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STATE OF FLORIDA
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TAMPA 47TH STREET APARTMENTS, LLC,
a Florida limited liability company,

Petitioner,

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2024-046VW
Application No. 2024-058SN; 2023-527C
RFA 2023-205

PETITION TO WAIVE RULES 67-48.004(3)(i) AND 67-21.003(8)(h), F.A.C. (6/28/23) AND FOR BOARD APPROVAL

Tampa 47th Street Apartments, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.004(3)(i) and Rule 67-21.003(8)(h), Florida Administrative Code ("F.A.C.") effective June 28, 2023 (the "Rules"), which prohibit decreasing the total number of units identified in the application. After Petitioner submitted Application No. 2024-058SN/2023-527C (the "Application") in response to RFA 2023-205 SAIL Financing Of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bond Financing And Non-Competitive Housing Credits (the "RFA"), Petitioner determined that the building configuration on the site was not practicable with an odd number of units given the proximity of the buildings to tree root and canopy protective zones. Accordingly, Petitioner seeks to decrease[1] the total number of units by less than 1% (*i.e.*, a 0.57% change), from 175 to

[1] Petitioner seeks a decrease because increasing the total number of units would require numerous trees to be cut down that could otherwise remain standing. The development site is currently wooded and undeveloped with many grand oak trees. Petitioner has worked diligently with its design team to work around these trees as best as possible to preserve the beautiful tree canopy.

174 units. Additionally, Petitioner seeks Board approval to correct a scrivener's error appearing at the third principal disclosure level. 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.
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 are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
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Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
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Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's Application:

- Development Name: Tampa 47th Street Apartments
- Development Address: 5709 North 47th Street, Tampa, Hillsborough County, Florida 33610
- County: Hillsborough
- Developer: Tampa 47th Street Apartments Developer, LLC

- Number of Units: 175 newly constructed units were identified in the Application, but Petitioner respectfully requests approval to decrease this amount to 174 units

- Type: Garden Apartments

- Set Asides: in the Application, Petitioner identified set asides of 35 units (20%) at or below 30% AMI (includes NHTF), 88 units (50.286%) at or below 60% AMI, and 52 units (29.714%) at or below 80% AMI, and 5 units (2.8%) at or below 22% AMI for NHTF Funds (treated as 60% AMI units for income averaging purposes). If this Petition is granted, the set asides will be revised as follows: 5 units (2.8%) at or below 22% AMI for NHTF Funds (treated as 60% AMI units for income averaging purposes); 43 units (27.586%) at or below 30% AMI (includes NHTF), 64 units (36.782%) at or below 60% AMI, and 62 units (35.632%) at or below 80% AMI

- Demographics: Family

- Funding: $7,000,000 SAIL; $750,000 ELI; $1,375,000 NHTF; $2,299,803 Housing Credits (annual amount)

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULES FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.004(3)(i), F.A.C., effective June 28, 2023, which provides in pertinent part:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
>
> ***
>
> (i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

Id. Petitioner also seeks a waiver of Rule 67-21.003(8)(h), F.A.C., effective June 28, 2023, which similarly provides:

> (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:
>
> ***
>
> (h) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter Credit Underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development

Id.

E. <u>THE NCA AND RFA PROVISIONS PURSUANT TO WHICH BOARD APPROVAL IS SOUGHT.</u>

6. The Non-Competitive Application Package ("NCA")[2] states:

> Prior to loan closing, any change (materially or non-materially*) in the ownership structure of the named Applicant will require review and recommendation of the Corporation, as well as Board approval prior to the change. After loan closing, (i) any material* change will require review and approval of the Credit Underwriter, as well as approval of the Board prior to the change, and (ii) any non-material* change will require review and approval of the Corporation prior to the change. Changes to the Applicant entity (material or non-material*) prior to the loan closing or without Board or Corporation approval, as applicable, after the loan closing may result in disqualification from receiving funding and may be deemed a material misrepresentation. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapters 67-21 and 67-48, F.A.C. for the duration of the Compliance Period. Changes to 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, if a change to the investor limited partner or investor member is made after the closing of the partnership agreement, the amended agreement reflecting the change must be provided to the Corporation. Changes to the officers or directors

[2] Rule 67-21.003(1), F.A.C. (06/28/2023) incorporated by reference NCA (Rev. 06-2023), which is available at http://www.flrules.org/Gateway/reference.asp?No=Ref-15428

of a Public Housing Authority or a Non-Profit entity, regardless of when they occur, 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.*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.

Id.

