STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

Park Towers Assisted Housing Preservation, L.P.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-081VW
Application No. 2020-525C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) (eff. 6-23-20) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS AND REQUEST FOR BOARD APPROVAL PURSUANT TO RULE 67-21.003(8)(b) (eff. 6-23-20)

Petitioner Park Towers Assisted Housing Preservation, L.P. (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.") (6-23-20) and the Non-Competitive Application Instructions against changing the principals of Petitioner identified in the application prior to issuance of the Preliminary Determination. Petitioner also seeks Board approval to change the Developer's principals pursuant to Rule 67-21.003(8)(b), F.A.C. (6-23-20). Park Towers Assisted Housing LLC ("PTAH") is a non-investor limited partner of Petitioner, as well as a member of the Developer. Because PTAH released its manager, he is no longer authorized to bind it. PTAH must therefore retain a new manager to perform the functions necessary to ensure the Development continues to move forward as quickly and efficiently as possible. Relatedly, the members of one of PTAH's members will also change to reflect the change in persons overseeing the Development's rehabilitation and asset management. The new members have

been previously disclosed to FHFC without issue in conjunction with other developments. Because the Preliminary Determination has not yet issued, Petitioner respectfully seeks a Rule waiver, and Board approval, to change PTAH's principals. 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:

Patrick Plunkett[1]
Perez Housing Assoicates, LLC
2850 Tigertail Avenue, Suite 800
Miami, FL 33133
Telephone: (305) 533-0049
Email: pplunkett@relatedgroup.com

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

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
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 underlying Petitioner's application ("Development"):

[1] Mr. Plunkett will be replaced by Anthony Del Pozzo (tony@relatedgroup.com) if this Petition is granted.

- Development Name: Park Towers Apartments
- Development Address: 390 NW 2nd Street, Miami, FL 33128
- County: Miami-Dade
- Developer: Park Towers Assisted Housing Developer, LLC
- Number of Units: 144 acquisition/rehab
- Type: High Rise
- Set Asides: 100% of units at 60% AMI or lower.
- Demographics: Elderly; Non-ALF
- Funding: an annual non-competitive HC Allocation of $2,186,276

D. PETITIONER'S PRINCIPAL STRUCTURE.

5. Petitioner, a Florida limited partnership, disclosed: (1) Florida Community Development Corporation (General Partner; 0.005%); (2) Synovus Park Towers 2021, LLC (Investor LP; 99.98%); (3) Synovus Special Limited Partner, LLC (Investor LP; 0.01%); and (4) PTAH (Non-Investor LP; 0.005%) at the first principal disclosure level in its application. *See* Petitioner's Current Organizational Structure, attached as Exhibit A. Petitioner is not seeking a change at this level.

6. At the second level, only the principals flowing from PTAH are pertinent here, which comprise: (1) Perez Housing Associates, LLC (Member; 50%); (2) LEDG Park Towers Member, LLC (Member; 50%); (3) Patrick Plunkett (Manager; 0%); and (4) Eliot Reid (Manager; 0%). At this level, Petitioner is seeking only to substitute Anthony Del Pozzo for Patrick Plunkett as the manager. *See* Petitioner's Proposed Organizational Structure, attached as Exhibit B.

7. At the third level, only the principals flowing from Perez Housing Associates, LLC are at issue. Because Mr. Plunkett is no longer the manager of PTAH, Petitioner would like to redistribute Mr. Plunkett's 10% interest in Perez Housing Associates, LLC among the three new members that will be overseeing the Development's rehabilitation and asset management in his stead. The redistribution will be as follows: 3.5% to Anthony Del Pozzo, 2.1% to Long Ha, 1.4% to David Loewy and the remaining 3% will stay with Mr. Plunkett in consideration for prior services rendered. *See* Exhibit B.

8. At its first principal disclosure level, Park Towers Assisted Housing Developer, LLC ("Developer") disclosed its sole member (and manager): PTAH. *See* Developer's Current Organizational Structure, attached as Exhibit C. Because PTAH also appears in Petitioner's organizational structure (*i.e.*, as Petitioner's non-investor limited partner), the same proposed changes requested with respect to Petitioner's organizational structure would also apply to Developer's organizational structure. *See* Developer's Proposed Organizational Structure, attached as Exhibit D. Specifically: (a) Anthony Del Pozzo would replace Mr. Plunkett as the manager of PTAH; and (b) Mr. Plunkett's 10% interest in Perez Housing Associates, LLC would be redistributed as follows: 3.5% to Anthony Del Pozzo, 2.1% to Long Ha, 1.4% to David Loewy, and 3% will remain with Mr. Plunkett. *Id*.

