STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

Citrus Glen Preservation, Ltd.
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2024-029VW
Application No. 2021-113B/2021-554C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

**PETITION FOR WAIVER OF RULE 67-21.003(1)(b) (05/18/2021) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (REV. 03-2021) AND FOR BOARD APPROVAL**

Citrus Glen Preservation, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the prohibition under Rule 67-21.003(1)(b), Florida Administrative Code ("F.A.C.") (05/18/2021) ("Rule") and the Non-Competitive Application Instructions (Rev. 03-2021) ("NCA") against changing the principals of the Applicant identified in the Application prior to Multifamily Mortgage Revenue Bond ("MMRB") loan closing. For tax and various other practical reasons, Petitioner determined that it must make a few changes to its organizational structure. This change must occur now, as opposed to waiting until after MMRB loan closing because the 2024 tax returns must reflect the ownership entity structure that will in fact operate the Development. Since the change is requested prior to the MMRB Loan closing, Petitioner respectfully requests a waiver of the Rule and NCA Instructions so that the original organizational chart, attached as Exhibit A, may be revised to reflect the structure depicted in Exhibit B. Pursuant to the terms of the Rule and NCA, Petitioner also seeks Board approval to

change the Developer's name and organizational structure from that depicted in Exhibit C to the structure depicted in Exhibit D. In support, Petitioner states as follows:

**A. THE PETITIONER.**

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

Jonathan Gruskin
210 University Blvd. Suite 460
Denver, CO 80206
Phone: (720)615-4450
Fax: N/A
Email: yoni.gruskin@ulyssesdevelopment.com

2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel is:

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**B. WAIVER IS PERMANENT.**

3. The waiver being sought is permanent in nature.

**C. DEVELOPMENT BACKGROUND.**

4. The following information pertains to the development underlying this petition (the "Development"):

- Development Name: Citrus Glen Apartments
- Development Address: 5351 Limelight Cir., Orlando, FL 32839
- County: Orange County

- Developer: Citrus Glen Developer, LLC
- Number of Units: 272 occupied units (Acquisition and Rehabilitation)
- Type: garden apartments
- Set Asides: 100% at or below 60%
- Demographics: Family
- Funding: $39,000,000 Corporation-issued MMRB and $2,793,214 Non-Competitive Housing Credits (annual amount)

**D. <u>THE RULE AND NCA PROVISIONS FROM WHICH WAIVER IS REQUESTED.</u>**

5. To change Petitioner's principals before the MMRB loan closing, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (05/18/21) which provides in pertinent part:

> (1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.
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> ***
>
> (b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 03-2021) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-13093, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

This Rule incorporates by reference the NCA Package (Rev. 03-2021). The NCA Package includes the following requirement:

(2) For Applicants requesting MMRB, with or without Non-Competitive Housing Credits:

The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form **cannot be changed in any way (materially or non-materially) until after the MMRB Loan closing**. After loan closing, (a) any material change in the ownership structure of the named Applicant will require review and approval of the Credit Underwriter, as well as Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require review and approval of the Corporation, as well as Board approval prior to the change. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapter 67-21, F.A.C. for the duration of the Compliance Period. Changes to the ownership structure of the Applicant entity (material or non-material) prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to loan closing 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.

*Id.* at Part A Section 6.b.(2) (emphasis added); available at https://www.flrules.org/Gateway/reference.asp?No=Ref-13093

6. Petitioner is requesting the foregoing waiver so that it may amend its organizational structure from the current chart attached as Exhibit A to the proposed chart attached as Exhibit B.

## E. RULE AND NCA PROVISION PURSUANT TO WHICH BOARD APPROVAL IS SOUGHT.

7. Petitioner seeks Board approval to change the Developer's name and principals from those depicted in Exhibit C to those identified in Exhibit D pursuant to Rule 67-21.003(8)(a)-(b), F.A.C. (05/18/2021), which provides:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as

follows: . . . . (a) **Name of** Applicant or **Developer** entity(s); notwithstanding the foregoing, the name of the Applicant or Developer entity(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation. (b) **Principals of each Developer**, including all co-Developers; notwithstanding the foregoing, 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 Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation . . . ."