7. The RFA similarly states:

(4) Material and non-material changes to the Applicant entity or Developer entity

***

(b) Prior to loan closing, any change (materially or non-materially*) in the ownership structure of the named Applicant will require review and recommendation of the Corporation, as well as Board approval prior to the change. After loan closing, (i) any material* change will require review and approval of the Credit Underwriter, as well as approval of the Board prior to the change, and (ii) any non-material* change will require review and approval of the Corporation prior to the change. Changes to the Applicant entity (material or non-material*) prior to the loan closing or without Board or Corporation approval, as applicable, after the loan closing may result in disqualification from receiving funding and may be deemed a material misrepresentation. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapters 67-21 and 67-48, F.A.C. for the duration of the Compliance Period. . . . *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.

RFA Section 4, A.3.c.(4)(b). Because Petitioner is seeking to correct a scrivener's error prior to the loan closing, Board approval is necessary.

F. STATUTES IMPLEMENTED BY THE RULES.

8. Rule 67-48.004(3)(i), F.A.C., 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 420.5087, State Apartment Incentive Loan Program.
- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

9. 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. <u>JUSTIFICATION FOR GRANTING WAIVER OF THE RULES.</u>

10. Petitioner submitted the Application on August 3, 2023.

11. Initially, Petitioner intended for the Development to be composed of 175 units.

12. However, due to the location of trees on the Development site, the building configuration is impractical with an odd number of units. Specifically, the development site is a heavily wooded site that has never been developed before, with multiple 100+ year old Grand Oak trees on site. Petitioner has maximized the layouts of the garden style, 3-story buildings while impacting these existing trees as little as possible. Four of the buildings are comprised of 36 units (12 units per floor x 3 floors) and one building is comprised of 30 units (10 units x 3 floors), which configuration totals 174 units. Petitioner attempted to expand one of the buildings to capture the additional unit necessary to yield 175 total units, but found the layout would not be feasible due to the adjacent trees as the buildings are already dangerously close to the tree root and canopy protective zones.

13. Petitioner would therefore like to reduce the total number by one unit (*i.e.*, a 0.57% reduction from 175 to 174 units).

14. While an even number of units could also be achieved by adding a unit, increasing the total number of units to 176 would require numerous trees to be cut down. Because trees provide natural beauty, shade, erosion control, and wildlife habitat (and removing trees increases Development costs related to planning, permit approval, labor, and disposal), Petitioner would like to avoid cutting down additional trees where possible.

15. If this Petition is granted, and Petitioner is able to decrease the total number of units in the Application by one unit, no prejudice would occur.

16. In contrast, if the Petition is denied, Petitioner must cut down a substantial number of trees that could otherwise remain in place.

17. 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,[3] 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.

18. If the Rules are imposed, Petitioner will suffer the substantial and unnecessary economic and operational hardship described above.

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[3] "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.

19. Petitioner meets the standards for granting the requested waiver. Granting the waiver will serve the purposes of the Rules and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

H. JUSTIFICATION FOR GRANTING BOARD APPROVAL.

20. Petitioner seeks Board approval so that it may amend its organizational structure from the current chart attached as Exhibit A to the proposed chart attached as Exhibit B.

21. In the Application, Petitioner accurately disclosed at the second principal disclosure level that Milo Family Real Estate Investments, LLC is a member (32.33%) of Tampa 47th Street Apartments Manager, LLC.[4] The members of Milo Family Real Estate Investments, LLC are a married couple: Alberto Milo, Jr. and Maria C. Milo. As husband and wife, they own 97%[5] of Milo Family Real Estate Investments, LLC as tenants by the entirety (a special form of joint ownership between married couples). For other developments (*e.g.*, Residences at SoMi Parc, Residences at Marina Village, and Tampa 47th Street Apartments), Petitioner has disclosed this 97% interest as: Milo, Alberto Jr.; Tenant by the Entireties (48.5%) and Milo, Maria C.; Tenant by the Entireties (48.5%). Based on a scrivener's error, the 97% interest was disclosed in the Application as: Milo, Alberto Jr.; Tenant by the Entireties (97%) and Milo, Maria C.; Tenant by the Entireties (97%). To correct this error, petitioner respectfully requests approval to make the following changes to its principal disclosure form:

Current Form	Proposed Change
Line 109: Milo, Alberto Jr.; Tenant by the Entireties (Member, 97%)	Line 109: Milo, Alberto Jr.; Tenant by the Entireties (Member, 48.5%)
Line 110: Milo, Maria C.; Tenant by the Entireties (Member, 97%)	Line 110: Milo, Maria C.; Tenant by the Entireties (Member, 48.5%)

[4] Tampa 47th Street Apartments Manager, LLC was accurately disclosed in the Application at the first level as the manager and non-investor member (0.01%) of the Petitioner.