E. <u>THE RULE FROM WHICH WAIVER IS REQUESTED.</u>

4. To change Petitioner's principals, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (06/23/2020) 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.

***

> (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. 04-2020) 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-12011, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. Rule 67-21.003(1)(b), F.A.C. (06/23/2020) incorporates by reference the Non-Competitive Application Package (Rev. 04-2020) ("NCA"). The NCA includes the following requirement:

> The Applicant entity shall be the recipient of the Housing Credits and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any way (materially or non-materially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any material change in the ownership structure of the named Applicant will require Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require Corporation approval prior to the change. The ownership structure of the Applicant entity may be changed without Corporation or Board approval after a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must still be notified in writing of the change. Changes to the ownership structure of the Applicant entity prior to the issuance of the Preliminary Determination or without Board approval or Corporation approval, as applicable, prior to the approval of the Final Housing Credit Allocation and issuance of the IRS Forms 8609 shall result in a disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to the issuance of the Preliminary Determination 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. (1).

9. Petitioner also seeks Board approval pursuant to Rule 67-21.003(8)(b), F.A.C. (6-23-20), 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;

Id.

F. STATUTES IMPLEMENTED BY THE RULE.

10. Rule 67-21.003, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- 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.

11. 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.

12. Petitioner submitted a non-competitive application for the Development prior to May 18, 2021. Petitioner received an invitation to credit underwriting on June 4, 2021.

13. Subsequently, Mr. Plunkett became disassociated with PTAH.

14. As a result, PTAH must make changes to its ownership structure prior to the issuance of the Preliminary Determination, thereby necessitating this Petition.

15. Because PTAH released its manager, he is no longer authorized to bind it. If this Petition is denied, PTAH will not be able to retain a new manager, nor have anyone authorized to perform essential functions, such as signing contracts on PTAH's behalf. This will impose an immense administrative burden, create significant delays, and prevent the Development from moving forward as quickly and efficiently as possible.

16. As set forth above, Petitioner's natural person principals disclosed in its application will not change if the Petition is granted with the exception that three natural persons will be added to the third disclosure level – persons who have been disclosed to FHFC previously without issue (*see, e.g.*, Application No. 2021-051C regarding David Loewy; Application No. 2017-146C regarding Anthony Del Pozzo; and Application No. 2018-105B regarding Long Ha). Accordingly, granting the Petition – and allowing three natural persons known to FHFC to be added at the third disclosure level – should not impact FHFC's confidence in the Petitioner, the Developer, nor their principals.

17. 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.

18. If the Rule is imposed, the organizational structures of both Petitioner and Developer will suffer a substantial and unnecessary operational hardship.

19. Because all natural persons financially benefitting from the Development have been disclosed to Florida Housing previously, granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner and Developer while still achieving the underlying purpose of the Rule.

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

21. The waiver will not adversely impact the Development nor Florida Housing.

H. ACTION REQUESTED.

22. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver and provide Board approval such that Petitioner may change its organizational structure to reflect the structure depicted in Exhibit B and that Developer may change its organizational structure to reflect Exhibit D; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
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 a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 4th day of November, 2021.