*Id.* (emphasis added).

8. The NCA similarly provides at Part A Section 6.c.:

> 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.

*Id.* at p. 5, available at https://www.flrules.org/Gateway/reference.asp?No=Ref-13093

## F. STATUTES IMPLEMENTED BY THE RULE.

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

10. Per Section 420.5099(1),(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

## G. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND NCA INSTRUCTIONS AND FOR GRANTING BOARD APPROVAL.

11. Petitioner submitted non-competitive application number 2021-113B/2021-554C (the "Application") for the Development on February 1, 2022, which was revised and subsequently finalized on April 6, 2022.

12. In the Application, Petitioner disclosed among other principals the following natural persons (each as the sole member or beneficiary):

- For the Petitioner: Jonathan A. Gruskin, Connor Larr, Ahmed Abdelhameed, William Licko, Mark O'Rear, Ryan Watt and Laura Carlstrom.
- For the Developer: Jonathan A. Gruskin, Connor Larr, Ahmed Abdelhameed, William Licko, Mark O'Rear, and Ryan Watt.

While these natural persons will continue to serve as the sole member of limited liability companies appearing at the first or second principal disclosure levels, Petitioner respectfully seeks a waiver to allow it to add two new limited liability companies and to change the interest held by certain limited liability companies.

13. The changes to Petitioner's structure for which the waiver is requested are limited to:

- First level: the Applicant's investor limited partner would be changed from Alliant Capital, Ltd. (99.990%) to "TBD."
- Second level:
  - UDG CG GP, LLC's manager would be changed from Red Rocks 90, LLC to Jonathan A. Gruskin
  - Red Rocks **90**, LLC (39.2%) would be changed to Red Rocks **88**, LLC (44.356%)

- The membership interest of High Peaks Holdings LLC[1] would be changed from 9.8% to 11.089%

- JAL Trust (27.8%) would be replaced with Zachariah Lutz (22.644%)

- Laura Carlstrom Trust (6.95%) would be replaced with Laura Carlstrom (5.661%)

- Third level: the trustees and beneficiaries of the JAL Trust and Laura Carlstrom Trust would be removed since the trusts are being replaced by natural persons.

14. The changes to the Developer's structure for which Board approval is requested are limited to:

- Developer: Citrus Glen Developer, **LLC** would be converted from a Delaware limited liability company into a Delaware limited partnership, known as Citrus Glen Developer **LP**[2] for tax purposes.

- First level:

  - Ulysses Development Group LLC would be added as a general partner of the Developer.

  - Red Rocks **90**, LLC would be changed to Red Rocks **88**, LLC.

- Second level: Jonathan A. Gruskin would be identified as the manager, and Tenmile Quandary LLC would be identified as the sole member, of Ulysses Development Group LLC.

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[1] In the Application, High Peaks Holdings LLC was mistakenly identified as having a comma in between "Holdings" and "LLC." Similarly, Sperryshire 2 LLC was mistakenly identified as "Sperryshire 2, LLC." While neither name has formally changed, Petitioner seeks via this petition to correct the disclosures.

[2] Because Petitioner was invited to credit underwriting on April 6, 2022, Petitioner separately requested Corporation approval to change the name of the Developer pursuant to Rule 67-21.003(8)(a)-(b), F.A.C. (05/18/2021) ("(8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows: (a) **Name of** Applicant or **Developer entity**(s); notwithstanding the foregoing, the name of the Applicant or Developer entity(s) **may be changed** only by written request of an Applicant to Corporation staff and **approval of the Corporation** after the Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation; . . . .") (emphasis added).

15. No other changes would be made to the principals or their percentage of interest. *Compare* Exhibit A (Applicant's Current Organizational Structure) with Exhibit B (Applicant's Proposed Organizational Structure) and Exhibit C (Developer's Current Organizational Structure) with Exhibit D (Developer's Proposed Organizational Structure).

16. If this request for waiver is denied, it will deny Petitioner certain tax and other benefits that will make the Development more cost effective, while more importantly provide less clear applicability of the IRS tax law treatment of Developer proceed distributions. If the Petition is granted, the natural person principals identified in the Application will remain the same with one exception.[3] Neither Florida Housing nor the Development would be prejudiced by the change in how these natural persons hold their interests.

