**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

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| In Re: MARQUIS PARTNERS, LTD. | FHFC CASE NO. 2022-043VW |
| WATER'S EDGE ASSOCIATES, LTD. | FHFC CASE NO. 2022-044VW |
| SOLIMAR ASSOCIATES, LTD. | FHFC CASE NO. 2022-045VW |

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**ORDER GRANTING WAIVER OF RULES 67-48.002(9), (93), AND (94), AND RULES 67-21.002(9) AND (85), FLA. ADMIN. CODE (2017 AND 2018) AND FOR BOARD APPROVAL**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 5, 2022, pursuant to three petitions for waiver ("Petitions"). Florida Housing Finance Corporation ("Florida Housing") received the Petitions on July 18, 2022, from three business entities associated with Cornerstone Group Development LLC. On July 19, 2022, Notice of the Petitions for Marquis Partners, Ltd, Water's Edge Associates, Ltd., and Solimar Associates, Ltd. were published in the Florida Administrative Register in Volume 48, Number 139. To date, Florida Housing has received no comments concerning the Petitions. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann McNamara DATE: 8/8/2022

2. For estate planning purposes, each Petitioner would like to replace one of its natural person principals at the second principal disclosure level with that person's Florida limited liability company, which has two trusts as its members that would be disclosed at the third principal disclosure level, and then disclose the natural person beneficiaries and trustees of the two trusts at the fourth principal disclosure level.

3. While this is now permitted under the current version of the rules, it was not permitted at the time the applications were submitted.

4. Rule 67-48.002(9) and (94), Fla. Admin. Code (2018) provide, in relevant part:

> (9) "Applicant" means any person or legal entity of the type and with the management and ownership structure described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to Rule Chapter 67-60, F.A.C., for one or more of the Corporation's programs. . . . Unless otherwise stated in a competitive solicitation, as used herein, a 'legal entity' means a legally formed corporation, limited partnership or limited liability company with a management and ownership structure that **consists exclusively of all natural persons by the third principal disclosure level.** . . . The terms 'first principal disclosure level' and 'third principal disclosure level' have the meanings attributed to them in the definition of "Principal."
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> (94) "Principal" means:
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> (a) With respect to an Applicant that is: . . . .
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> 2. A limited partnership, at the first principal disclosure level, any general partner or limited partner of the Applicant limited partnership, and, unless otherwise excluded at subsection 67-48.002(9),

F.A.C., with respect to any general partner or limited partner of the Applicant limited partnership, at the second principal disclosure level, that is:...

c. A limited liability company, any manager or member of the limited liability company, or ...

with respect to any entity identified at the second principal disclosure level that is:...

g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, each of whom must be a natural person, or...

(emphasis added).

5. Rules 67-21.002(9) and (85), Fla. Admin. Code (2018) and Rule 67-48.002(93), Fla. Admin. Code (2017) are essentially identical to Rules 67-48.002(9) and (94), Fla. Admin. Code.

6. Since the loans have already closed, Petitioners also request that the Board approve the changes to its organizational structure as required by Section 4.A.3.d.(3) of RFA 2018-116, which in relevant part provides:

For purposes of the following, 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. The name of the Applicant entity stated in the Application 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. The Applicant entity shall be the recipient of the Housing Credits, and the borrowing entity for the SAIL loan(s) and, if applicable, the MMRB loan, and cannot be changed in any way until after the closing of the loan(s). **After loan closing,** (a) any material change will require review

and approval of the Credit Underwriter, as well as approval of the Board prior to the change, and (b) **any non-material change will require review and approval of the Corporation, as well as approval of the Board prior to the change.** Changes to the Applicant entity (material or non-material) prior to the loan closing or without Board approval after the loan closing may result in disqualification from receiving funding and may be deemed a material misrepresentation. Changes to the officers or directors of a Public Housing Authority or the investor-limited partner of an Applicant limited partnership or the investor-member of an Applicant limited liability company owning the syndicating interest therein will not result in disqualification. (emphasis added).

7. Sections 4.A.3.d.(3) of RFA 2017-108 and of RFA 2018-114 are essentially identical to Section 4.A.3.d.(3) of RFA 2018-116.