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

Exhibit A

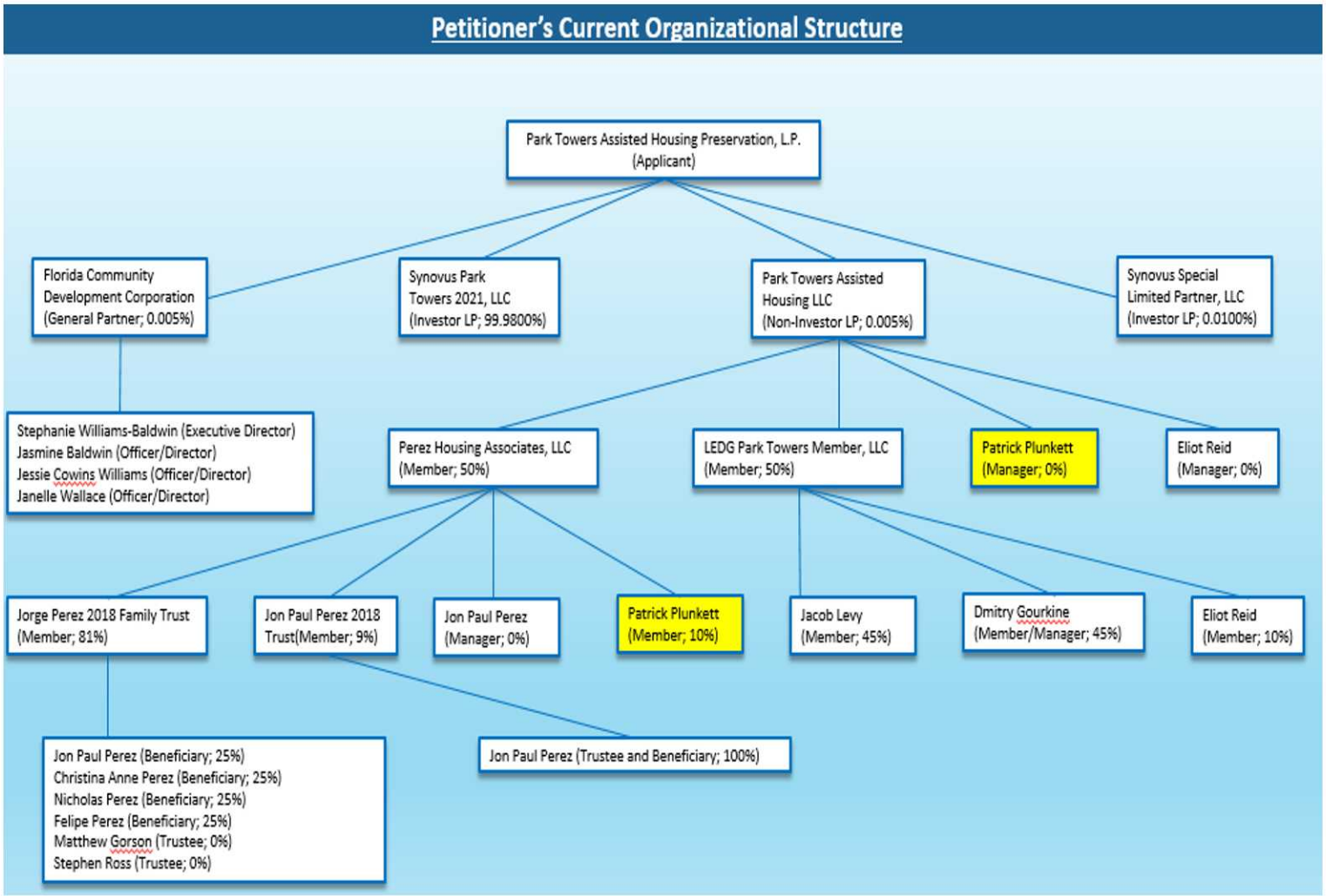

Petitioner's Current Organizational Structure
Park Towers Assisted Housing Preservation, L.P. (Applicant)
Florida Community Development Corporation (General Partner; 0.005%)
Synovus Park Towers 2021, LLC (Investor LP; 99.9800%)
Park Towers Assisted Housing LLC (Non-Investor LP; 0.005%)
Synovus Special Limited Partner, LLC (Investor LP; 0.0100%)
Stephanie Williams-Baldwin (Executive Director)
Jasmine Baldwin (Officer/Director)
Jessie Cowins Williams (Officer/Director)
Janelle Wallace (Officer/Director)
Perez Housing Associates, LLC (Member; 50%)
LEDG Park Towers Member, LLC (Member; 50%)
Patrick Plunkett (Manager; 0%)
Eliot Reid (Manager; 0%)
Jorge Perez 2018 Family Trust (Member; 81%)
Jon Paul Perez 2018 Trust(Member; 9%)
Jon Paul Perez (Manager; 0%)
Patrick Plunkett (Member; 10%)
Jacob Levy (Member; 45%)
Dmitry Gourkine (Member/Manager; 45%)
Eliot Reid (Member; 10%)
Jon Paul Perez (Beneficiary; 25%)
Christina Anne Perez (Beneficiary; 25%)
Nicholas Perez (Beneficiary; 25%)
Felipe Perez (Beneficiary; 25%)
Matthew Gorson (Trustee; 0%)
Stephen Ross (Trustee; 0%)
Jon Paul Perez (Trustee and Beneficiary; 100%)

