seeks reimbursement for significant construction costs funded by BCC and material damages incurred as a result of the GC's numerous delays in completing the project.[1] Information pertaining to this litigation is attached as Exhibit 1 (the "Litigation"). The Litigation does not seek reimbursement of soft costs, but rather costs[2] related to the Child Learning Center ("CLC") and payment for damages related to delays. Because the parties disputed whether the CLC costs fell within the scope of work under the construction contract, Boston Capital funded the CLC construction costs as a construction change directive. While the CLC costs[3] are within the contract price (and are therefore included in the DFCC and AUP), the GC profit was reduced by the amount of the CLC costs.

16. Likely as a result of the Litigation and the various disputes leading up to same, the GC has been unresponsive to Petitioner's information requests. Despite multiple requests, the GC has failed to provide the information necessary to complete the Final Cost Certification Application Package ("FCCAP").

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[1] The total amount of damages remains to be determined as damages will continue to accrue as costs are incurred to obtain the certificate of occupancy, as well as final approvals from inspectors and lenders. This includes corrective work necessary to obtain Public Works approval, ensure ADA compliance, and pass all building inspections. While the GC claims that it is entitled to retainage of approximately $1m, which is included within the approximately $18m cost certification, that amount will be offset by the damages asserted in the Litigation.

[2] These costs include the additional costs that the Developer paid, such as: Builder's Risk Insurance, General Liability Insurance, Roof Replacement, Corrective Plans, Water/Sewer Meter Hook Up and costs related to corrective work.

[3] The CLC costs total $824,567, which were added to the ineligible basis. To date, approximately $520k has been paid by Boston Capital. Boston Capital will offset amounts due to the GC by this amount, plus any advanced amounts, and treat the remainder due as being included within what is still owed in relation to the contract and approved change orders.

17. Pursuant to the Rule, Petitioner must submit the FCCAP to itemize the costs and expenses incurred with the Development. Because the Rule incorporates the FCCAP by reference, both the Rule and FCCAP require: (a) completion and inclusion of a GCCC and (b) a CPA opinion letter and audit report for the GCCC without any modifications.

18. The FCCAP provides the GCCC instructions, which identify the requirements and audit procedures for the GCCC audit.

19. The FCCAP also includes a form, entitled "General Contractor Costs Certification - GC Certification," that must be executed by the GC and the CPA ("GC Certification"). The GC Certification certifies the accuracy of the GC's costs.

20. Petitioner completed construction of the Development and received a temporary Certificate of Occupancy for the East Building (27 units) on June 15, 2020 and the West Building (63 units) on July 29, 2020. Currently, 100% of the units are occupied.

21. The closing of permanent loan financing is dependent upon finalization and submission of the audited GC Certification and the Final Cost Certification. Petitioner must close the permanent loan financing in order to pay down its construction loan and avoid a default under such loan. In addition, receipt by Petitioner of the remaining portion of the tax credit investor's capital contributions are dependent upon the issuance of the Form 8609. The Corporation cannot issue Form 8609 until it has reviewed the FCCAP.

22. Through the Litigation, Petitioner disputes the amounts owed under the construction contract. The costs used in the DFCC and AUP are the sum of the original contract with the GC, plus approved change orders. Petitioner asserts via the Litigation that this amount (*i.e.*, the original contract price plus approved change orders) is the amount due for construction

of the project, including the CLC. Put another way, neither the DFCC nor the AUP include construction costs that Petitioner believes are not due. Accordingly, any additional costs that may be awarded as a result of the Litigation are not included in the DFCC or the AUP.

23. Despite numerous requests, the GC has failed to execute the GC Certification, and other certificates and affidavits that must be provided to the CPA in order to enable the CPA to issue its opinion letter and audit report. Accordingly, the Corporation has not, and cannot, issue Form 8609.

