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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

VINELAND FAMILY APARTMENTS, LTD.
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2023-064VW
Application No. 2021-110B

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULES 67-21.0025(7)(C) AND 67-21.003(1)(b) (05/18/2021) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (REV. 03-2021) AND FOR BOARD APPROVAL PURSUANT TO RULE 67-21.003(8)(b) (05/18/21)

Petitioner Vineland Family Apartments, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of: (1) the requirement under Rule 67-21.0025(7)(c), Florida Administrative Code ("F.A.C.") that only natural persons (or trusts with natural person principals) be disclosed by or at the third principal disclosure level; and (2) the prohibition under Rule 67-21.003(1)(b), F.A.C. (05/18/2021) and the Non-Competitive Application ("NCA") Instructions (Rev. 03-2021) against changing the principals of the Applicant identified in the Application prior to Multifamily Mortgage Revenue Bond ("MMRB") loan closing (collectively, "Rules"). Petitioner must update its structure now, as opposed to waiting until after MMRB loan closing because the 2023 tax returns must reflect the ownership entity structure that will in fact operate the Development. Because natural person principals of a trust must appear at the fifth

level,[1] and because the change is requested prior to the MMRB Loan closing, Petitioner respectfully requests a waiver of the Rules and NCA Instructions so that the original organizational chart, attached as Exhibit A, may be revised to reflect the structure depicted in Exhibit B. For similar reasons, Petitioner seeks Board approval pursuant to Rule 67-21.003(8)(b) (05/18/21) to change principals of the Developer. *Compare* Exhibit C (Current Developer Organizational Structure) with Exhibit D (Proposed Developer Organizational Structure).

In support, Petitioner states as follows:

A. <u>THE PETITIONER.</u>

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

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Telephone: 424-222-8392
Fax: N/A
Email: rcondas@lincolnavecap.com

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

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[1] Per Rule 67-21.0025(7)(d), F.A.C. (5/18/21), trust beneficiaries that are natural persons may appear at the fourth disclosure level. Effective 6/28/23, Florida Housing has amended Rule 67-21.0025(7)(c)-(e), F.A.C., such that applicants for non-competitive housing credits may request approval from Florida Housing to disclose principals below the fourth level by detailing in writing the reasons for the request, which must include any substantial hardship that would prevent the applicant from disclosing all principals by the third level.

Tel: (305) 789-3350 Fax: 850-329-4844
Fax: (305) 789-3395

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: The Salix on Vine
- Development Address: 2200 Old Vineland Road, Kissimmee, FL 34746
- County: Osceola
- Developer: Vineland Family Developer LLC
- Number of Units: 252 new construction
- Type: Garden
- Set Asides: 100% of units at 60% AMI or lower
- Demographics: Family
- Funding: $50,000,000 MMRB; an annual 4% HC allocation of $3,060,938; and Construction Inflation Response Viability Funding in the amount of $4,300,000

D. THE RULES FROM WHICH WAIVER IS REQUESTED.

5. To allow Petitioner's principals to appear below the fourth principal disclosure level, Petitioner requests a waiver of Rule 67-21.0025(7)(c), F.A.C. (05/18/2021) which provides in pertinent part:

> (7) Disclosure of the Principals of the Applicant must comply with the following:
> (a) The Applicant must disclose all of the Principals of the Applicant (first 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;

(b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level);

(c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, all of the Principals must be natural persons; and

(d) If any of the entities identified in paragraph (c) above are a trust, the Applicant must disclose all of the Principals of the trust (fourth principal disclosure level), **all of whom must be natural persons**.

Id. (emphasis added).

6. To change Petitioner's principals before the MMRB loan closing, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (05/18/21) which provides in pertinent part:

(1) Applicants shall apply for MMRB, 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 MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

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(b) If the NC Award will not be in conjunction with other Corporation funding 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. 03-2021) 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-13093, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

This Rule incorporates by reference the NCA Package (Rev. 03-2021). The NCA Package includes the following requirement:

(2) For Applicants requesting MMRB, with or without Non-Competitive Housing Credits:

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, as well as Board approval 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.

