STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

HTG BANYAN, LLC
a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2022-014VW
Application No. 2019-117C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.002(9), (94), F.A.C. (7/8/18)

Petitioner HTG Banyan, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.002(9) and (94), Florida Administrative Code ("F.A.C.") ("Rule"), which requires that only natural persons appear at the third principal disclosure level. Petitioner's Application properly disclosed all of Petitioner's principals and the third principal disclosure level contained only natural persons in accordance with the Rule. *See* Current Organizational Structure, attached as Exhibit A. For estate planning purposes, Petitioner would like to insert a newly created limited liability company (*i.e.*, HTG Holdings 2, LLC) at the second disclosure level flowing from Petitioner's manager (*i.e.*, HTG Banyan Manager, LLC) as well as Petitioner's non-investor member (*i.e.*, HTG Banyan Member, LLC). The members of HTG Holdings 2, LLC will be trusts with natural persons as trustees and beneficiaries at the fourth disclosure level. *See* Proposed Organizational Structure, attached as Exhibit B. Two of the original trusts will remain and four new trusts will be added if the Petition is granted. While this

structure is permissible under the current version of the Rule,[1] it is not permissible under the version of the Rule applicable at the time the Application was submitted. Accordingly, Petitioner respectfully requests a waiver of the Rule such that natural person beneficiaries of a trust may appear at the fourth 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:

HTG Banyan, LLC
Attn: Matthew A. Rieger
3225 Aviation Ave, 6th Floor
Coconut Grove, FL 33133
Telephone: 305-860-8188
Fax: 305-856-1475
Email: mattr@htgf.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
Suite 2200
Miami, Florida 33130
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Bridget Smitha
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Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4864
Email: BSmitha@stearnsweaver.com

B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

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

[1] Effective July 11, 2019, Rule 67-48.0075(8)(d), F.A.C., allows trust beneficiaries that are natural persons to appear at the fourth principal disclosure level.

- Development Name: Flagler Station f/k/a Banyan Station
- Development Address: Banyan Blvd., Banyan Blvd and N Tamarind Ave., West Palm Beach
- County: Palm Beach
- Developer: HTG Banyan Developer, LLC
- Number of Units: 94; new construction
- Type: High Rise
- Set Asides: 15.9% (15 units) at or below 30%, 47.9% (45 units) at or below 60%, 24.5% (23 units) at or below 70%, and 11.7% (11 units) at or below 80%
- Demographics: Family
- Funding: $2,374,993 Housing Credit (annual)
- RFA 2018-112: Housing Credit Financing For Affordable Housing Developments Located In Broward, Duval, Hillsborough, Orange, Palm Beach, And Pinellas Counties

D. PETITIONER'S PRINCIPAL STRUCTURE.

5. Petitioner's first principal disclosure level comprises: (1) HTG Banyan Manager, LLC (0% manager); (2) HTG Banyan Member, LLC (0.01% member); and (3) Matthew A. Rieger (99.99% equity investor member). Petitioner is not seeking a change at this level. *See* Current Organizational Chart, attached as Exhibit A.

6. Only the second principal disclosure level flowing from HTG Banyan Manager, LLC and HTG Banyan Member, LLC are pertinent here. If this Petition is granted, HTG Holdings 2, LLC, will be inserted into the second level such that it is the sole member of HTG Banyan Manager, LLC, as well as the sole member of HTG Banyan Member, LLC. *See*

Proposed Organizational Structure, attached as Exhibit B. The managers of HTG Holdings 2, LLC are Matthew Rieger and Randy Rieger. The members of HTG Holdings 2, LLC would be trusts with natural persons as trustees and beneficiaries at the fourth disclosure level. Those trusts are: Matthew A. Rieger Family Trust (40%); Matthew A. Rieger Irrevocable MGM Trust (10%); Gina Rieger Irrevocable MGM Trust (10%); Meredith Branciforte Irrevocable MGM Trust (10%); Alexandra B. Balogh Irrevocable Ins Trust (15%); and Andrew C. Balogh Irrevocable Ins Trust (15%). *See* Proposed Organizational Structure, attached as Exhibit B.

