STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FINANCE CORPORATION

EMERALD VILLAS PHASE THREE, LLC
a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2024-020VW
Application No. 2022-103B/2022-534C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

**PETITION FOR WAIVER OF RULE 67-21.003(1)(b) (07/06/2022) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (REV. 04-2022)**

Petitioner Emerald Villas Phase Three, LLC (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.") (07/06/2022) ("Rule") and the Non-Competitive Application Instructions (Rev. 04-2022) ("NCA") against changing the principals of the Applicant identified in the Application prior to Multifamily Mortgage Revenue Bond ("MMRB") loan closing. Petitioner must update its structure now, as opposed to waiting until after MMRB loan closing for consistency purposes. Because 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. 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:

Alberto Milo, Jr.
Related Urban Development Group
2850 Tigertail Avenue, Suite 800
Miami, FL 33133
Phone: (305) 460-9900
Fax: N/A
Email: amilo@relatedgroup.com

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

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
bmcdonough@stearnsweaver.com
Tel: (305) 789-3350
Fax: (305) 789-3395

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson
106 East College Avenue, Suite 700
Tallahassee, FL 32301
bsmitha@stearnsweaver.com
Direct: 850-329-4852
Fax: 850-329-4844

**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: Emerald Villas Phase Three
- Development Address: 5845 El Segundo Way, Orlando, FL 32808
- County: Orange County
- Developer: Emerald Villas Phase Three Developer, LLC
- Number of Units: 90
- Type: garden apartments (new construction)

- Set Asides: 25.556% (23 units) at or below 50% AMI; 62.222% (56 units) at or below 60% AMI; and 12.222% (11 units) at or below 80% AMI.
- Demographics: Family
- Funding: $12,000,000 Corporation-issued MMRB and $1,188,934 Non-Competitive Housing Credits (annual amount as approved in the credit underwriting report at the March 26, 2024 Board Meeting)

**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. (07/06/22) which provides in pertinent part:

> (1) Unless otherwise set forth in a competitive solicitation pursuant to rule Chapter 67-60, F.A.C., Applicants shall apply for 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 Non-Competitive HC or a combination of MMRB and Non-Competitive HC, and funding from the Predevelopment Loan Program (PLP) will not be considered to be other Corporation funding.
>
> ***
>
> (b) If the NC Award will not be 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. 04-2022) 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-14387, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

This Rule incorporates by reference the NCA Package (Rev. 04-2022). The NCA Package includes the following requirement at Part A.6.b(2):

> 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 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. Any allowable replacement to the natural person Principals of a Public Housing Authority or officers and/or directors of a non-profit entity will apply to all preliminarily awarded Applications and Applications pending final Board action that include the Public Housing Authority or non-profit entity.

*Id.* at p. 4 (emphasis added); available at available at https://www.floridahousing.org/docs/default-source/programs/non-competitive/complete-non-competitive-application-package1ea29ac2fb0d6fb69bf3ff00004a6e0f.pdf?sfvrsn=1aaff57b_2

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. STATUTES IMPLEMENTED BY THE RULE.**

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

- Section 420.502, Legislative findings.
- Section 420.503, Definitions.
- 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.

8. 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.

## F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND NCA INSTRUCTIONS.

9. Petitioner submitted non-competitive application number 2022-103B/2022-534C (the "Application") for the Development on February 1, 2022. A new application (Rev. 4-2022) with an application fee was submitted on April 4, 2023, to allow for the extension of the allocation offered in the initial application submitted in February 2022.

10. In the Application, Applicant disclosed that, at the second principal disclosure level, Milo Family Real Estate Investments, LLC[1] is a member of Emerald Villas Phase Three Manager, LLC.[2] At the third level, Applicant disclosed the principals of Milo Family Real Estate Investments, LLC as two natural persons: Alberto Milo, Jr. (50% member and manager) and Maria C. Milo (50% member and manager). These two natural persons are husband and wife and own 97% of Milo Family Real Estate Investments, LLC as tenants by the entirety (a special form of joint ownership between married couples), and split ownership of the remaining

[1] Milo Family Real Estate Investments, LLC is also a member of the developer (Emerald Villas Phase Three Developer, LLC). However, because Mr. and Mrs. Milo were disclosed as natural person principals of the developer, and the Principals of the Applicant and Developer(s) Disclosure Form (Form Rev. 05-2019) did not require that they specify the percentages of their ownership interests, no similar clarification is requested in relation to the Developer's principal disclosures or organizational structure.