Id. at Part A. 6. b. (2) (emphasis added).

7. 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. <u>RULE PURSUANT TO WHICH BOARD APPROVAL IS SOUGHT.</u>

8. To change the Developer's principals, Petitioner seeks Board approval pursuant to Rule 67-21.003(8)(b) (05/18/21), which provides:

> 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:
>
> ***
>
> (b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the **Principals of the Developer(s) 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**. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation. Principals of a Public Housing Authority or officers and/or directors of a non-profit entity may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter Credit Underwriting.

> Any allowable replacement of a Principal that was identified as the experienced Developer in a competitive solicitation must meet the experience requirements met by the original Principal;

Id. (emphasis added).

F. STATUTES IMPLEMENTED BY THE RULES.

9. 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 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

10. 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 RULES AND NCA INSTRUCTIONS.

11. Petitioner submitted non-competitive application number 2021-110B (the "Application") for the Development on January 5, 2022, which was acknowledged by Florida Housing on March 4, 2022.

12. Petitioner was subsequently notified by one of its principals of the need to make a change to the organizational structure for estate planning and other purposes.

13. As a result, Petitioner is requesting a waiver such that:

- At the first level: Vineland Family Partner LLC (00.009% Class B limited Partner - 90% economics and residual) and LAC TC Partners Holdings LLC (99.99% Limited Partner) would be removed and replaced with a to-be-determined investor (99.99% Limited Partner).[2] Vineland Family GP LLC would remain the General Partner, but its interest would increase from 0.001% to 0.01%.[3]

- At the second level: Although Vineland Family Partner LLC would be removed at the first level, many[4] of its members (*i.e.,* its principals disclosed at the second level) would be transferred to become members of Vineland Family GP LLC. Specifically, SJB Management LLC would be removed as the sole member of Vineland Family GP LLC and replaced with Schore Lincoln Holdings, LLC (1.716% Class B Member); Condas Lincoln Holdings, LLC (4.250% Class B Member); and Fitzgerald Equity LLC (15% Class B Member), each of which were disclosed in the Application, as well as 60 Edgewood Lane II LLC (79.034% Class A Member), Lincoln Avenue Capital Management, LLC (Manager) and Jeremy Bronfman[5] (manager).

- At the third level: the following entities disclosed in the Application would appear: Jeremy Bronfman (as the manager of both 60 Edgewood Lane II LLC and Lincoln Avenue Capital Management, LLC), Eli Bronfman (as manager of Lincoln Avenue Capital Management, LLC), Matthew Bronfman Family EMBT (as the 20% member of 60 Edgewood Lane II LLC and the 24% member of Lincoln Avenue Capital Management, LLC), Neal Schore (as the sole managing member of Schore Lincoln Holdings, LLC), Russell Condas (as the sole managing member of Condas Lincoln Holdings FL, LLC) and Jordan Richter (as the sole managing member of Fitzgerald Equity LLC). The following entities that were not identified in the Application would also appear if the Petition is granted: Jeremy Bronfman 2014 Revocable Trust (as the 48% member of 60 Edgewood Lane II LLC and the 45.5% member of Lincoln Avenue Capital Management, LLC), EB 2022 Revocable Trust (as the 32% member of 60 Edgewood Lane II LLC and the 30.5% member of Lincoln Avenue Capital Management, LLC), and

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[2] Essentially, Petitioner would combine the General Partner and the Class B Limited Partner, and the stakeholders' interests in the initial Class B Limited Partner would be captured in the General Partner.

[3] Pursuant to the NCA Instructions, "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." *See* NCA Instruction, Part A. 6. b. (2) (emphasis added).