7. Upon granting this Petition, the beneficiaries and trustees of the trusts would appear at the fourth disclosure level. Specifically, the trustee and beneficiary of the Matthew A. Rieger Family Trust is Matthew Rieger, who was disclosed in the Application; the trustee and beneficiary of the Matthew A. Rieger Irrevocable MGM Trust is also Matthew Rieger; the trustee and beneficiary of the Gina Rieger Irrevocable MGM Trust is Gina Rieger; the trustee and beneficiary of the Meredith Branciforte Irrevocable MGM Trust is Meredith Branciforte; the trustee of the Alexandra B. Balogh Irrevocable Ins Trust is Robert Balogh, and the beneficiary is Alexandra B. Balogh, who were both disclosed in the Application; the trustee of the Andrew C. Balogh Irrevocable Ins Trust is Robert Balogh, and the beneficiary is Andrew C. Balogh, who were both disclosed in the Application. The Alexandra B. Balogh Irrevocable Ins Trust and the Andrew C. Balogh Irrevocable Ins Trust were disclosed in the Application and will not change. If the Petition is granted, the Matthew Rieger Trust dated 02/28/2017 (the trustee and beneficiary of which is Matthew Rieger) and the Randy Rieger Rev Trust dated 12/08/2005 (the trustee and beneficiary of which is Randy Rieger) would be removed from the organizational structure.

8. No other change to Petitioner's organizational structure is requested.

E. THE RULE FROM WHICH WAIVER IS REQUESTED.

9. To change Petitioner's principals, Petitioner requests a waiver of Rule 67-48.002(9) and (94), F.A.C. (7/8/18), which provides in pertinent 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. For purposes of rules 67-48.0105, 67-48.0205 and 67-48.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. 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. For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required. 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:
>
> (a) With respect to an Applicant that is: . . . .
>
> 3. A limited liability company, at the first principal disclosure level, any manager or member of the Applicant limited liability company, and, unless otherwise excluded at subsection 67-48.002(9), F.A.C., with respect to any manager or member of the Applicant limited liability company, at the second principal disclosure level, that is:
>
> a. A corporation, any officer, director, executive director, or shareholder of the corporation,
>
> b. A limited partnership, any general partner or limited partner of the limited partnership,
>
> c. A limited liability company, any manager or member of the limited liability company, or
>
> d. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and

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

e. A corporation, by the third principal disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,

f. A limited partnership, by the third principal disclosure level, any general partner or limited partner of the limited partnership, each of whom must be a natural person,

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

h. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons.

Id.

10. Petitioner is requesting waiver of the foregoing Rule so that it may amend its organizational structure such that trusts may appear at the third disclosure level with their natural person beneficiaries appearing at the fourth level.

F. STATUTES IMPLEMENTED BY THE RULE.

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

- Section 420.5087, State Apartment Incentive Loan Program.
- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund.

12. 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.

13. Petitioner timely submitted an application for the Development and received an invitation to credit underwriting.

14. The trustees and beneficiaries of the trusts currently appearing at the second principal disclosure level determined after loan closing that, for estate planning purposes, the trusts should be held by a limited liability company (*i.e.*, HTG Holdings 2, LLC). It was also decided that two trusts (*i.e.*, the Matthew Rieger Trust dated 02/28/2017 and the Randy Rieger Rev Trust dated 12/08/2005) should be removed from the organizational structure and replaced by four trusts (*i.e.*, the Matthew A. Rieger Family Trust, the Matthew A. Rieger Irrevocable MGM Trust, the Gina Rieger Irrevocable MGM Trust and the Meredith Branciforte Irrevocable MGM Trust). This change would be consistent across all developments in which these trusts are principals.

15. If the Rule is imposed, Petitioner's principals will suffer a substantial and unnecessary operational hardship. 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.

16. If the Petition is granted, the natural persons disclosed as trustees and beneficiaries of the trusts will simply move from the third level to the fourth level, as permitted under the current version of the Rule. The natural person managers of the limited liability company being inserted at the second level are natural persons identified in the Application. Thus, allowing HTG Holdings 2, LLC to be inserted into Petitioner's structure would not result in the inclusion of natural person principals that were not previously disclosed. Although permitting Petitioner to add four trusts to its structure would include two natural person trustees and beneficiaries that were not previously disclosed in the Application (*i.e.*, Gina Rieger and

Meredith Branciforte), their inclusion should not cause concern for Florida Housing. Both natural persons are close family members of principals previously disclosed and will have no control over or direct involvement with the Development.