24. After conferring with the Corporation, Petitioner reached out to Petitioner's independent CPA (CohnReznick LLP) to obtain the subcontractor information necessary to provide a modified contractor cost certification. Since the GC was unwilling to provide access to their accounting records, CohnReznick was unable to prepare an audit of the GCCC. Alternately, an AUP report was deemed to be the best option to provide the Corporation with subcontractor and vendor costs and expenses incurred for the construction of the project. In addition, the procedures calculate the percentage of General Conditions and Contractor profit and overhead charged to the project to ensure they did not exceed the allowable limits established by the Corporation. Petitioner submitted a draft of the AUP report detailing costs and expenses incurred under the construction contract to the Corporation. CohnReznick independently verified the costs and expenses incurred by the GC using the procedures outlined in their report. A description of the information CohnReznick was able to verify and how CohnReznick was able to verify the costs to each subcontractor is contained within the AUP report.

25. CohnReznik cannot issue an audit opinion here since an audit entails more than simply verifying numbers (*e.g.*, testing internal controls, testing journal entries, performing cash

disbursement tests, performing interviews with the GC for fraud and gaining an understanding of their accounting system, obtaining representations from the GC, etc.) and is not possible here. Accordingly, an audit report would violate professional standards and cannot be issued. To compensate for this fact, the AUP report provides stronger assurances than an audit would. The GCCC forms contain contractor trade categories that require a level of detail that is not available. No assurances can be provided for the sub-categories because no documentation exists with which to agree the numbers to.

26. Due to the GC's refusal to provide the requested documentation and/or cooperate, CohnReznick cannot issue an opinion letter or unmodified audit report and Petitioner is unable to complete the GCCC, much less obtain the GC's signature on the GCCC or other requisite certificates and affidavits; thereby necessitating this Petition for Rule waiver.

27. Petitioner believes that the procedures performed in conjunction with the AUP report are sufficient to allow completion of the cost certification process and issuance of the Form 8609. Any deficiencies caused by the GC's failure to cooperate would likely only understate the eligible costs and credits. CohnReznick will be issuing an AUP report on the final construction costs of St. John Plaza Apartments, along with amounts incurred by each subcontractor/vendor by trade line item.

28. Petitioner requests via this Petition that the Corporation waive the requirement that the Final Cost Certification Application Package contain a GCCC and/or CPA opinion letter and audit report for the GCCC. By granting the Petition, Petitioner will be permitted to instead satisfy the Rule by providing the AUP report prepared by CohnReznick detailing the costs and expenses incurred by the GC, as presented in the schedule attached to the AUP report.

29. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to, or variances from, its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

> 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. For purposes of this section, "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.

The controlling statutes and the Corporation's Rules are designed to allow the flexibility necessary to provide relief when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Granting the requested variance in this instance would allow Petitioner to finalize the cost certification process and pursue issuance of the housing credits.

30. Additionally, by granting this waiver, the Corporation would recognize the goal of increasing private investment and participation in increasing the supply of affordable housing and promote the principles of fundamental fairness in developing affordable rental housing. The purpose of the underlying statute, which is to "encourage development of low-income housing in the state" as identified in Section 420.5099(2), Fla. Stat., would still be achieved if the variance is granted.

31. The Corporation has jurisdiction to grant a waiver of the Rule and Petitioner meets the standard for a waiver of the Rule.

32. Petitioner would suffer a substantial hardship if this Petition is denied. Specifically, Petitioner will lose the opportunity to access a large portion of the tax credit equity financing available to the Development if the Petition is not granted. Further, Petitioner would be required to repay all of the capital contribution previously made by the tax credit investor, with interest and penalties, thus causing the Development to fail and for the lender to likely foreclose. Petitioner is unable, through no fault of its own, to obtain the information necessary to complete the FCCAP (*i.e.*, Petitioner cannot provide all of the information required by the GCCC nor obtain a CPA opinion letter and an audit report), much less obtain the GC's execution of the GCCC. Accordingly, absent the Corporation granting this Petition, it cannot issue Form 8609 to Petitioner.

33. As demonstrated above, the requested waiver serves the purposes of Section 420.5099, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

34. A representative of Petitioner is available to answer any questions should the Corporation require additional information.

**F. Justification for the Requested Board Approval.**

**i. 31% Subcontractor Cap.**

35. Because Petitioner's Development Type is "Mid-Rise, 5 to 6-stories," Petitioner is subject to the 31% Subcontractor Cap. The AUP report states that the construction contract costs

for concrete to "Matrix Construction Group, Inc/Construct Build, Inc."[4] – used in conjunction with the building shell – totaled $5,246,898. The AUP also states the total subcontractor costs are $16,699,980. Accordingly, this subcontractor will exceed the 31% Subcontractor Cap by approximately 0.42%[5] and Petitioner respectfully requests Board approval as contemplated by Rule 67-21.026(13)(f)2., F.A.C.