[4] While ENB Family LLC would be removed from the current structure, its sole managing member (Eli Bronfman) would remain a natural person principal in the proposed organizational structure.

[5] Jeremy Bronfman was disclosed in the Application.

LACM Associates LLC (as the 0% member of Lincoln Avenue Capital Management, LLC).[6]

- At the fourth level: the following natural persons identified in the Application would appear: Jeremy Bronfman (as the sole trustee and beneficiary of the Jeremy Bronfman 2014 Revocable Trust and as the manager of LACM Associates LLC), Eli Bronfman (as the sole trustee and beneficiary of the EB 2022 Revocable Trust), and Russell Condas and Neal Schore (as members of LACM Associates LLC). Additionally, the following new entities would appear: Hanna Jamar, Tyler Conger, and Jeremy Bronfman 2014 Revocable Trust (as members of LACM Associates LLC) and the principals of the Matthew Bronfman Family EMBT (beneficiaries: Matthew Bronfman, Jeremy Bronfman, Eli Bronfman, Gabriela Bronfman, Sadie Bronfman, Sasha Bronfman, Tess Bronfman, Ezekiel Bronfman, Coby Bronfman, and trustees: Matthew Bronfman, Almog Geva, Mayo Shattuck, and Edgar Bronfman, Jr.)

- At the fifth level: would appear Jeremy Bronfman (who was disclosed in the Application) as the sole trustee and beneficiary of the Jeremy Bronfman 2014 Revocable Trust, which trust would also appear at the third level (since the trust is both a member of 60 Edgewood Lane II LLC and LACM Associates LLC).

Compare Exhibit A to Exhibit B.

14. Denying the request for a waiver to appear at the fifth level would create an immense administrative burden upon Jeremy Bronfman's passing as the interest would have to pass through probate rather than be governed by his trust (*i.e.*, the Jeremy Bronfman 2014 Revocable Trust). Upon information and belief, the purpose of the requirement for all principals to be natural persons by or at the third level is to ensure all persons financially benefitted by 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), F.A.C., because Florida Housing recognized the unique purpose and properties of trusts and understood that disclosing a trust at the third level provides the same information and comfort as disclosing a natural person at the third level (so long as that trust only has natural persons as principals).

[6] The effective profits interest for Lincoln Avenue Capital Management, LLC would be: Jeremy Bronfman 2014 Revocable Trust (24.980%), EB 2022 Revocable Trust (16.745%), Matthew Bronfman Family EMBT (13.175%), and LACM Associates LLC (45.10%).

Here, the sole principal of the Jeremy Bronfman 2014 Revocable Trust is a natural person and that natural person was disclosed in Petitioner's Application. Accordingly, granting the Petition to allow the Trust to appear at the fourth level should not impact Florida Housing's confidence in Petitioner.

15. Likewise 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.[7] The changes sought are only to: the names of the entities through which those natural persons will act; the beneficiaries of a trust (who are family members of a natural person disclosed in the Application); and the natural person members of a manager entity (which members appear at the fourth level, and half of which were disclosed in the Application). 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 were not changed. Accordingly, granting the Petition should not impact Florida Housing's confidence in the Development, Petitioner, or its principals.

[7] Jeremy Bronfman, Eli Bronfman, Neal Schore, Russell Condas, and Jordan Richter were each identified as principals in the Application. The only natural persons that were not named in the Application are: (1) the natural person beneficiaries and trustees of the Matthew Bronfman Family EMBT trust, who are family members of Matthew Bronfman and who will not exert control over the Development; and (2) Hanna Jamar and Tyler Conger, who are each members of LACM Associates LLC, which is a member of Lincoln Avenue Capital Management, LLC, which appears as a manager at the second level. The other two natural person members of LACM Associates LLC (*i.e.*, Russell Condas and Neal Schore), were identified as principals in the Application.

16. 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,[8] 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).

17. 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 Rules.