[2] Emerald Villas Phase Three Manager, LLC was disclosed at the first level as the manager, as well as a 0.0051% non-investor member, of the Applicant.

3% in their individual capacities. There is no rule or requirement that Applicant include descriptive language in its principal disclosure specifying that a certain percentage is owned as tenants by the entireties. However, such descriptive language has been included in the principal disclosures for other applications involving Milo Family Real Estate Investments, LLC (see, *e.g.*, Residences at SoMi Parc, Residences at Marina Village, and Tampa 47th Street Apartments). Accordingly, for purposes of consistency, Applicant respectfully requests approval to substitute the attached "Current" principal disclosure form with the attached "Proposed" principal disclosure form. The changes within those forms are limited to:

| **Current Form** | **Proposed Form** |
|---|---|
| Line 111: Milo, Alberto Jr. (Manager, 50%) | Line 111: Milo, Alberto Jr. (Manager, 0%)[3] |
| Line 112: Milo, Alberto Jr. (Member, 50%)[4] | Line 112: Milo, Alberto Jr. (Member, 1.5%) |
| | Line 113: Milo, Alberto Jr.; Tenants by the Entireties (Member, 48.5%) |
| Line 113: Milo, Maria C. (Manager, 50%) | Line 114: Milo, Maria C. (Manager, 0%)[5] |
| Line 114: Milo, Maria C. (Member 50%)[6] | Line 115: Milo, Maria C. (Member, 1.5%) |
| | Line 116: Milo, Maria C.; Tenants by the Entireties (Member, 48.5%) |
| Line 121: Milo, Alberto Jr. (Manager, 50%) | Line 123: Milo, Alberto Jr. (Manager, 0%)[7] |
| Line 122: Milo, Alberto Jr. (Member, 50%)[8] | Line 124: Milo, Alberto Jr. (Member, 1.5%) |
| | Line 125: Milo, Alberto Jr.; Tenants by the Entireties (Member, 48.5%) |

[3] This change is made to clarify that Mr. Milo owns the interests solely in his capacity as a member, and not in his capacity as a manager.

[4] Mr.. Milo's 50% membership interest is being separated as: 1.5% owned individually and 48.5% owned as tenants by the entirety.

[5] This change is made to clarify that Mrs. Milo owns the interests solely in her capacity as a member, and not in her capacity as a manager.

[6] Mrs.. Milo's 50% membership interest is being separated as: 1.5% owned individually and 48.5% owned as tenants by the entirety.

[7] This change is made to clarify that Mr. Milo owns the interests solely in his capacity as a member, and not in his capacity as a manager.

[8] Mr.. Milo's 50% membership interest is being separated as: 1.5% owned individually and 48.5% owned as tenants by the entirety.

| | |
|---|---|
| Line 123: Milo, Maria C. (Manager, 50%) | Line 126: Milo, Maria C. (Manager, 0%)[9] |
| Line 124: Milo, Maria C. (Member 50%)[10] | Line 127: Milo, Maria C. (Member, 1.5%) |
| | Line 128: Milo, Maria C.; Tenants by the Entireties (Member, 48.5%) |

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).

11. If this request for waiver is denied, it will create an inconsistency with principal disclosures submitted in conjunction with other developments, necessitating that they all request to amend their principal disclosures. If the Petition is granted, the natural person principals identified in the Application will remain the same; they will simply provide notice that a portion of their interest is held as tenants by the entireties – a designation that is not required to be included in the Application. Neither Florida Housing nor the Development would be prejudiced by the inclusion of this information. Rather, Florida Housing would be benefitted by the specification.

12. 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 persons that might exert control over the Development. Here, the natural persons exerting control over the Development were disclosed in the Application. The changes sought are only to provide specification as to the type of ownership of the membership held by the natural person principals of Milo Family Real Estate Investments, LLC, appearing at the third level. The requested waiver should not, therefore, cause concern for

[9] This change is made to clarify that Mrs. Milo owns the interests solely in her capacity as a member, and not in her capacity as a manager.

[10] Mrs.. Milo's 50% membership interest is being separated as: 1.5% owned individually and 48.5% owned as tenants by the entirety.

