STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2022-007VW

MILLENNIA JACKSONVILLE FL TC, LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

RECEIVED
FEB 3 2022 8:00 AM
FLORIDA HOUSING FINANCE CORPORATION

AMENDED PETITION FOR WAIVER OF RULE 67-21.003(8)(i) TO DECREASE THE TOTAL NUMBER OF UNITS

MILLENNIA JACKSONVILLE FL TC, LP, a Florida limited partnership, (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of Rule 67-21.003(8)(i), Florida Administrative Code ("F.A.C") (2018) to decrease the Total Number of Units from 200 to 188. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

MILLENNIA JACKSONVILLE FL TC, LP
4000 Key Tower, 127 Public Square
Cleveland, OH 44114-1309
Attn: Stephanie Sinito
Email: ssinito@mhmltd.com

2. For purposes of this petition, the address, telephone number, facsimile number, and email address of Petitioner's counsel is:

David F. Leon, Esq.
Nelson Mullins Riley and Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4276
Facsimile: (407) 425-8377
Email: david.leon@nelsonmullins.com

B. THE DEVELOPMENT

3. Petitioner is the owner of a portfolio of 4 multifamily residential developments located in Duval County, Florida (the "Portfolio"). Petitioner's acquisition, rehabilitation, installation and equipping of the developments in the Portfolio was financed, in part, by a loan in the principal amount of up to $81,600,000 (the "Loan") from the JACKSONVILLE HOUSING FINANCE AUTHORITY (the "JHFA") that was financed by the proceeds of multifamily housing revenue bonds (the "Bonds"). On October 24, 2018, the JHFA issued the Bonds and disbursed a portion of the Loan to Petitioner.

4. One of the developments in the Portfolio is that certain 200-unit multifamily residential development commonly known as CALLOWAY COVE (the "Development"). On or about August 2018, Petitioner submitted its Non-Competitive 4% Application Package (Rev. 05-2018) for Non-Competitive Housing Credits (the "Application") to the Corporation and requested an annual amount of $1,223,380.00 in Housing Credits to assist in financing the acquisition and rehabilitation of the Development.

5. In Section 6c.(1) of the Application, Petitioner indicated that the Total number of units in the Development would be 200 (the "Total Number of Units"). However, in July 2019, Building G of the Development, which has twelve (12) of the units, was irreparably damaged by fire from a natural gas explosion (the "Fire"), and the Total Number of Units in the Development has been reduced from 200 to 188. Therefore, Petitioner seeks to remove those twelve (12) units

from the Total Number of Units as they cannot be replaced due to the prohibitive cost to reconstruct Building G.

C. THE RULE FROM WHICH WAIVER IS SOUGHT

6. Petitioner requests a waiver from Rule 67-21.003(8)(i), F.A.C. (2018) (the "Rule"), which provides:

> **67-21.003 – Application and Selection Process for Developments.**
>
> * * *
>
> (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**:
>
> * * *
>
> (i) **Total number of units;…**
>
> (Emphasis added.)

D. STATUTES IMPLEMENTED BY THE RULES

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See §§ 420.509, 420.5099, Fla. Stat.

E. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

8. Petitioner requests a waiver of the Rule to decrease the total number of units from 200 to 188.

9. Petitioner was originally underwritten for the Total Number of Units that was submitted in the Application. Petitioner demonstrated eligibility for Housing Credits, as evidenced by that certain Preliminary Determination Certificate dated December 11, 2020 (the "CUR").

10. Subsequent to Petitioner's submission of the Application, but prior to receipt of the CUR, Building G of the Development, which had twelve (12) units was damaged by the Fire which also resulted in serious personal injuries.

11. Petitioner acknowledges that the CUR issued in December 2020 contemplated and incorporated the costs to repair Building G. However, for the reasons outlined more fully below, up until the time of issuance of the CUR in December 2020, Petitioner's understanding of the extent of the damage to Building G was very limited. In fact, it was not until January 2021, that Petitioner was finally able to complete a thorough damage/repair assessment and it was determined that Building G should be demolished rather than repaired.

12. First, as a result of the Fire, Building G was the subject of numerous investigations by a multitude of insurance adjusters, law enforcement agencies, HUD, local government agencies, personal injury attorneys and their retained professional investigators. Given the significant litigation risk posed by the serious personal injuries resulting from the Fire, Petitioner had to be exceedingly cautious in how it proceeded with respect to Building G. For example, spoliation of evidence claims could result in punitive damage claims that would easily dwarf the costs to demolish and/or construct a new building.

13. And even after the personal injury plaintiffs' experts completed their inspections of Building G in late October 2019, Petitioner continued to work with the other former residents to try to retrieve as much of their personal belongings as possible from the damaged building.

14. Further complicating matters was the fact the Building G had asbestos-containing components that had to be abated prior to any further work being done on Building G.