**ii. Transfer of Applicant and Developer Interests.**

36. In the course of recording the EUA, it was discovered that the Petitioner misunderstood the principal disclosure form and mistakenly included multiple entities within the same column and row. Specifically:

- At row 41, column H, the members of SJP Apartments MM, LLC are identified as: "St John Plaza, LLC (St John Community Development Corp)"
    - As a result, at row 108, column H, the Executive Director of "St John Plaza, LLC (St John Community Development Corp)" is listed as "Eric L. Hayes."[6] The members of St. John Plaza, LLC were not identified on the spreadsheet.
- Similarly, at row 107, column H, the managing member of St. John CDP-BC MM, LLC is identified as "BCP SJP, LLC, Boston Capital Companion LP, John P. Manning 2002 Revocable Trust."
    - As a result, at row 174, line H, the Trustee of "BCP SJP, LLC, Boston Capital Companion LP, John P. Manning 2002 Revocable Trust" is identified as John P. Manning. The principals of BCP SJP, LLC, and Boston Capital Companion LP were not identified by mistake.

37. Discussions related to this discovery caused Petitioner to determine that it must

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[4] Construct Build, Inc. is a separate entity from Matrix Construction Group, Inc.("Matrix") and was contracted via the GC as a minority trainee to work with Matrix for the purpose of learning project management procedures related to the shell of the project and as part of the lender requirements. All of the work was considered billed under Matrix and was not separated between the vendors. Matrix may have subsequently reorganized under a different company name.

[5] This percentage was calculated based upon the most recent draft AUP report provided to FHFC and will not change substantially between now and FHFC's final approval of the AUP report.

[6] This was a typo: "Hayes" should read "Haynes."

restructure in order to comply with Rule 67-21.0025(7), F.A.C. (6/23/20). All of the proposed changes flow from the Petitioner's Managing Member (*i.e.*, SJP Apartments MM, LLC), which is a non-investor member[7] with only a 0.01% interest in the Petitioner:

- The member with a 25% interest in SJP Apartments MM, LLC would change to St. John Community Development Corporation. The Executive Director of St. John Community Development Corporation is Eric Haynes and the remaining principals are identified in Exhibit 2.

- The member with a 75% interest in SJP Apartments MM, LLC would remain St. John CDP-BC MM, LLC. However, the members with a collective 33.32% interest in St. John CDP-BC MM, LLC would change to: Jeffrey H. Goldstein (6.66%), Kevin P. Costello (6.66% interest), and Richard D. Mazzocchi (20% interest). John P. Manning 2002 Revocable Trust would maintain its 66,68% interest and John P. Manning would remain the Trustee of the John P. Manning 2002 Revocable Trust.

*Compare* Exhibit 3 (Petitioner Structure as Disclosed) with Exhibit 4 (Proposed Petitioner Structure).

38. The Application provides that "Once the Preliminary Determination has been issued . . . any material change in the ownership structure of the named Applicant will require Board approval prior to the change." *See* NCA (Rev. 04-2020), pp. 3-4. Thus, Petitioner requests Board approval of the foregoing change to the Petitioner's ownership structure. Petitioner also requests approval to correct the typo of "Eric Hayes" in the original disclosures to reflect "Eric Haynes" in the proposed structure.

39. Petitioner also proposes changes to the second level of the Developer's structure as follows: The members of SJP Development Holdings, LLC would be the same as the members of St. John CDP-BC MM, LLC in the Petitioner's structure (*i.e.*, John P. Manning 2002 Revocable Trust, Jeffrey H. Goldstein, Kevin P. Costello, and Richard D. Mazzocchi).

[7] Both Boston Capital Corporate Tax Credit Fund XL and BCCC, Inc., are investor members. BCCC, Inc. is a Special Limited Partner with a 0.001% ownership interest in the Development that was inserted into the structure by the housing credit syndicator.