Florida Housing. Since 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.

13. 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,[11] 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. (2019).

14. 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.

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

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

**G. <u>ACTION REQUESTED.</u>**

17. 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

[11] "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.

structure to reflect the attached Exhibit B prior to the MMRB loan closing; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

*Counsel for Petitioner*

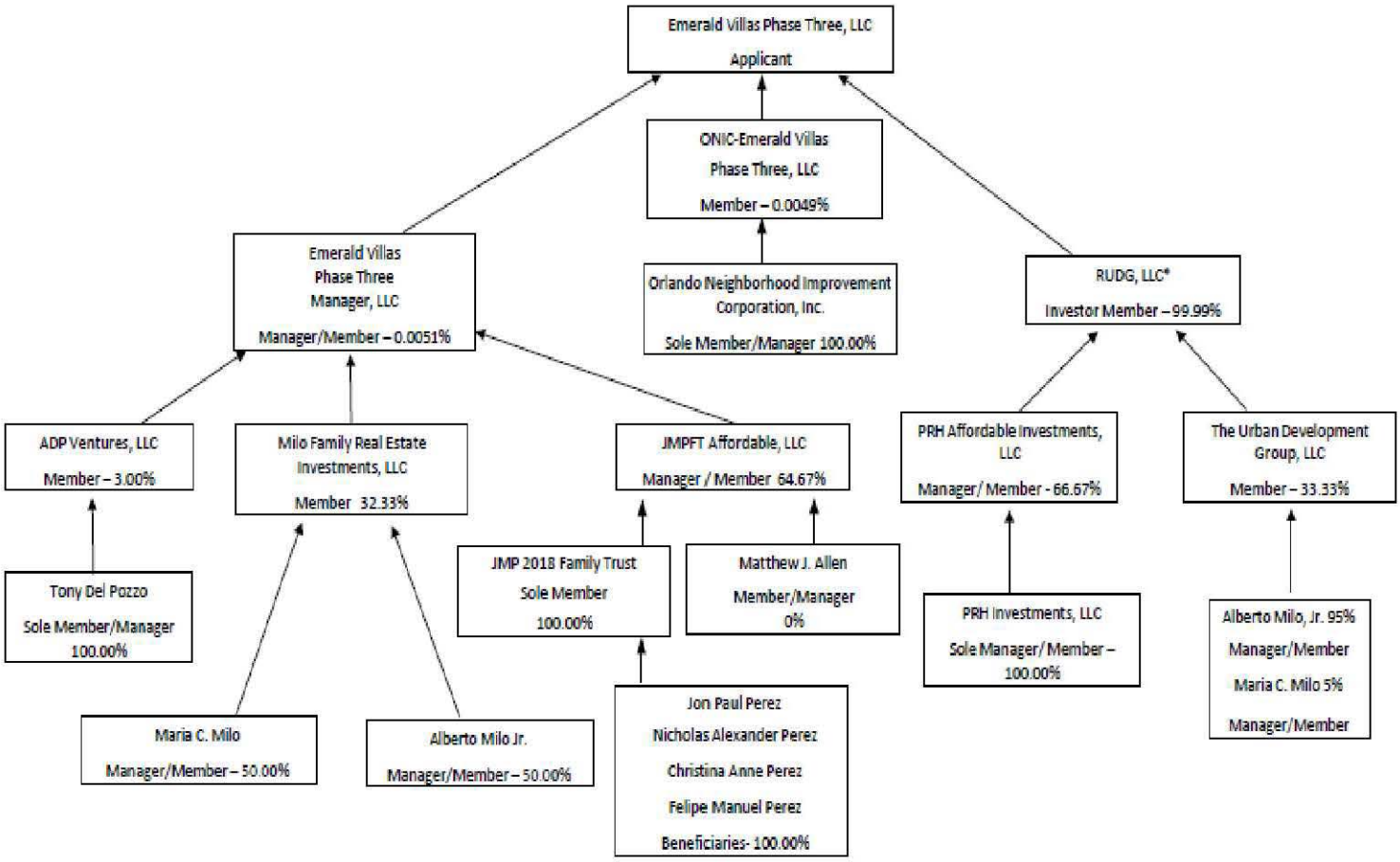
By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