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

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

H. JUSTIFICATION FOR GRANTING BOARD APPROVAL.

20. The Developer, Vineland Family Developer LLC, seeks Board approval to revise its organizational structure to insert two limited liability companies (Vineland Family Developer CF Member LLC, and Vineland Family Developer DDF Member LLC) at the first disclosure level. This would push many of the entities disclosed at the first level in the Application down to the second level in the proposed structure. *Compare* Exhibit C to Exhibit D. Specifically, the following original members of Vineland Family Developer LLC, would become members of

[8] "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.

both Vineland Family Developer CF Member LLC and Vineland Family Developer DDF Member LLC: Fitzgerald Equity LLC; Condas Lincoln Holdings, LLC; and Schore Lincoln Holdings, LLC.

21. If approved, two new entities would be added to the structure: JEB Developer LLC and LAC Guarantor Holdings LLC. Specifically, JEB Developer LLC would be added as a member to both entities identified at the first level (*i.e.*, (Vineland Family Developer CF Member LLC, and Vineland Family Developer DDF Member LLC). Additionally, Vineland Family Developer DDF Member LLC would have as a member, LAC Guarantor Holdings LLC

22. Upon Board approval, 60 Lincoln Family II LLC would be removed from the structure.

23. The requested change is necessary to provide an additional layer of protection for the Developer as requested by certain principals, but will not impact the day-to-day operations of the Development, nor the natural persons having ultimate control.

24. The experience requirements met by the original principals identified in the Application would not be impacted by this request.

I. ACTION REQUESTED.

25. 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 structure to reflect the attached Exhibit B, which includes natural person principals appearing below the fourth disclosure level, and so that this change may occur prior to the MMRB loan closing; (ii) grant this Petition and all of the relief requested herein; (iii) grant such further relief as it may deem appropriate; and (iv) the Board approve the requested change in the Developer's organizational structure to reflect the attached Exhibit D.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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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 16th day of August, 2023.