*Compare* Exhibit 5 (Developer's Current Structure) with Exhibit 6 (Developer's Proposed Structure). The Application provides: "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 Petitioner has been invited to enter Credit Underwriting." *See* NCA (Rev. 04-2020),[8] p. 4; *see also* Rule 67-21.003(8)(b), F.A.C. ("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."). Accordingly, Petitioner hereby requests Board approval of the foregoing change to the Developer's principals.

40. The proposed changes will bring the Petitioner's structure into compliance with the applicable Rules without affecting the operations of the Petitioner, nor will it result in the inability of the Petitioner or Developer to meet any and all financial obligations. The proposed change cannot take effect unless or until the foregoing requests are approved.

**G. Type of Waiver.**

41. The waiver being sought is permanent in nature.

**H. Action Requested.**

36. Petitioner respectfully requests that the Corporation:

a. Grant this Petition and all the relief requested therein;

b. Grant a waiver of Rule 67-21.027(6), F.A.C. (6/23/2020) to permit submission of the Final Cost Certification Application Package with an Agreed Upon Procedures Report instead of: (i) the General Contractor

[8] NCA (Rev. 04-2020) was adopted and incorporated into Rule 67-21.003(1)(b), F.A.C. (6/23/20) by reference.

Cost Certification; (ii) a certified public accountant opinion letter; and/or (iii) an audit report prepared by an independent certified public accountant; and

c. Award such further relief as may be deemed appropriate.

37. Petitioner also requests Board approval:

a. For the subcontractor to exceed the 31% Subcontractor Cap pursuant to Rule 67-21.026(13)(f)2., F.A.C. (6/23/20); and

b. To change the principals of Petition and Developer as permitted under Rule 67-21.003(8)(b) and NCA (Rev. 04-2020).

Respectfully submitted this 1st day of April, 2021.

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
*Counsel for Petitioner*
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

By: *s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

This Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 1st of April, 2021.

*s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

**Exhibit 1**

***St. John Plaza Apartments, LLC v. Burke Construction Group, Inc., Case No. 2020-17412-CA-32 (Fla. Cir. Ct. 11th Jud. Cir., Miami-Dade County)***

Petitioner filed a lawsuit against the GC on July 30, 2020 asserting a claim for breach of contract and seeking damages, interest, costs, and attorneys' fees. The lawsuit is pending before Judge Thomas in the Complex Business Litigation Division. On August 14, 2020 – after Petitioner filed its lawsuit, but before the GC was served – the GC filed a lawsuit against Petitioner ("GC Lawsuit") for wrongful termination (*i.e.*, breach of contract) seeking damages, unpaid contract sums, interest, costs, and attorneys' fees. As Petitioner's lawsuit against the GC was filed first, the GC Lawsuit was transferred to the Complex Business Litigation Division and then consolidated with the lawsuit filed by Petitioner. The GC answered Petitioner's complaint and asserted affirmative defenses on September 15, 2020. Likewise, Petitioner answered the GC's complaint and asserted affirmative defenses on September 15, 2020. A case management order established the litigation deadlines and the trial period, including the following:

- December 31, 2020 - deadline to add parties.
- March 31, 2021 – initial mediation.
- August 16, 2021 - conclusion of fact witness discovery.
- September 1, 2021 - plaintiff's disclosure of experts.
- October 1, 2021 - defendant's disclosure of experts.
- November 30, 2021 - conclusion of expert discovery.
- January 20, 2022 - final mediation.
- February 28, 2022 - three-week trial period.

**Exhibit 2**
***Principals of St. John Community Development Corporation***

OFFICERS:

CHAIRMAN OF THE BOARD
BISHOP JAMES D. ADAMS

1ST VICE CHAIRMAN
WILL MILLER, Ed.D.