17. FHFC would not be prejudiced by natural person trustees and beneficiaries appearing at the fourth level. Indeed, effective July 11, 2019, Rule 67-48.0075(8)(d), F.A.C., expressly permits the structure sought here. Upon 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, FHFC provided the exception for trusts to appear at the third level under Rule 67-48.0075(8)(d), F.A.C., because FHFC 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 principals). 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. Accordingly, granting the Petition should not impact FHFC's confidence in the Development, Petitioner, or its principals.

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,[2]

[2] "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.

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. If the Rule is imposed, Petitioner's principals will suffer a substantial and unnecessary operational hardship. 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.

H. ACTION REQUESTED.

22. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that Petitioner may insert HTG Holdings 2, LLC at the second principal disclosure level, remove two trusts and add four trusts at the third level, and disclose natural person trust beneficiaries and trustees at the fourth level; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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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 9th day of February, 2022.

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

Exhibit A - Current Organizational Structure

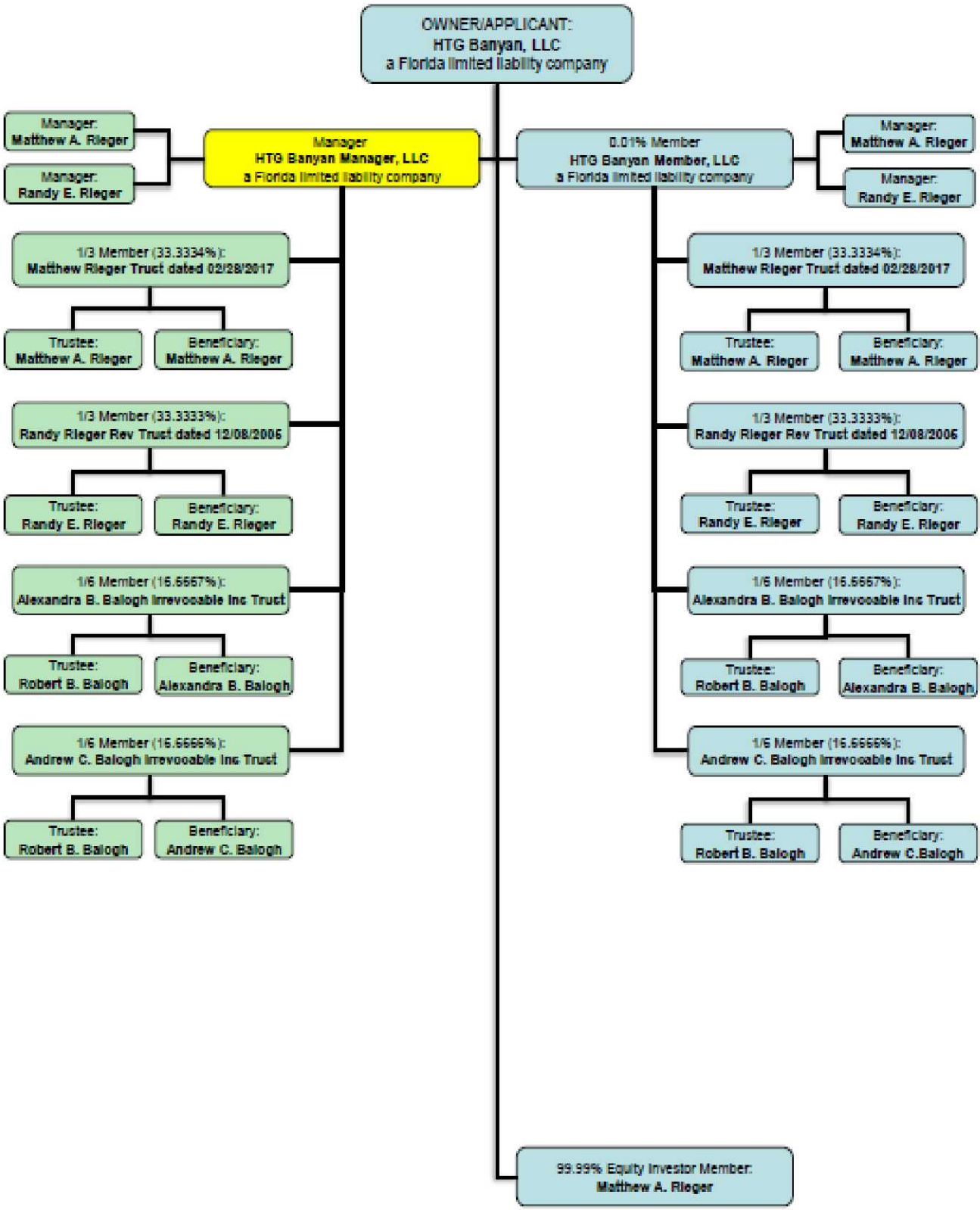
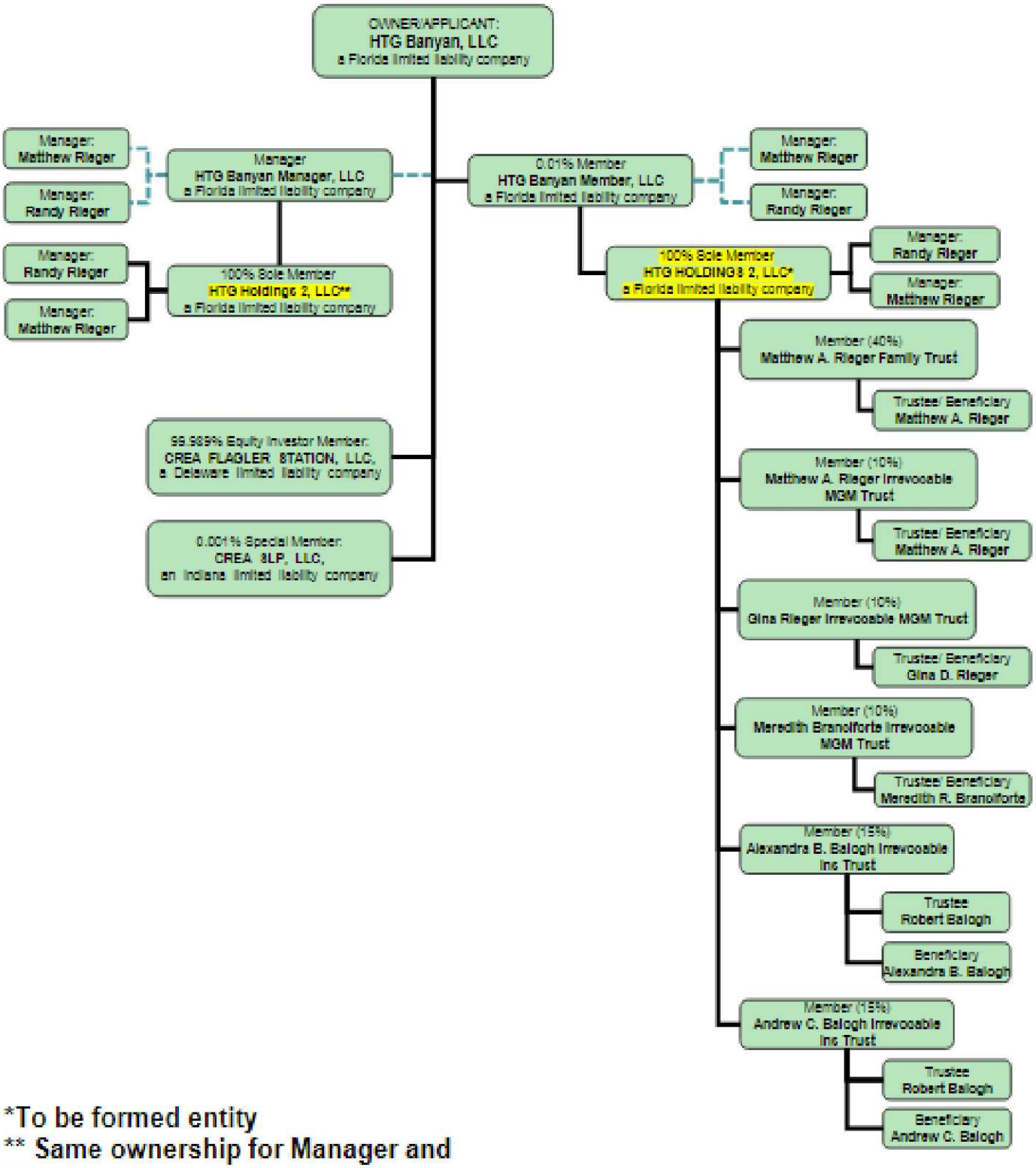


Exhibit B - Proposed Organizational Structure



*To be formed entity
** Same ownership for Manager and Member