**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 17th day of April, 2024.

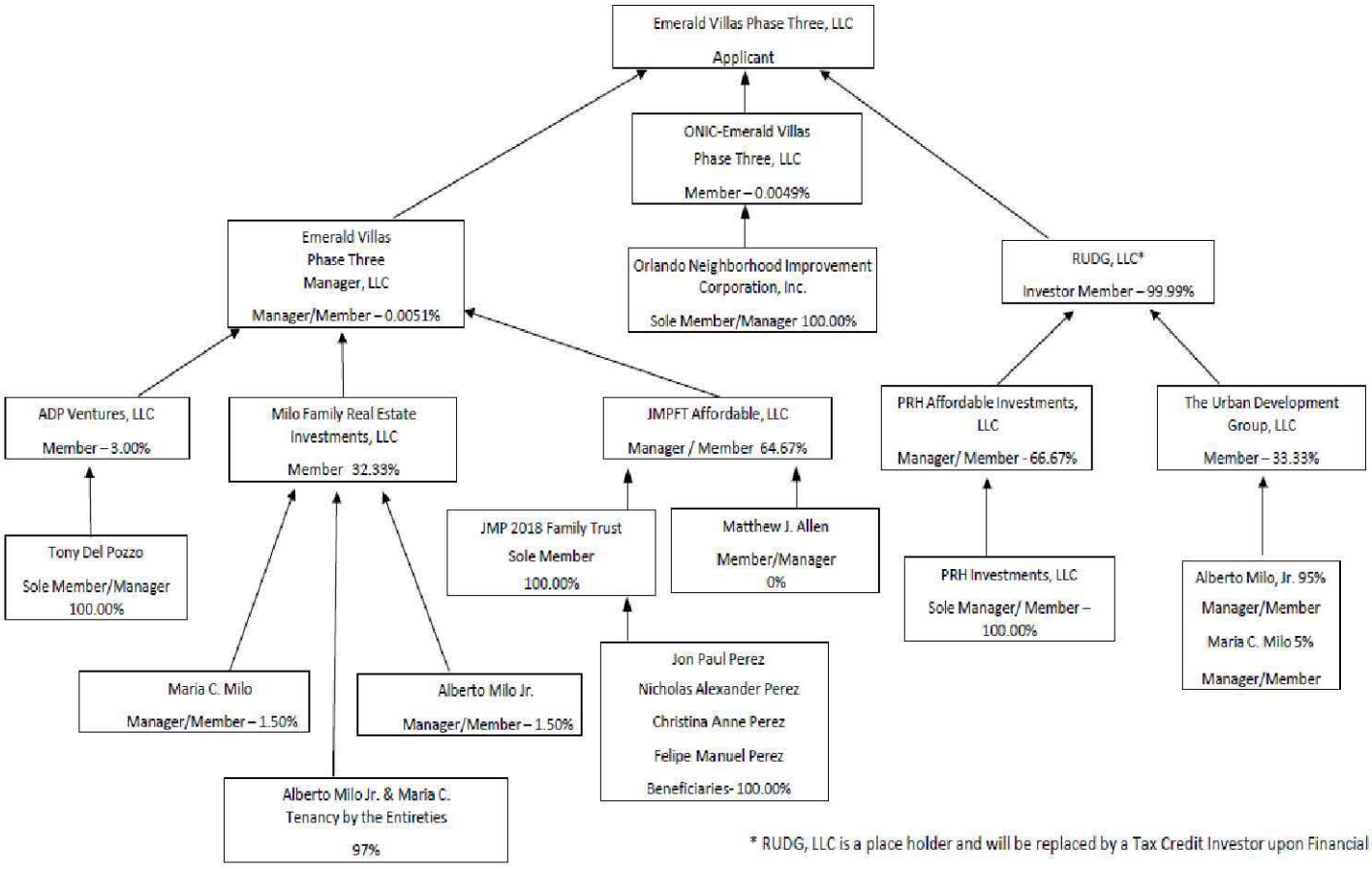
By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.

## Exhibit A - Current Applicant Organizational Chart




* RUDG, LLC is a place holder and will be replaced by a Tax Credit Investor upon Financial Closing.

## Exhibit B – Proposed Applicant Organizational Structure




* RUDG, LLC is a place holder and will be replaced by a Tax Credit Investor upon Financial Closing.