Exhibit B

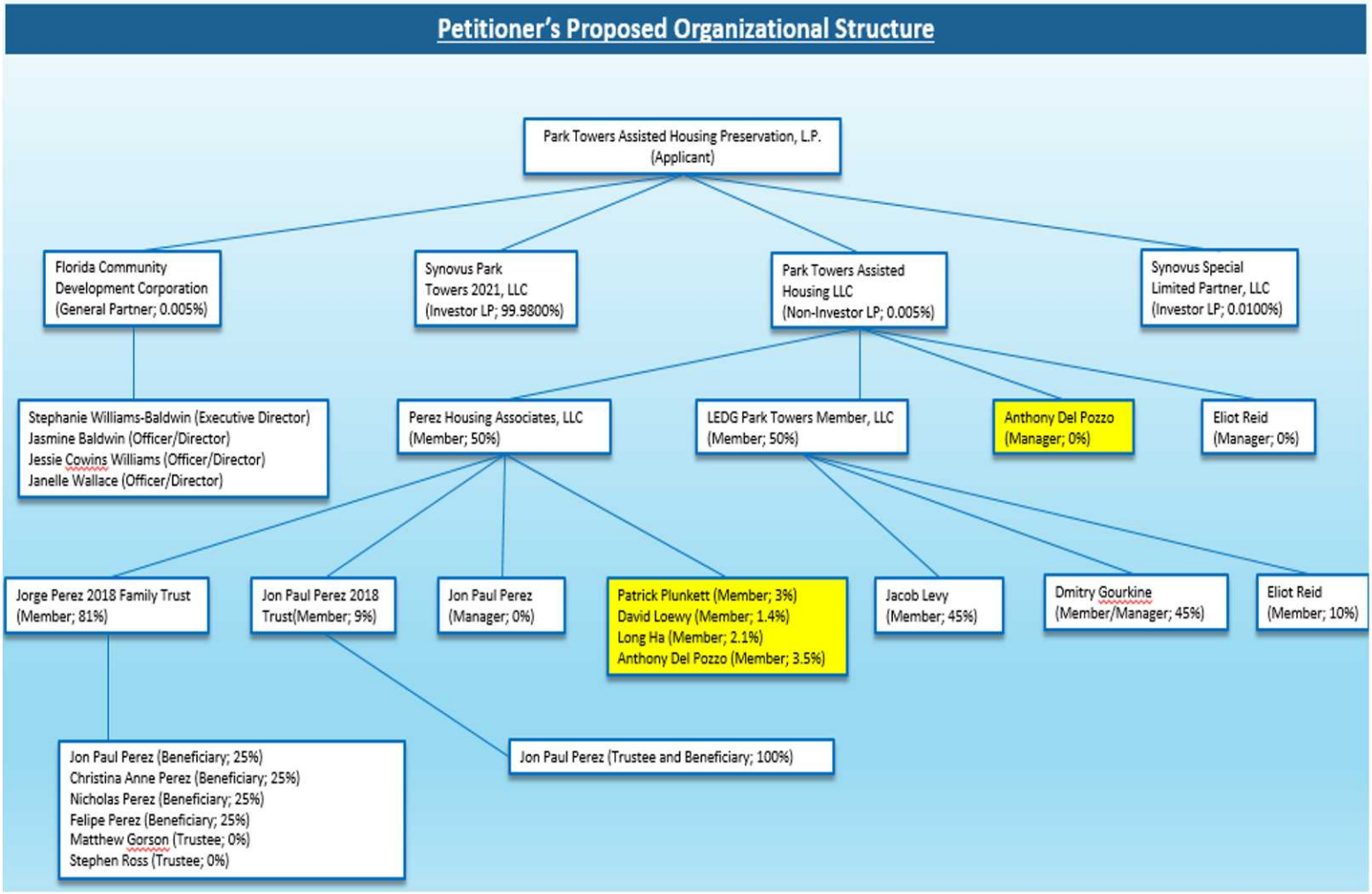

Petitioner's Proposed Organizational Structure
Park Towers Assisted Housing Preservation, L.P. (Applicant)
Florida Community Development Corporation (General Partner; 0.005%)
Synovus Park Towers 2021, LLC (Investor LP; 99.9800%)
Park Towers Assisted Housing LLC (Non-Investor LP; 0.005%)
Synovus Special Limited Partner, LLC (Investor LP; 0.0100%)
Stephanie Williams-Baldwin (Executive Director)
Jasmine Baldwin (Officer/Director)
Jessie Cowins Williams (Officer/Director)
Janelle Wallace (Officer/Director)
Perez Housing Associates, LLC (Member; 50%)
LEDG Park Towers Member, LLC (Member; 50%)
Anthony Del Pozzo (Manager; 0%)
Eliot Reid (Manager; 0%)
Jorge Perez 2018 Family Trust (Member; 81%)
Jon Paul Perez 2018 Trust(Member; 9%)
Jon Paul Perez (Manager; 0%)
Patrick Plunkett (Member; 3%)
David Loewy (Member; 1.4%)
Long Ha (Member; 2.1%)
Anthony Del Pozzo (Member; 3.5%)
Jacob Levy (Member; 45%)
Dmitry Gourkine (Member/Manager; 45%)
Eliot Reid (Member; 10%)
Jon Paul Perez (Beneficiary; 25%)
Christina Anne Perez (Beneficiary; 25%)
Nicholas Perez (Beneficiary; 25%)
Felipe Perez (Beneficiary; 25%)
Matthew Gorson (Trustee; 0%)
Stephen Ross (Trustee; 0%)
Jon Paul Perez (Trustee and Beneficiary; 100%)