[5] Mr. and Mrs. Milo split the ownership of the remaining 3% in their individual capacities; *i.e.*, Alberto Milo, Jr. (1.5%) and Maria C. Milo (1.5%).

Line 121: Milo, Alberto Jr.; Tenant by the Entireties (Member, 97%)	Line 121: Milo, Alberto Jr.; Tenant by the Entireties (Member, 48.5%)
Line 122: Milo, Maria C.; Tenant by the Entireties (Member, 97%)	Line 122: Milo, Maria C.; Tenant by the Entireties (Member, 48.5%)

No other changes would be made to the principals or their percentage of interest. *Compare* Exhibit A (Current Organizational Structure) with Exhibit B (Proposed Organizational Structure).

22. If this request for approval 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 request is granted, the natural person principals identified in the Application will remain the same; the percentage held by each spouse as tenants by the entireties would simply be clarified. Neither Florida Housing nor the Development would be prejudiced by this request. Rather, Florida Housing would be benefitted by the clarification.

23. The changes sought are only to specify that each spouse holds an equal interest in the 97% membership of Milo Family Real Estate Investments, LLC held as tenants by the entireties at the third disclosure level. The requested waiver should not, therefore, cause concern for 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.

I. ACTION REQUESTED

24. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rules such that Petitioner may decrease the total number of units identified in the Application from 175 to 174; (ii) grant Board approval such that

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

Respectfully submitted,

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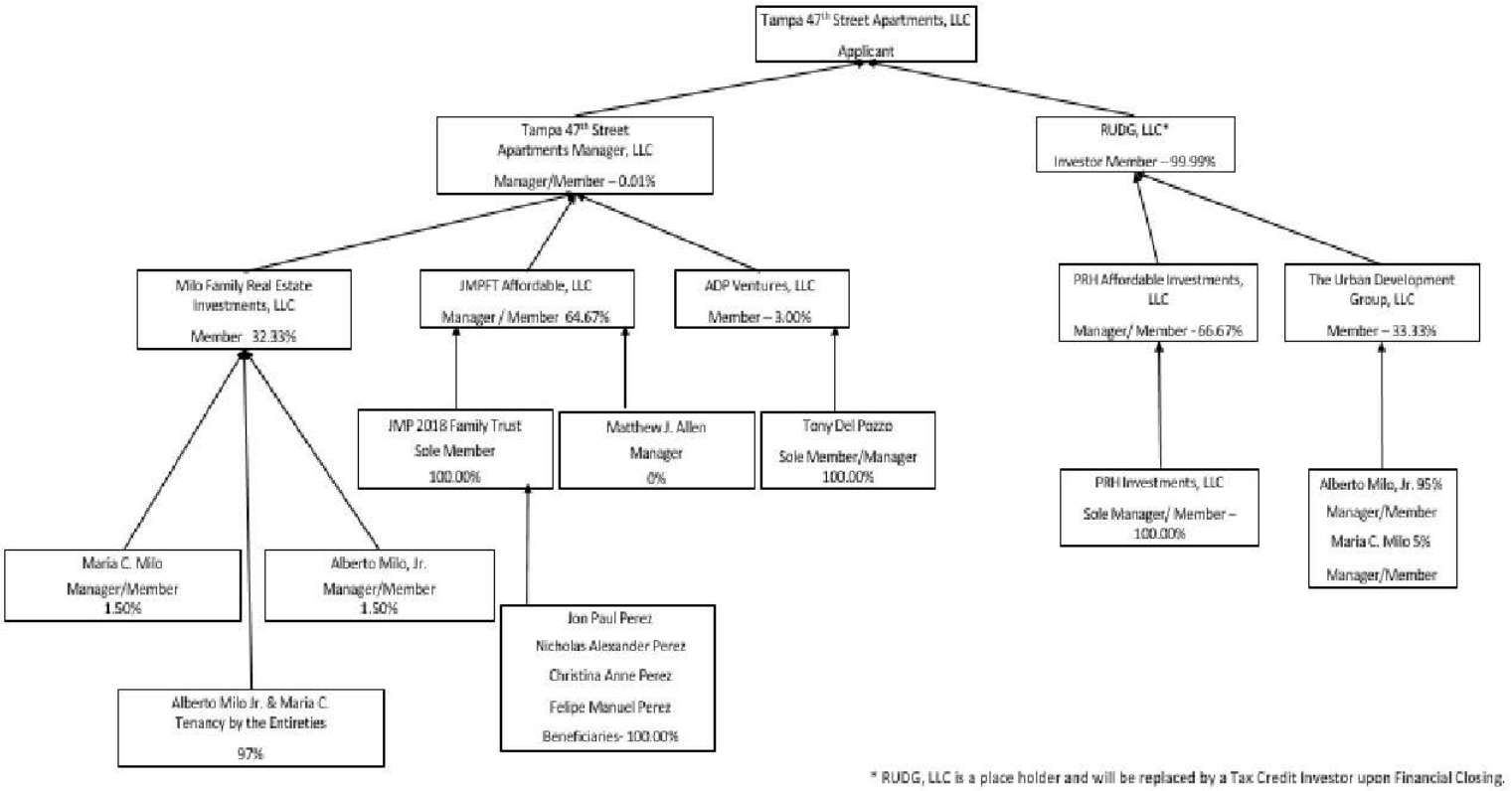
By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

