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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. 2023-080VW
Application No. 2021-110B

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 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) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (REV. 03-2021)

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 the prohibition under Rule 67-21.003(1)(b), Florida Administrative Code ("F.A.C.") (05/18/2021) ("Rule") and the Non-Competitive Application Instructions (Rev. 03-2021) ("NCA") against changing the principals of the Applicant identified in the Application prior to Multifamily Mortgage Revenue Bond ("MMRB") loan closing. 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 the change is requested prior to the MMRB Loan closing, Petitioner respectfully requests a waiver of the Rule 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) and the NCA 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. THE PETITIONER.

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

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401 Wilshire Blvd, 11th Floor
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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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Stearns Weaver Miller Weissler Alhadeff & Sitterson
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bmcdonough@stearnsweaver.com
Tel: (305) 789-3350
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Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson
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Tallahassee, FL 32301
bsmitha@stearnsweaver.com
Direct: 850-329-4852
Fax: 850-329-4844

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 $4,771,299; and Construction Inflation Response Viability Funding in the amount of $4,300,000

D. <u>THE RULE AND NCA PROVISIONS FROM WHICH WAIVER IS REQUESTED.</u>

5. 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 at Part A.6.b.(2):

(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).

6. 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. RULE AND NCA PROVISIONS PURSUANT TO WHICH BOARD APPROVAL IS SOUGHT.

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

***

(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).

8. Petitioner also seeks Board approval pursuant to Part A.6.c. of the NCA, which similarly provides:

> The Principals of each Developer identified in the Application, including all co-Developers, **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. 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.

Id. (emphasis added).

F. <u>STATUTES IMPLEMENTED BY THE RULE.</u>

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "<u>Act</u>"):

- 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 RULE AND NCA INSTRUCTIONS.

11. Petitioner submitted non-competitive application number 2021-110B (the "Application") for the Development on January 6, 2022, and was invited to enter into credit underwriting by Florida Housing on February 23, 2022.

12. In the 21 months that have elapsed since Petitioner submitted the Application, two of Petitioner's principals determined that they needed to change the organizational structure for estate planning and other purposes (*e.g.*, the interests currently held individually by Jeremy S. Bronfman and Eli M. Bronfman through their limited liability companies would instead be held by their trusts). The change must occur now, rather than waiting until after MMRB Loan closing because the 2023 tax returns must reflect the ownership entity structure that will in fact operate the Development. If this request for waiver is denied, it will create an immense administrative burden upon each principal becoming deceased as his interest will have to pass through probate rather than be governed by his trust. If the Petition is granted, the natural person trustees and beneficiaries will be the same natural person principals identified in the Application. Neither FHFC nor the Development would be prejudiced by the addition of these passive trusts. Additionally, the limited partner identified in the Application served as a placeholder entity only and the true investor limited partner must be included in the structure at the resyndication closing. Accordingly, the change must occur now, as opposed to waiting until after the MMRB loan closing.

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 placeholder[1] (99.99% Limited Partner[2]) prior to closing. Vineland Family GP LLC would remain the General Partner,[3] but its interest would increase from 0.001% to 0.01% (economics and residual would remain 10%).

- 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 FL, LLC (4.250% Class B Member); and Fitzgerald Equity LLC (15% Class B Member), each of which were disclosed in the Application. The only new member that was not named in the application would be 60 Edgewood Lane II LLC (79.034% Class A Member). The manager, Jeremy S. Bronfman, was disclosed in the Application.

- At the third level: the following entities disclosed in the Application would appear: Jeremy S. Bronfman (as the manager of 60 Edgewood Lane II LLC), Matthew Bronfman Family EMBT (as the 20% member of 60 Edgewood Lane II 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 at the third level if the Petition is granted: Jeremy Bronfman 2014 Revocable Trust (as the 48% member of 60 Edgewood Lane II LLC), EB 2022 Revocable Trust (as the 32% member of 60 Edgewood Lane II LLC).

- 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

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[1] A special purpose entity is being created by an affiliate entity of Truist Bank for this transaction.

[2] 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).

[3] 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.

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

> Bronfman 2014 Revocable Trust), Eli Bronfman (as the sole trustee and beneficiary of the EB 2022 Revocable Trust), and the principals of the Matthew Bronfman Family EMBT, beginning with the beneficiaries: Matthew Bronfman, Jeremy Bronfman, Eli Bronfman, Gabriela Bronfman, Sadie Bronfman, Sasha Bronfman, Tess Bronfman, Ezekiel Bronfman, Coby Bronfman, and followed by the trustees: Matthew Bronfman, Almog Geva, Mayo Shattuck, and Edgar Bronfman, Jr.

Compare Exhibit A to Exhibit B.

14. 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.[5] The changes sought are only to: the names of the entities through which those natural persons will act; and the beneficiaries of a trust (who are family members of a natural person 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.

15. 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

[5] Jeremy Bronfman, Eli Bronfman, Neal Schore, Russell Condas, and Jordan Richter were each identified as principals in the Application.

application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[6] 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).

