STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

Water's Edge Associates, Ltd.
a Florida limited partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2022-044VW
App. No. 2017-025BS/2018-025BS/2016-580C
RFA No. 2017-108

PETITION FOR WAIVER OF RULE 67-48.002(9), (93) AND RULE 67-21.002(9), (85), F.A.C. (5/24/17) AND FOR BOARD APPROVAL

Petitioner Water's Edge Associates, Ltd. (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 (93), Florida Administrative Code ("F.A.C.") (May 24, 2017) and Rule 67-21.002(9) and (85), F.A.C. (May 24, 2017) ("Rules"), which require that only natural persons appear at the third principal disclosure level. The Application properly disclosed all of Petitioner's principals and the third principal disclosure level contained only natural persons. *See* Current Organizational Structure, attached as Exhibit A. For estate planning purposes, Petitioner would like to replace one of its natural person principals with that person's Florida limited liability company. The members of that limited liability company are two trusts whose beneficiaries and trustees are natural persons. *See* Proposed Organizational Structure, attached as Exhibit B. While this structure is permissible under the current rules,[1] it is not permitted under the version of the Rules applicable at the time the Application was submitted

[1] Effective July 11, 2019, Rule 67-21.0025(7)(d) and Rule 67-48.0075(8)(d), F.A.C., allow trust beneficiaries that are natural persons to appear at the fourth principal disclosure level.

(*i.e.*, October 10, 2017). Accordingly, Petitioner respectfully requests a waiver of the Rules such that natural person beneficiaries and trustees may appear at the fourth principal disclosure level. The requested waiver will not prejudice FHFC, nor any other applicant, because the beneficiary of the trusts was disclosed in Petitioner's Application. Petitioner also requests Board approval to change its organizational structure. 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:

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Telephone: 305.443.8288
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2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel are:

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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"):

- Development Name: Water's Edge Apartments

- Development Address: 10955 SW 214th Street, Miami, FL 33189
- County: Miami-Dade County
- Developer: Cornerstone Group Partners, LLC
- Number of Units: 128 Unit (New Construction)
- Type: Garden Apartments
- Set Asides: 40% @ or below 60% AMI (MMRB); 15.625% @ or below 30% AMI (SAIL, ELI & 4% HC); 0.781% @ or below 40% AMI (SAIL & 4% HC); 35.156% @ or below 60% AMI (SAIL & 4% HC); 48.438% @ or below 70% AMI (SAIL & 4% HC).
- Demographics: Family
- Funding: SAIL Loan in the amount of $3,000,000; an ELI Loan of $600,000; MMRB loan in the amount of $14,250,000 (prior to redemption); a 4% Non-Competitive Housing Credit allocation of $1,092,118; and HOME funds and Surtax funds from Miami-Dade County.

D. <u>PETITIONER'S PRINCIPAL STRUCTURE.</u>

5. Petitioner's first principal disclosure level comprises: (a) Raymond James Tax Credit Fund XX, LLC as the Limited Partner ("LP") (99.99%); and (b) Cornerstone Water's Edge LLC as the General Partner ("GP") (0.0001%). Petitioner is not seeking a change at this level. *See* Current Organizational Chart, attached as Exhibit A.

6. The managing members of GP Cornerstone Water's Edge, LLC, as approved at the September 10, 2021 Board meeting, are: (a) Jorge and Awilda Lopez, Tenants by the Entireties (50%); (b) 9501 Partners, LLC (25%); and (c) Mara S. Mades (25%). For estate planning purposes, Mara S. Mades would like to transfer her interest to her limited liability

company: MSM Interests, LLC. The manager of MSM Interests, LLC is Mara S. Mades and the members are: (a) the Mara S. Mades Revocable Trust (60%) and (b) the Mades Family Trust (40%). The trustee of the Mara S. Mades Revocable Trust is Mara Mades and she is also the beneficiary while she is living (upon her death, the beneficiary will become her son, Jackson Robert Mades). The trustee of the Mades Family Trust is Jodie Susan Bakes and the beneficiary is Jackson Robert Mades.

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

8. If this Petition is granted, the beneficiaries of the trusts would appear at the fourth disclosure level, requiring waiver of the Rules.

E. THE RULES FROM WHICH WAIVER IS REQUESTED.

4. To change Petitioner's principals, Petitioner requests a waiver of Rule 67-48.002(9) and (93), F.A.C. (May 24, 2017), 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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> ***
>
> (93) "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. (emphasis added).

9. Petitioner also seeks a waiver of Rule 67-21.002(9) and (85) (May 24, 2017), which provides:

(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 Rule 67-21.031, 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."

***

(85) "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 67-21.002(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

> 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. (emphasis added).

10. Petitioner is requesting waiver of the foregoing Rules 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. THE RFA PROVISION FOR WHICH APPROVAL IS SOUGHT.

11. Section 4.A.3.d.(3) of RFA 2017-108 states:

> 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 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.