17. Upon information and belief, the purpose of the NCA Instructions prohibiting changes to Petitioner's structure prior to the MMRB Loan closing is to ensure full and fair consideration by Florida Housing of all natural persons that might exert control over, or financially benefit from, the Development. Here, the natural persons exerting control over the Development were disclosed in the Application. The changes sought are generally to how membership interests are held by natural persons disclosed in the Application, and the amount of such interest. The requested waiver should not, therefore, cause concern for Florida Housing. Since essentially the same natural person principals disclosed in the Application will exert control over the Development, Florida Housing should have the same degree of comfort as if the structure was not changed. Accordingly, granting the Petition should not impact Florida Housing's confidence in the Development, Petitioner, or its principals.

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[3] At the third level, JAL Trust (whose beneficiary was Jude **Lutz** and whose trustee was Greg Densen) will be replaced with Zachariah **Lutz**. Zachariah Lutz is Jude Lutz's father and was substituted into the structure because Jude is still a minor. No prejudice will occur if this passive trust is replaced by a natural person.

18. 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,[4] 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.

19. For the reasons set forth above, granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule.

20. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

21. The requested waiver will not adversely impact the Development or Florida Housing.

[4] "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. § 120.542(2), Fla. Stat.

## H. ACTION REQUESTED.

22. For the reasons set forth herein, Petitioner respectfully requests that: (i) Florida Housing grant the requested permanent waiver such that Petitioner may change its organizational structure to reflect the attached Exhibit B prior to the MMRB loan closing; (ii) grant this Petition and all of the relief requested herein; (iii) approve the Developer entity change as reflected in the attached Exhibit D; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,

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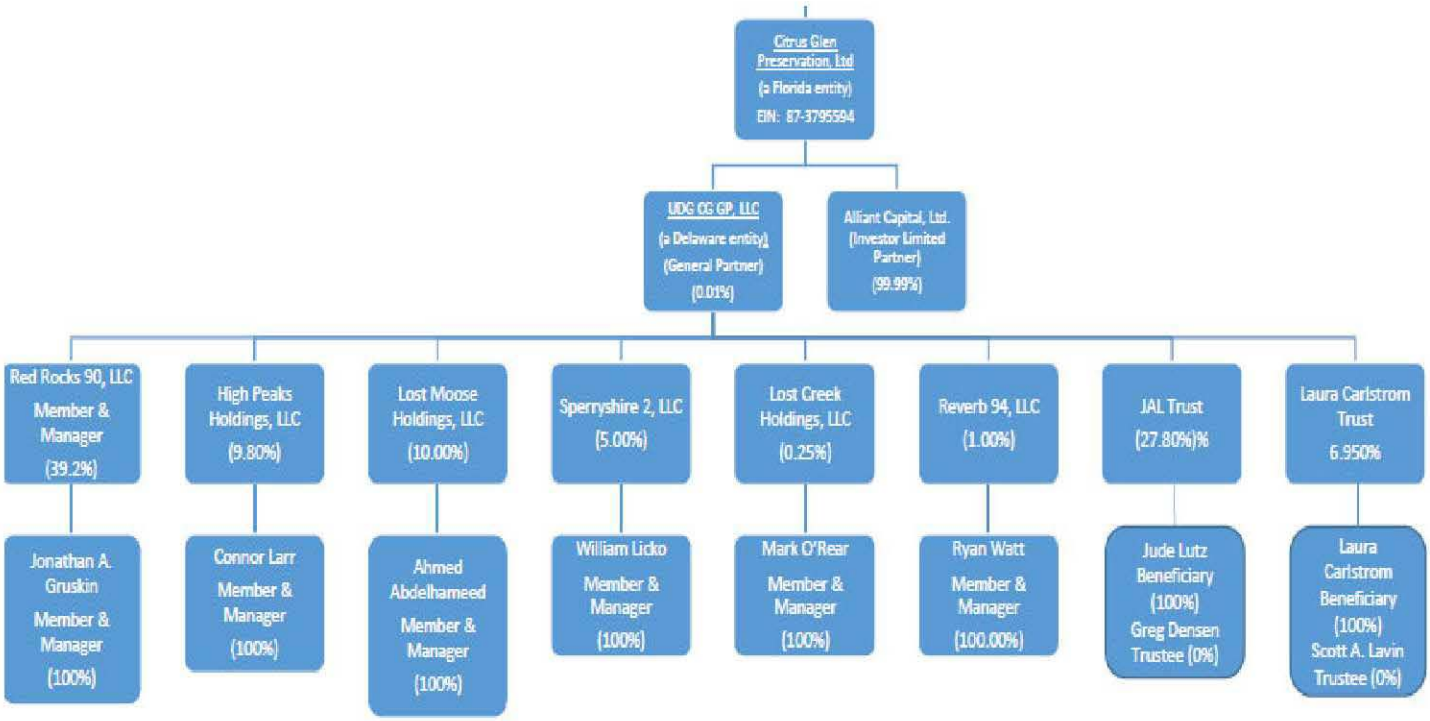
By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