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 a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 7th day of August, 2024.

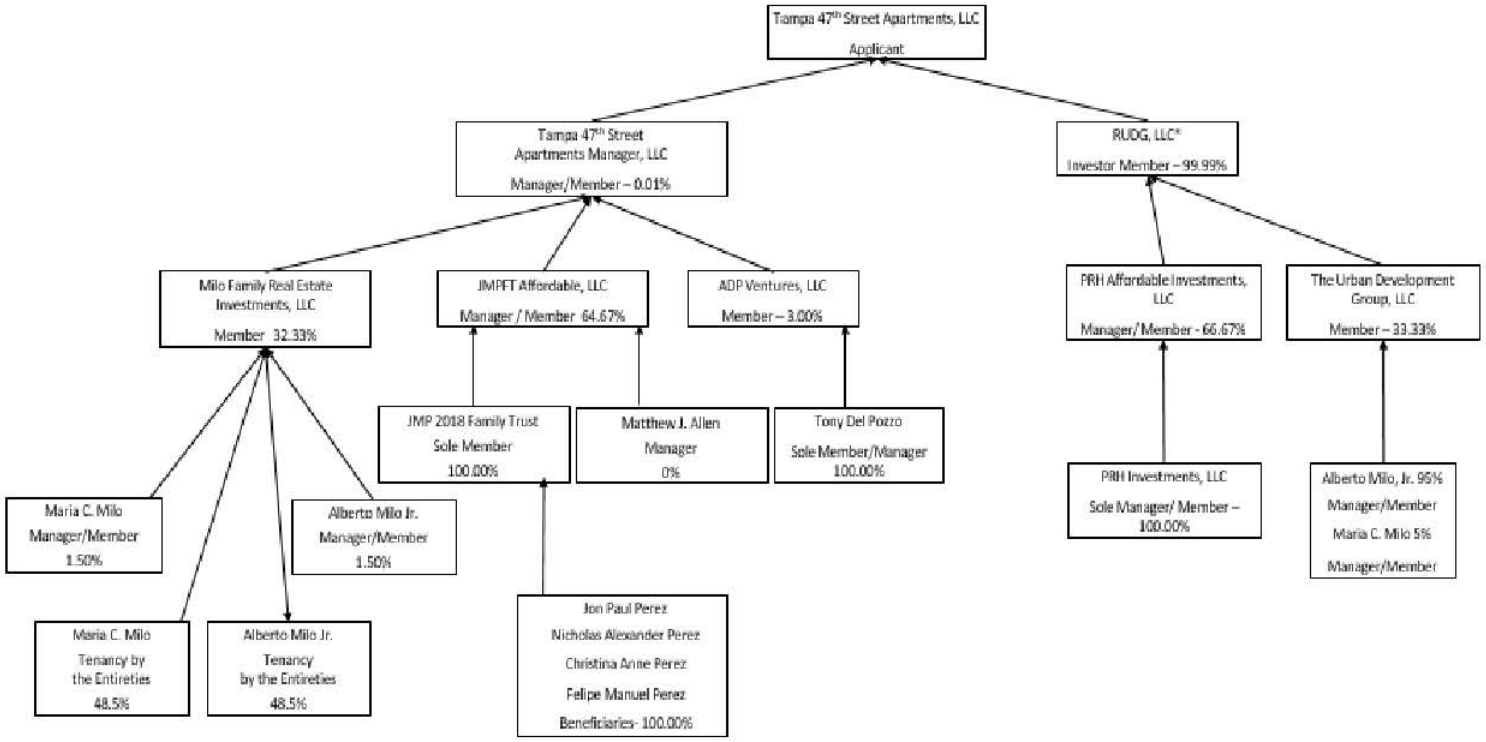
By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.

Exhibit A - Current Organizational Chart



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

Exhibit B – Proposed Organizational Structure



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