Because loan closing has occurred, Petitioner respectfully requests Corporation and Board approval to change its organizational structure.

G. STATUTES IMPLEMENTED BY THE RULES.

12. The Rules implement, 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 420.5087, State Apartment Incentive Loan Program.
- Section 420.509, Revenue bonds.
- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund.
- Section 420.5099, Allocation of the low-income housing tax credit.

13. 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.

H. JUSTIFICATION FOR GRANTING WAIVER OF THE RULES.

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

15. After loan closing, one of Petitioner's natural person principals determined, for estate planning purposes, that her membership interest should be held by a Florida limited liability company. Accordingly, Petitioner respectfully requests a waiver to make the following changes:

- 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 Robert Mades would be the beneficiary and Jodie Susan Bakes would serve as the trustee.

16. If this request for waiver is denied, it 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.

17. 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).

18. FHFC would not be prejudiced by the addition of the passive trusts. Indeed, effective July 11, 2019, Rule 67-21.0025(7)(d) and Rule 67-48.0075(8)(d), F.A.C., expressly permit 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 67-21.0025(7)(d) and 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 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, granting the Petition – and allowing the trusts to be inserted into the third level – should not impact FHFC's confidence in the Development, Petitioner or its principals.

19. 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] 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.

20. If the Rules are 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 Rules.

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

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

I. ACTION REQUESTED.

23. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that Petitioner may have natural person

[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.

beneficiaries and trustees appear at the fourth disclosure level; (ii) approve the requested organizational change; (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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ALHADEFF & SITTERSON, P.A.
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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 18th day of July, 2022.

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

Exhibit A - Current Organizational Structure

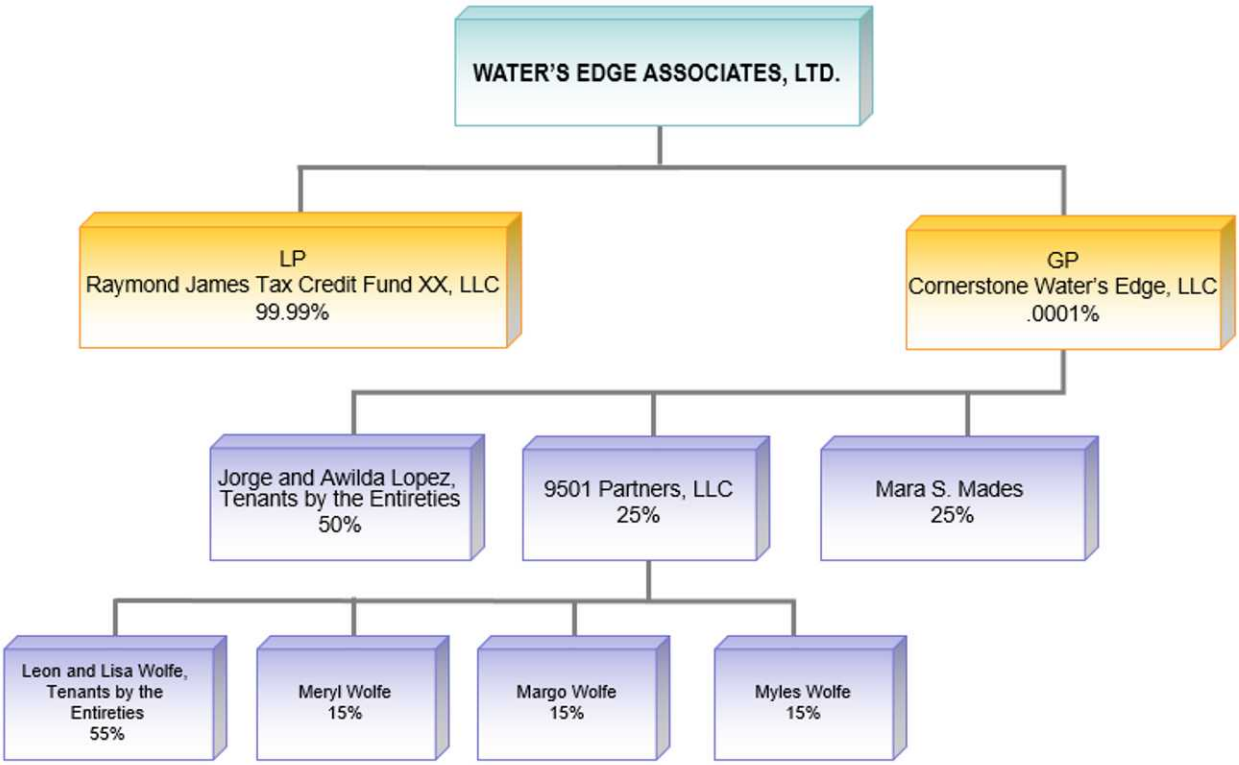


Exhibit B - Proposed Organizational Structure