## CERTIFICATE OF SERVICE

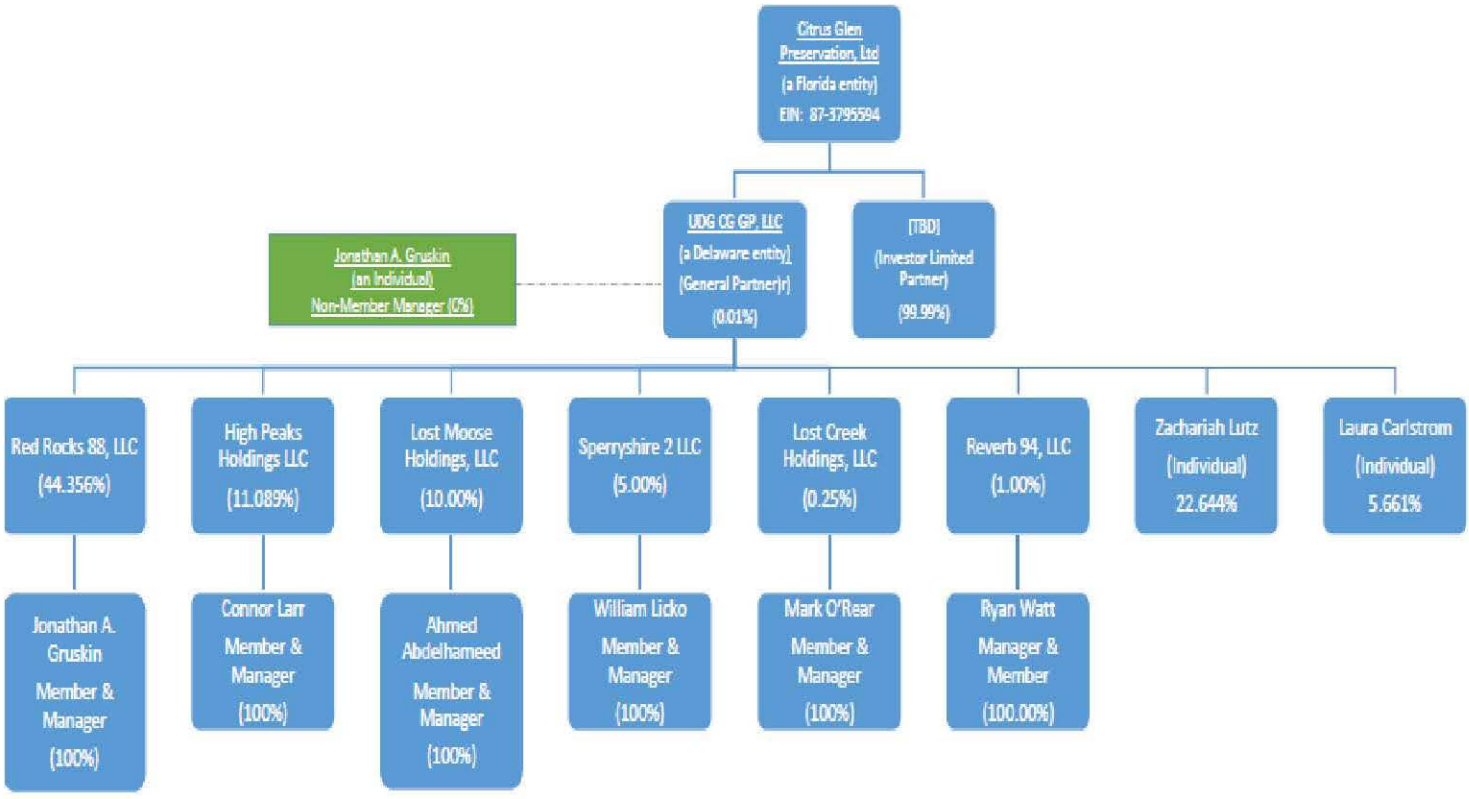
This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 11th day of June, 2024.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.