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

Exhibit A - Current Applicant Organizational Chart

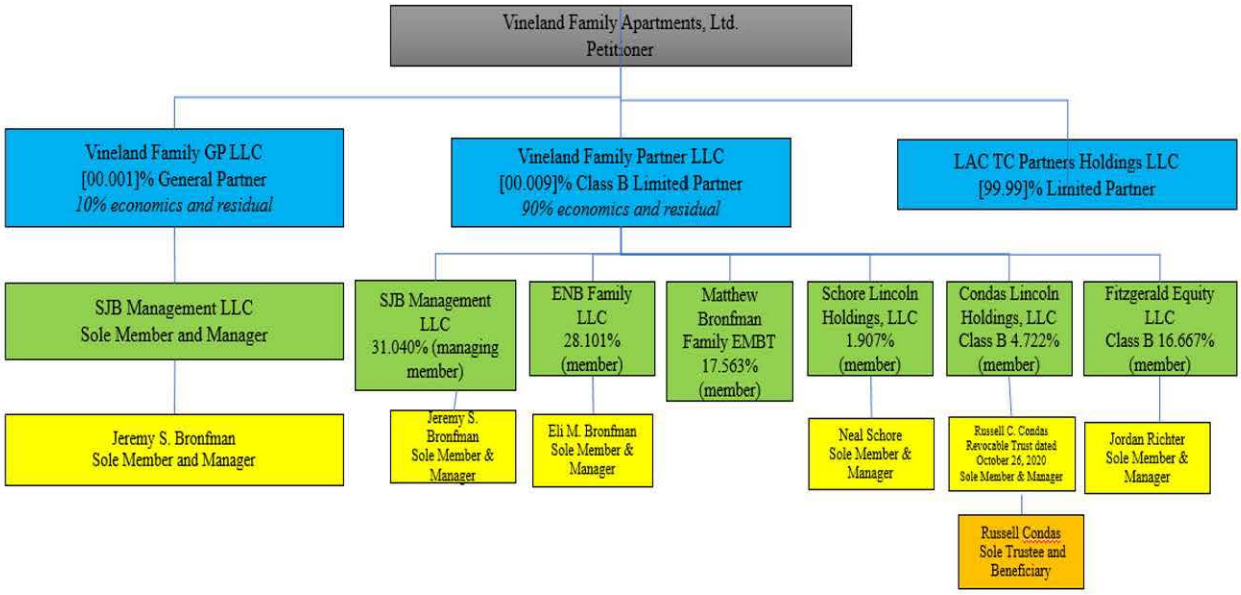


Exhibit B – Proposed Applicant Organizational Structure