8. In each of the three applications, the first principal disclosure level will not change.

9. In each of the three waiver requests, if granted, the limited liability company will be inserted at the second principal disclosure level, the members of which will be trusts, disclosed at the third principal disclosure level, with the natural persons as trustees and beneficiaries at the fourth principal disclosure level, as follows:

- At the second level, substitute MSM Interests, LLC for Mara S. Mades (25%)

- At the third level would appear the principals of MSM Interests, LLC (a) Mara S. Mades (Manager); (b) Mara S. Mades Revocable Trust (60%, Member); and (c) Mades Family Trust (40%, Member)

- At the fourth level would appear the principals of the trust:

- For the Mara S. Mades Revocable Trust, Mara S. Mades would be the trustee and beneficiary.
- For the Mades Family Trust, Jackson R. Mades would be the beneficiary and Jodie Susan Bakes would serve as the trustee.

10. Petitioners state that allowing the organizational structure to remain unchanged will create an immense administrative burden upon Ms. Mades's passing as her interest will have to pass through probate rather than be governed by trusts.

11. Further, Petitioners state that if the Petition is granted, the natural person beneficiaries will be the same natural person identified in the Application. Moreover, half of the trustees would likewise be the same natural person disclosed in the Application (because the Mades Family Trust is a grantor trust, Ms. Mades cannot be the trustee of that trust).

12. In addition, Petitioners state Florida Housing would not be prejudiced by the addition of the passive trusts. Rule 67-21.0025(7)(d) and Rule 67-48.0075(8)(d), Fla. Admin. Code, effective July 11, 2019, expressly permit the structure sought here. Petitioners assert that upon its information and belief, the

purpose of the requirement to identify all natural persons by or at the third level is to ensure all persons that might exert control over the Development are disclosed. Upon further information and belief, Florida Housing provided the exception for trusts to appear at the third level under Rule 67-21.0025(7)(d) and Rule 67-48.0075(8)(d), Fla. Admin. Code, because Florida Housing recognized the unique purpose and properties of trusts and understood that disclosing a trust at the third level provides the same degree of comfort as disclosing a natural person (so long as that trust only has natural person beneficiaries and trustees). Here, all of the principals of the trusts are natural persons - no fictitious entities will be disclosed beyond the third level if the Petition is granted. Additionally, all of the beneficiaries were previously disclosed in the Application. Accordingly, Petitioners allege that granting the Petition - and allowing the trusts to be inserted into the third level - should not impact Florida Housing's confidence in the Development, Petitioners or its principals.

13. Petitioners wish to make these organizational changes for estate planning purposes so that the trusts can be held by a limited liability company. If the waiver requests are denied, the members of the applicant entities will suffer a substantial and unnecessary operational hardship. As noted above, Florida Housing revised its rules in 2019 to expressly permit these same organizational structures.

14. The Board finds that granting the waivers will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

15. Section 120.542(2), Florida Statutes provides in pertinent part:

> 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.

16. Petitioners have demonstrated that the waivers are needed in order to efficiently serve low-income residents. Petitioners have also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waivers are granted.

17. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioners, and that granting these requests furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED as follows:**

1. Marquis Partners, Ltd.'s request for waiver of Rules 67-48.002(9) and (94), and Rules 67-21.002(9) and (85), Fla. Admin. Code (2018), is hereby **GRANTED** to allow the Petitioner to change its organizational structure post-

closing and permit Petitioner to insert a limited liability company at the second disclosure level causing the trusts to be disclosed at the third principal disclosure level and the natural person principal trustees and beneficiaries to be disclosed at the fourth principal disclosure level, as described above.

2. Water's Edge Associates, Ltd.'s request for waiver of Rules 67-48.002(9) and (93), and Rules 67-21.002(9) and (85), Fla. Admin. Code (2017), is hereby **GRANTED** to allow the Petitioner to change its organizational structure post-closing and permit Petitioner to insert a limited liability company at the second disclosure level causing the trusts to be disclosed at the third principal disclosure level and the natural person principal trustees and beneficiaries to be disclosed at the fourth principal disclosure level, as described above.

3. Solimar Associates, Ltd.'s request for waiver of Rules 67-48.002(9), 67-48.002(93), 67-48.002(94), 67-21.002(9), and 67-21.002(85), Florida Aministrative Code (2017 and 2018), is hereby **GRANTED** to allow the Petitioner to change its organizational structure post-closing and permit Petitioner to insert a limited liability company at the second disclosure level causing the trusts to be disclosed at the third principal disclosure level and the natural person principal trustees and beneficiaries to be disclosed at the fourth principal disclosure level, as described above.

DONE and ORDERED this 5th day of August, 2022.

Florida Housing Finance Corporation

By: _____
Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee
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Joint.admin.procedures@leg.state.fl.us

**NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**