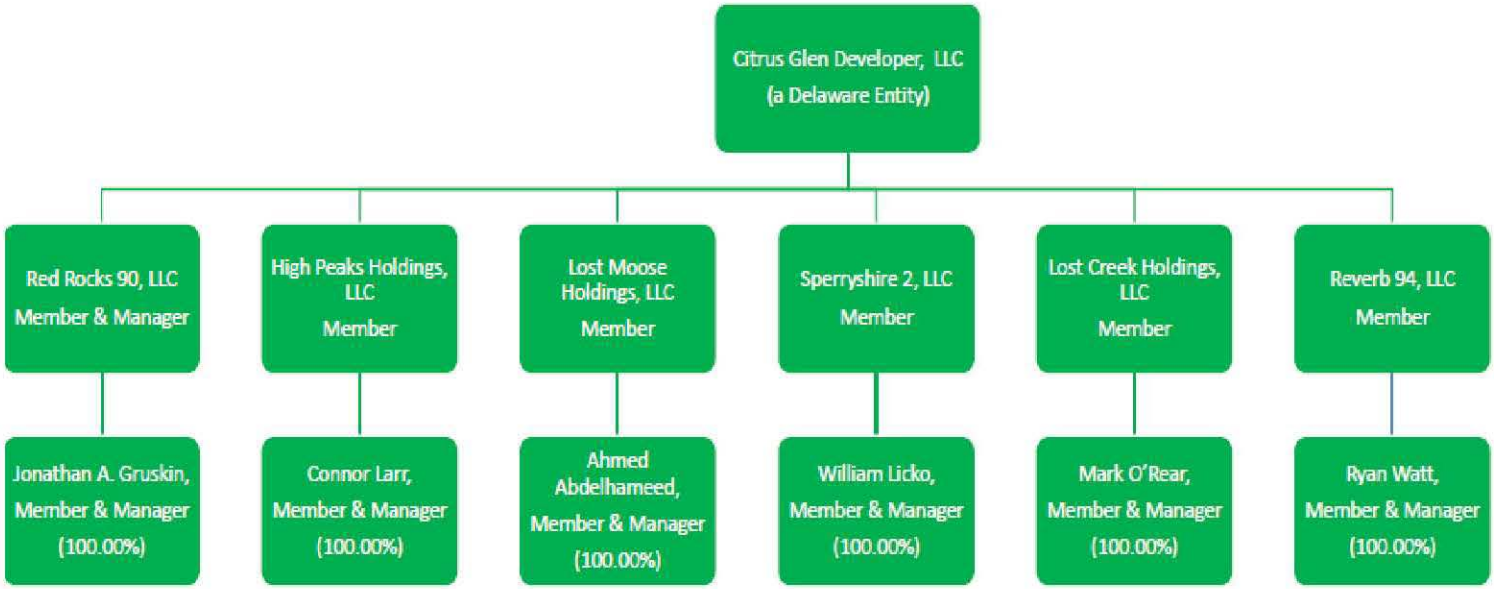
## Exhibit A - Current Petitioner Organizational Chart




## Exhibit B – Proposed Petitioner Organizational Structure



## Exhibit C – Current Developer Organizational Structure




## Exhibit D – Proposed Developer Organizational Structure