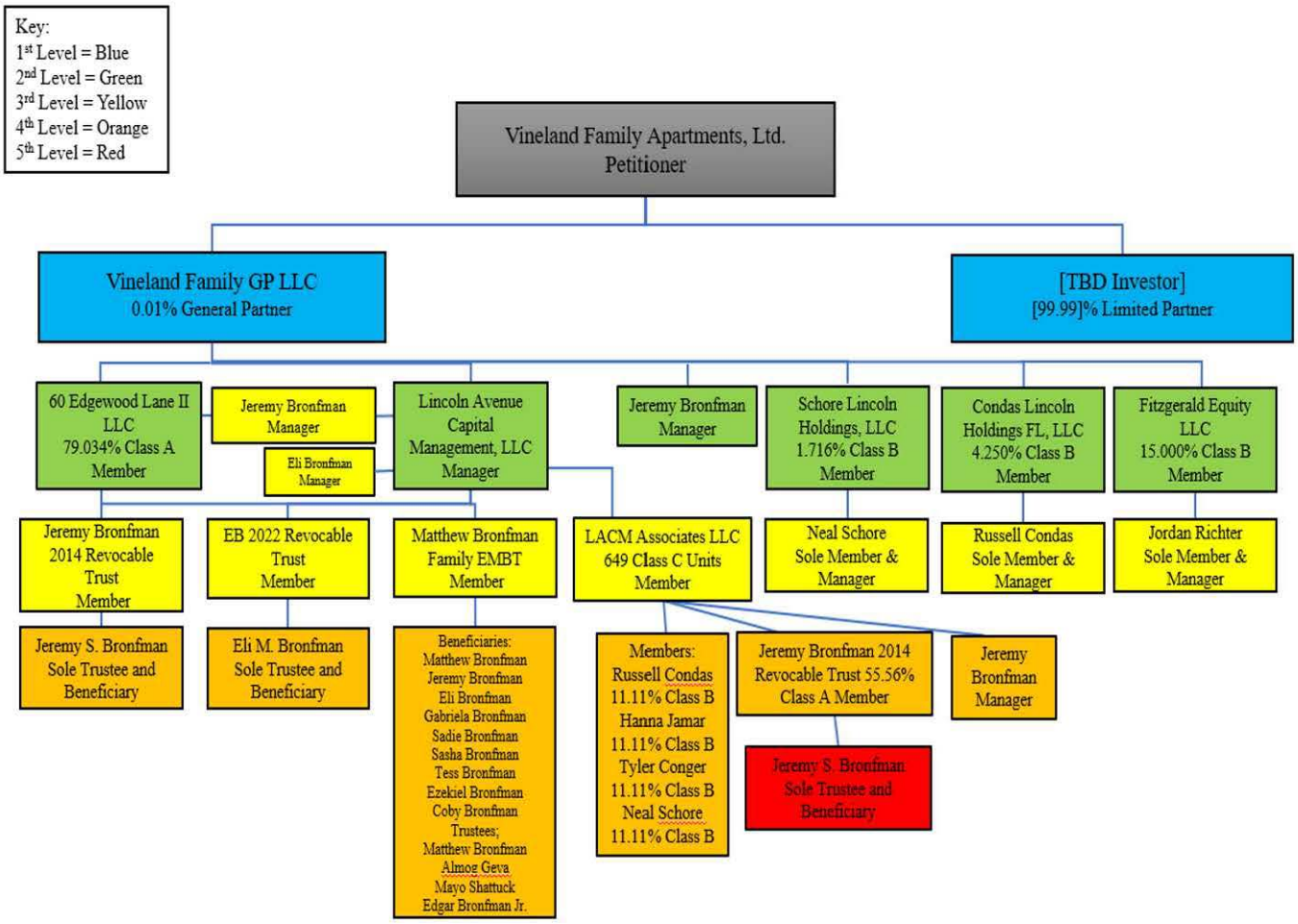


Exhibit C – Current Developer Organizational Structure

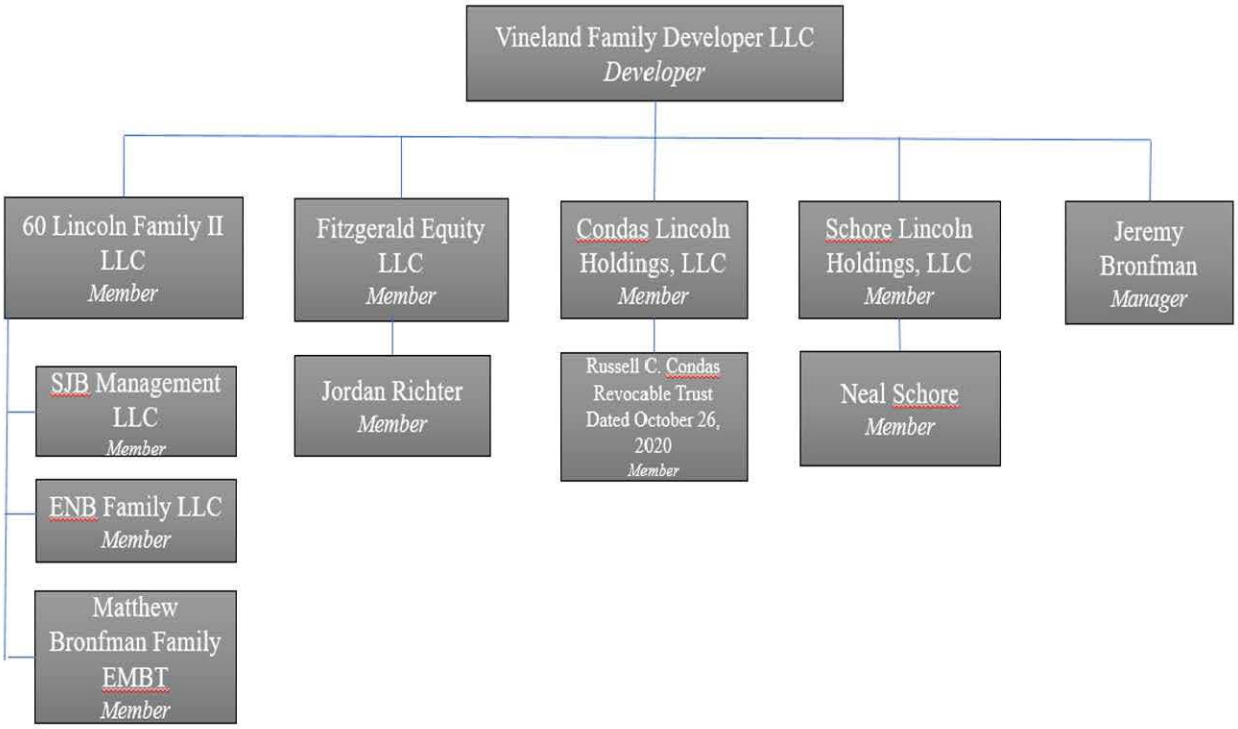


Exhibit D – Proposed Developer Organizational Structure