2ND VICE CHAIRMAN
WALTER DENNIS

SECRETARY
EDWINA PACE

ASSISTANT SECRETARY
ELIJAH J. BOWDRE

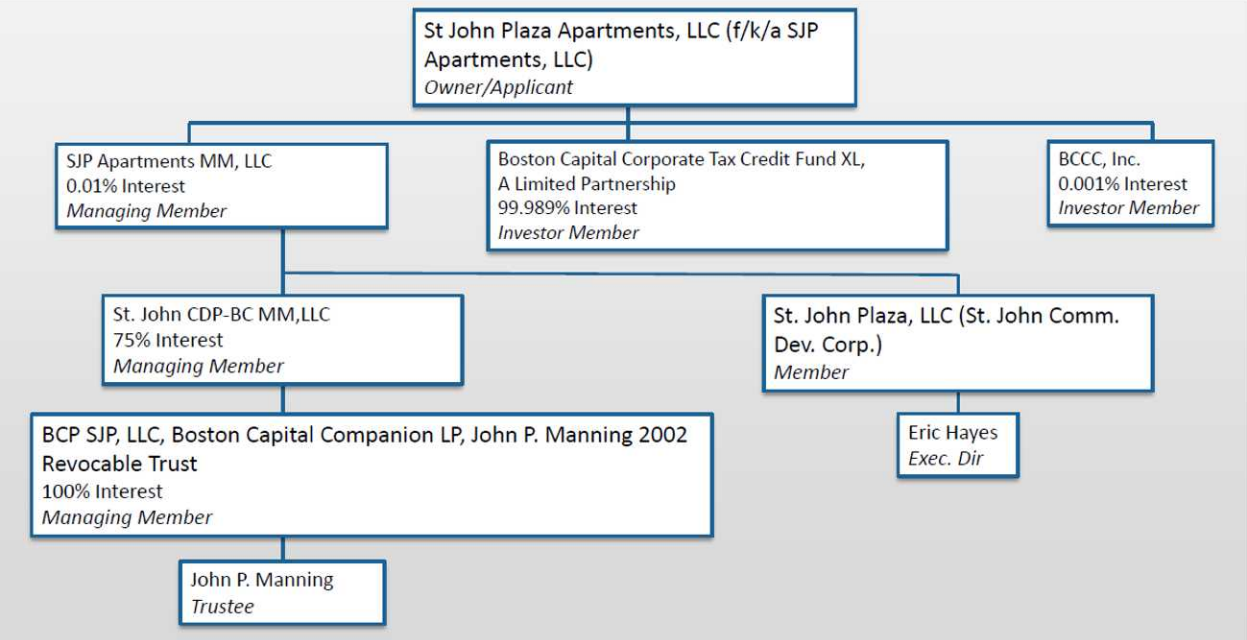
TREASURER
THEMA CAMPBELL

ASSISTANT TREASURER
LEHONDRA SWAIN

BOARD OF DIRECTORS:

NELSON ADAMS, III, M.D.
EDWARD BLAIR, IV
DOUGLAS BROWN
BETTY BURKE-CLAYTON
COREY B. COLLINS, Esq.
CECIL DUFFIE
TROY DUFFIE
JAMAAL FAIRLEY
ERICK FERNANDEZ
DONAVAN JACKSON
GRACE HUMPHREY
GARFIELD MILLER, Esq.
KADISHA PHELPS, Esq.
CHARLES SCOTT
T'RAN STUDWELL, Ed.D.