16. 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 Rule.

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

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

H. JUSTIFICATION FOR GRANTING BOARD APPROVAL.

19. 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 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.

[6] "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.

20. 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

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

22. 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.

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

I. ACTION REQUESTED.

24. 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 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
ALHADEFF & SITTERSON, P.A.
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Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

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 29th day of September, 2023.

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

Exhibit A - Current Applicant Organizational Chart

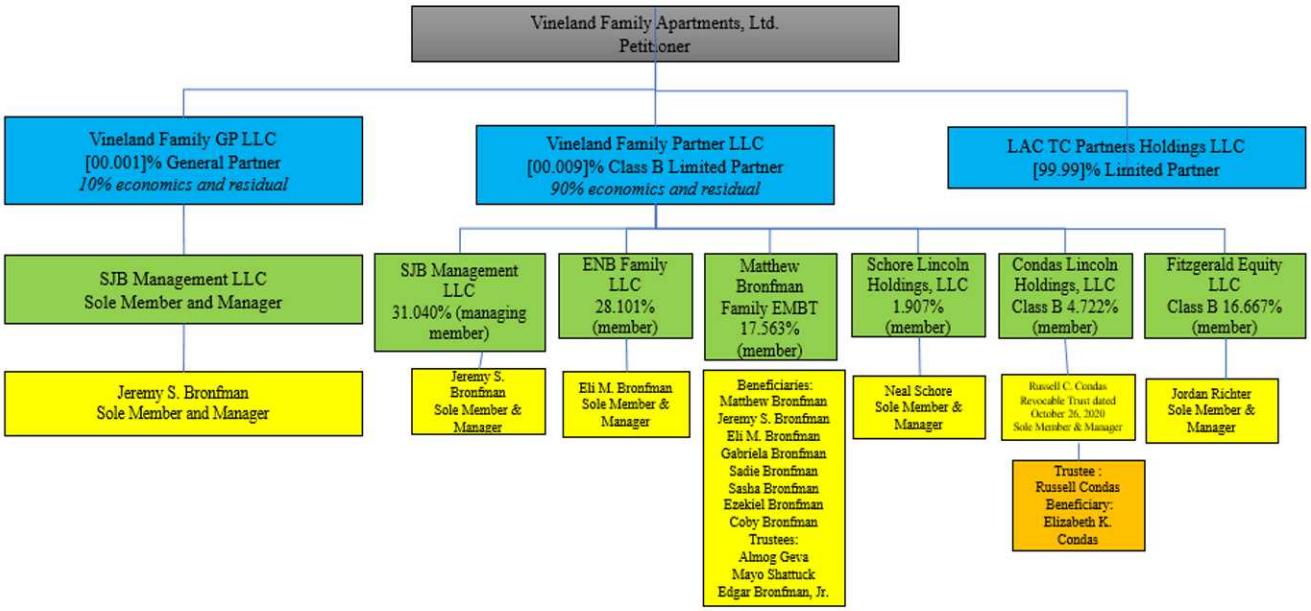


Exhibit B – Proposed Applicant Organizational Structure

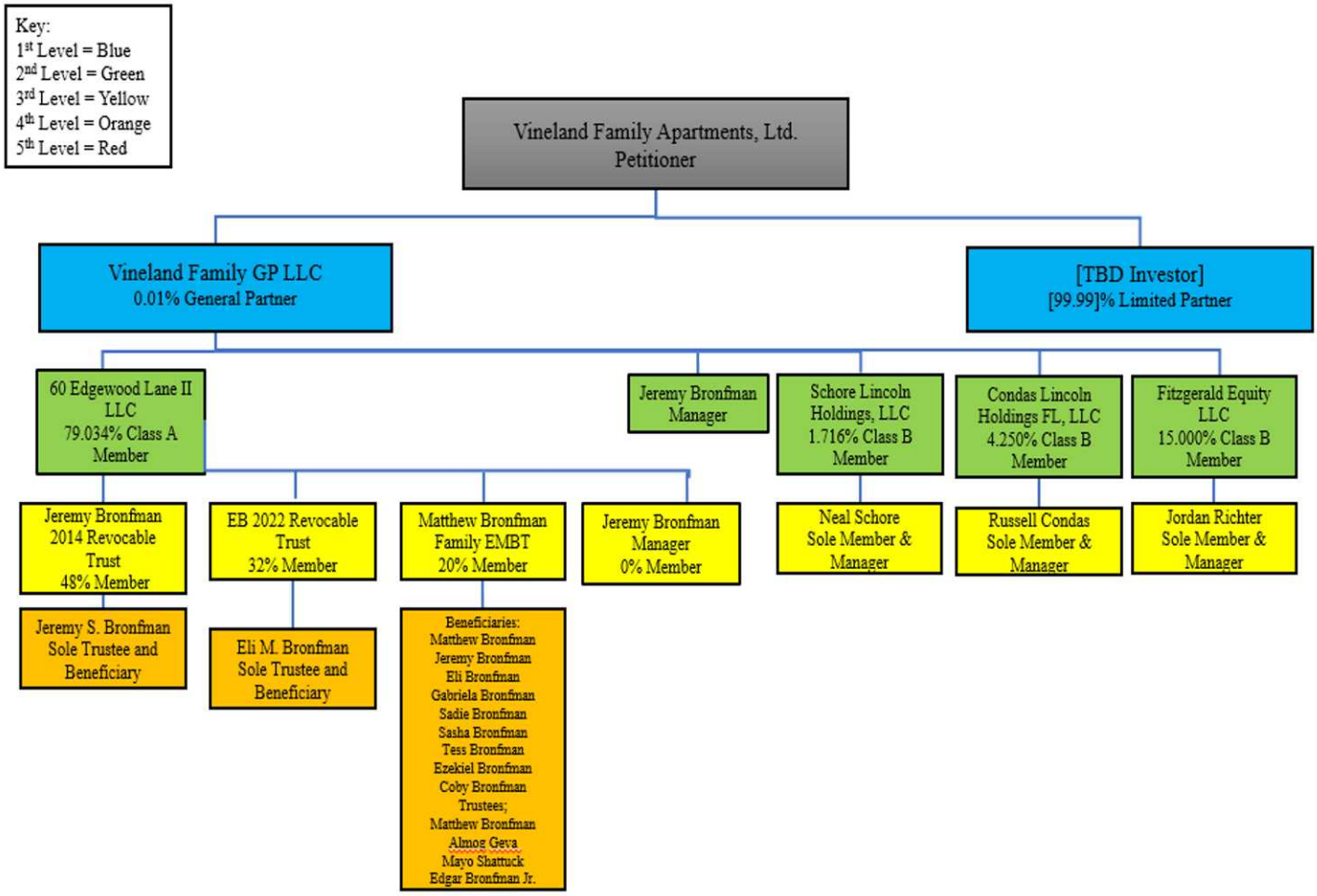


Exhibit C – Current Developer Organizational Structure

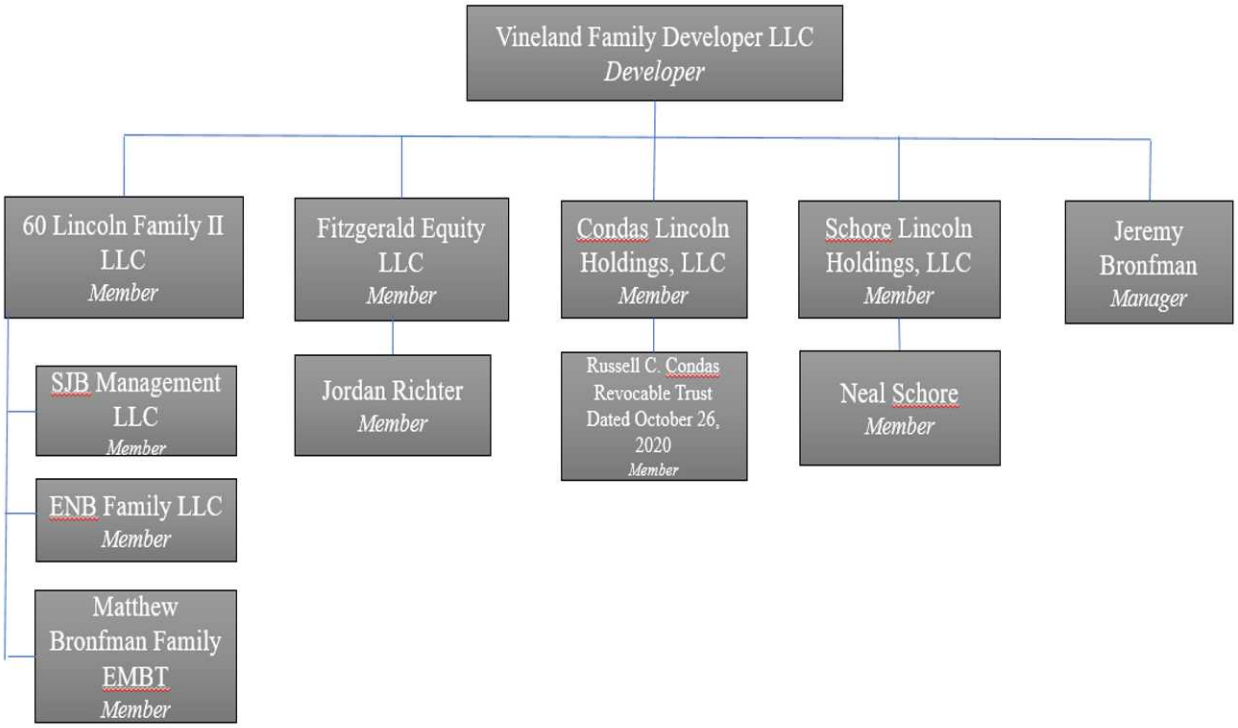


Exhibit D – Proposed Developer Organizational Structure