15. Then, beginning in February 2020, the public health emergency caused by the COVID-19 pandemic, further delayed Petitioner's preservation/rehabilitation process at the

Development and greatly hampered work on Building G. As have other housing developers, Petitioner has experienced significant staffing issues because of increasing numbers of workers becoming infected with the virus and other workers having to quarantine as a result.

16. Adding yet another hurdle to the preservation/rehabilitation process, while Petitioner was negotiating the contracts for the partial demolition and abatement of the asbestos, the City of Jacksonville, Florida issued a Notice of Condemnation. This issue was finally resolved with the City in December 2020 and a demolition permit for the partial demolition was acquired.

17. As soon as a contract was approved and a Notice to Proceed was issued, the partial demolition and abatement work on Building G commenced on December 7, 2020 and was completed on January 11, 2021. It was only after this work was done that The Architectural Team Company ("TAT") was able to conduct a closer inspection of Building G. TAT determined that the building should be completely demolished rather than repaired, noting in its report that:

a. The existing brick walls have been heavily damaged by fire;

b. New roof tie-down anchors will be needed throughout the building, even in non-damaged portions; and

c. Existing brick and masonry walls are not tied together and need to be structurally connected.

18. Petitioner is unable to replace Building G because the estimated cost to reconstruct Building G would exceed $2.3 million, but insurance proceeds received for damage caused by the Fire totaled only $864,000. Because of the prohibitive cost to rebuild, Petitioner will instead demolish Building G and rehab the open space into common green space.

19. Petitioner further notes that although Building G will not be repaired/replaced, the increased Development Costs reflected on page 2 of the CUR for “necessary rehab work which

was unexpectedly discovered during the demolition process, as well as [the Fire]" will nevertheless remain the same. As a result of the Fire, Petitioner conducted gas line testing at all of the developments in the Portfolio as a precaution. As a result of the gas line testing, Petitioner had to make costly repairs to the Development and the other properties in the Portfolio, including completely replacing all the gas lines at Petitioner's Valencia Way property.

20. Petitioner submits that, even with the loss of the 12 units in Building G, the Debt Service Coverage Ratio will nevertheless remain above 1.10 where (a) since issuance of the CUR, Petitioner has received two Operating Cost Adjustment Factor increases to overall rents; and (b) since construction completion and as the Development approaches stabilization, operating expenses have continued to decrease.

21. Accordingly, Petitioner requests a waiver from, or variance to, the Rule to enable Petitioner to revise the Total Number of Units.

22. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance 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[1] *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. *See* § 120.542(2), Fla. Stat.

23. Here, Petitioner meets the requirements for the waiver or variance. The requested waiver will not adversely impact the Development or the Corporation and will ensure that the 188

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "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. *See* Fla. Stat. § 120.542.

affordable housing units of the Development will be preserved and made available for the target population in Duval County. However, strict application of the Rule will result in substantial hardship to Petitioner as Petitioner is unable to replace the damaged units due to the large cost in excess of the insurance proceeds. Without a waiver of, or variance from, the Rule, Petition will be out of compliance with the set-aside commitment made in the Application and will potentially lose its Housing Credits. A loss of the Housing Credits will cause substantial and unnecessary financial and operational hardship due to the commitments made by the investor of the Petitioner with respect to certain financial obligations which are contingent on the receipt of Housing Credits, which obligations have been critical to Petitioner's acquisition and rehabilitation of the Development. A loss of the Housing Credits at this time will undoubtedly trigger various defaults and have a substantial impact on Petitioner's ability to maintain the Development as committed to.

24. The requested waiver serves the purpose of the Statute that is implemented by the rules. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting these waivers, Petitioner will be able to obtain the needed Housing Credits and avoid suffering financial and administrative hardship, and the Corporation would recognize the goal of providing persons of low-income with of affordable housing through private investment.

E. TYPE OF WAIVER

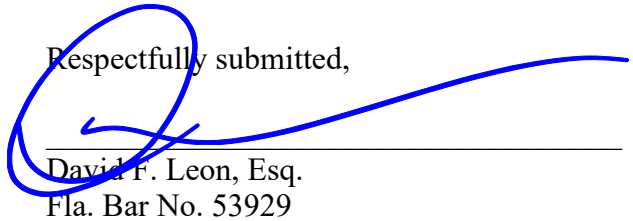
11. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

12. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of the Rule; (*ii*) grant the requested reduction in the total number of units from 200 to 188, (*iii*) grant the Petition and all the relief requested herein, and (*iv*) grant such further relief as it may deem appropriate.

Respectfully submitted the 2nd day of February, 2022.

Respectfully submitted,



David F. Leon, Esq.
Fla. Bar No. 53929
Nelson Mullins Riley and Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, FL 32801
Telephone: (407) 839-4276
Facsimile: (407) 425-8377
Email: david.leon@nelsonmullins.com
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

The 2nd day of February, 2022.

By: _____
David F. Leon, Esq.
Fla. Bar No. 53929