## Exhibit 3
### *Petitioner's Structure as Disclosed*




## Exhibit 4
### *Petitioner's Proposed Structure*

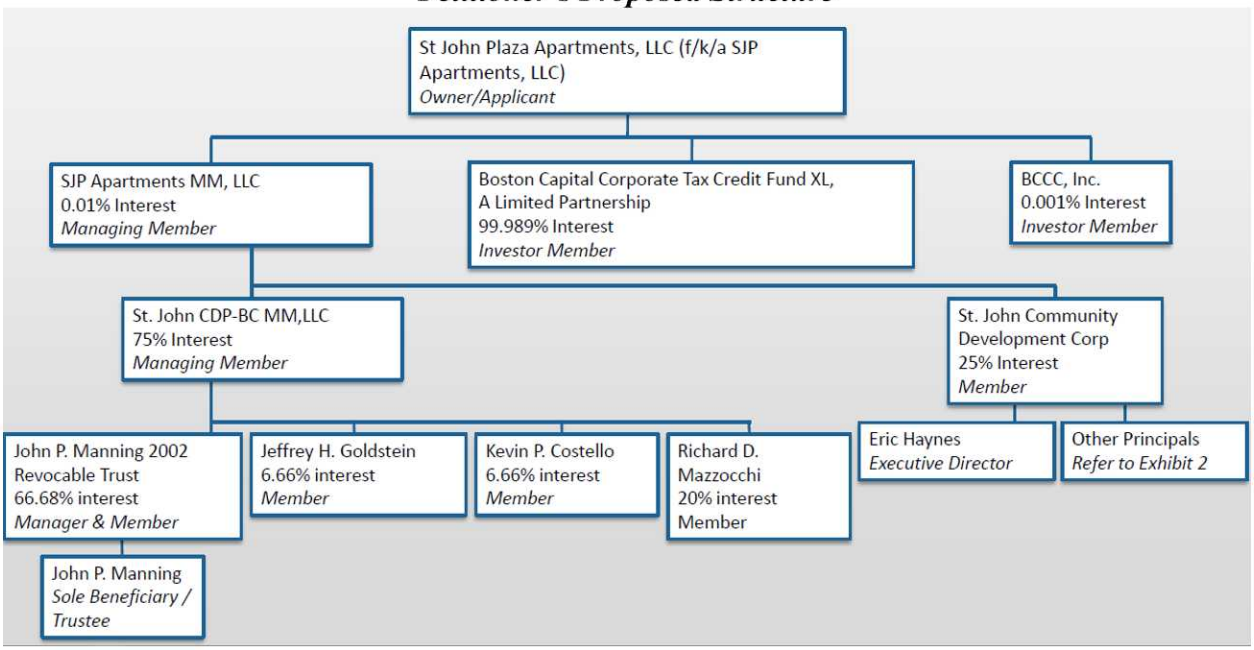


**Exhibit 5**
***Developer's Current Structure***

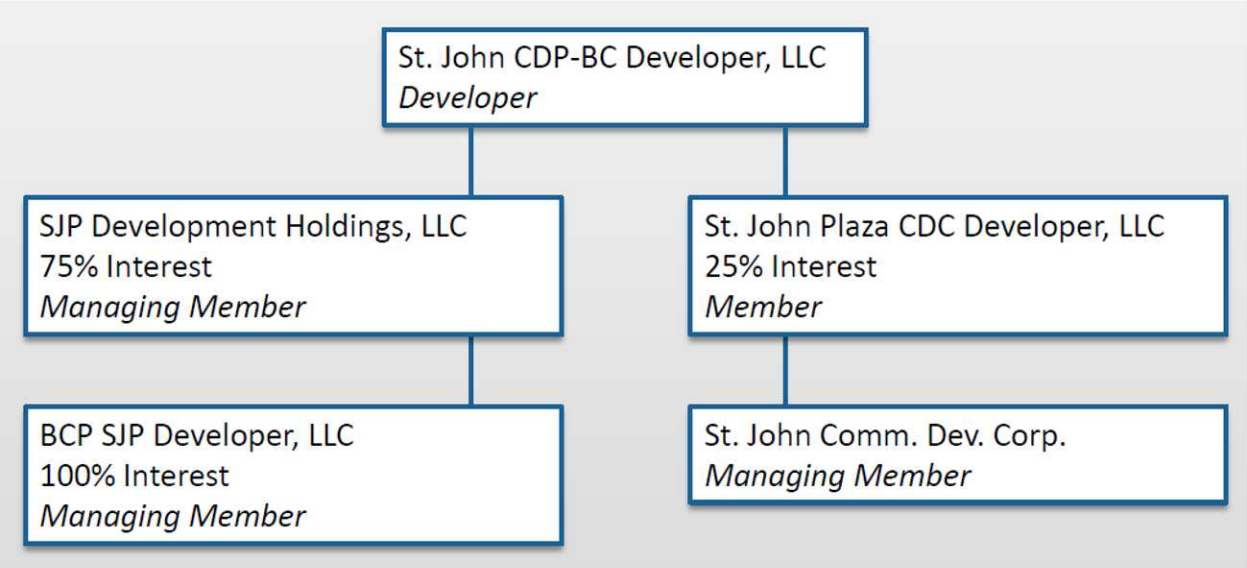



**Exhibit 6**
***Developer's Proposed Structure***