Exhibit C

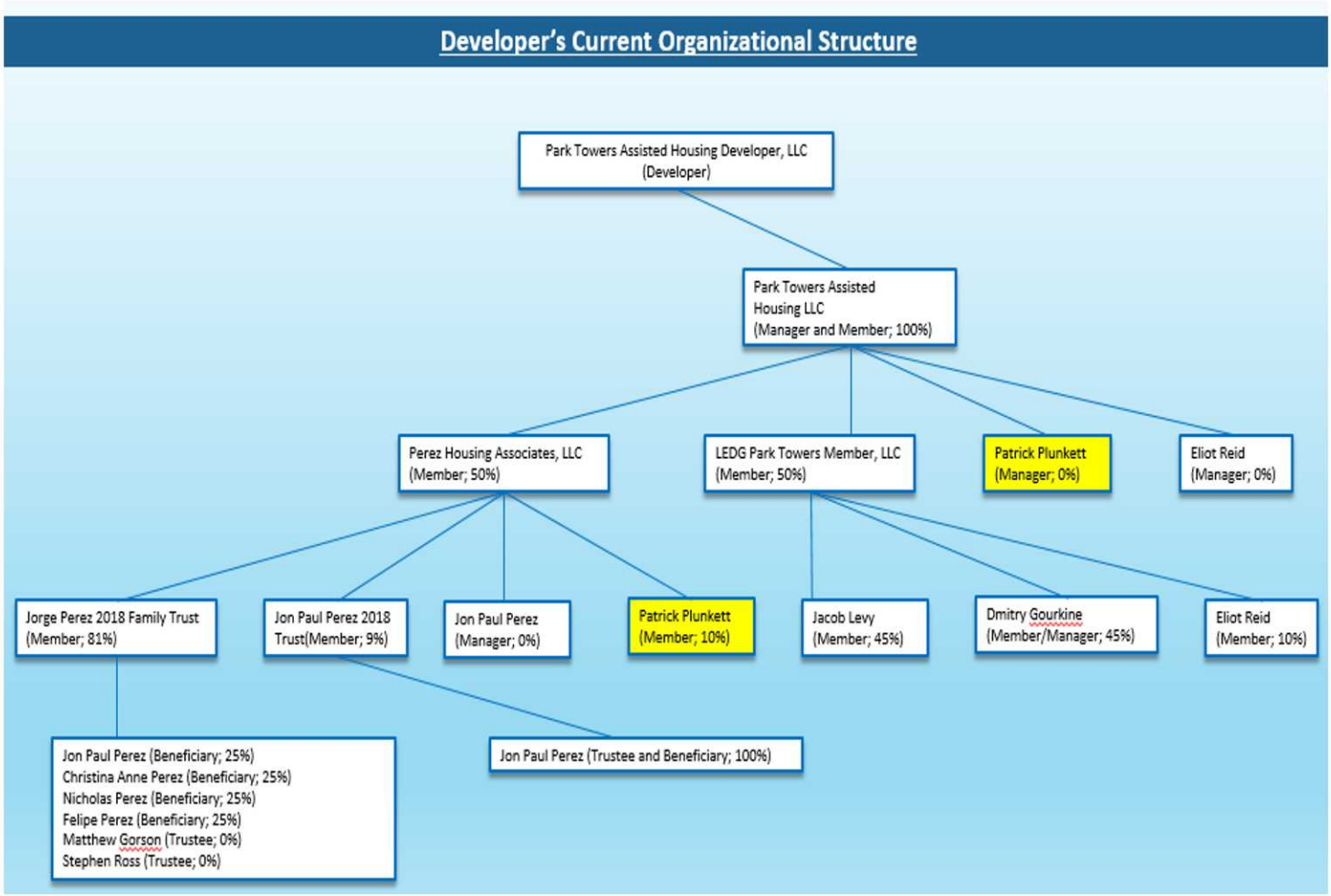
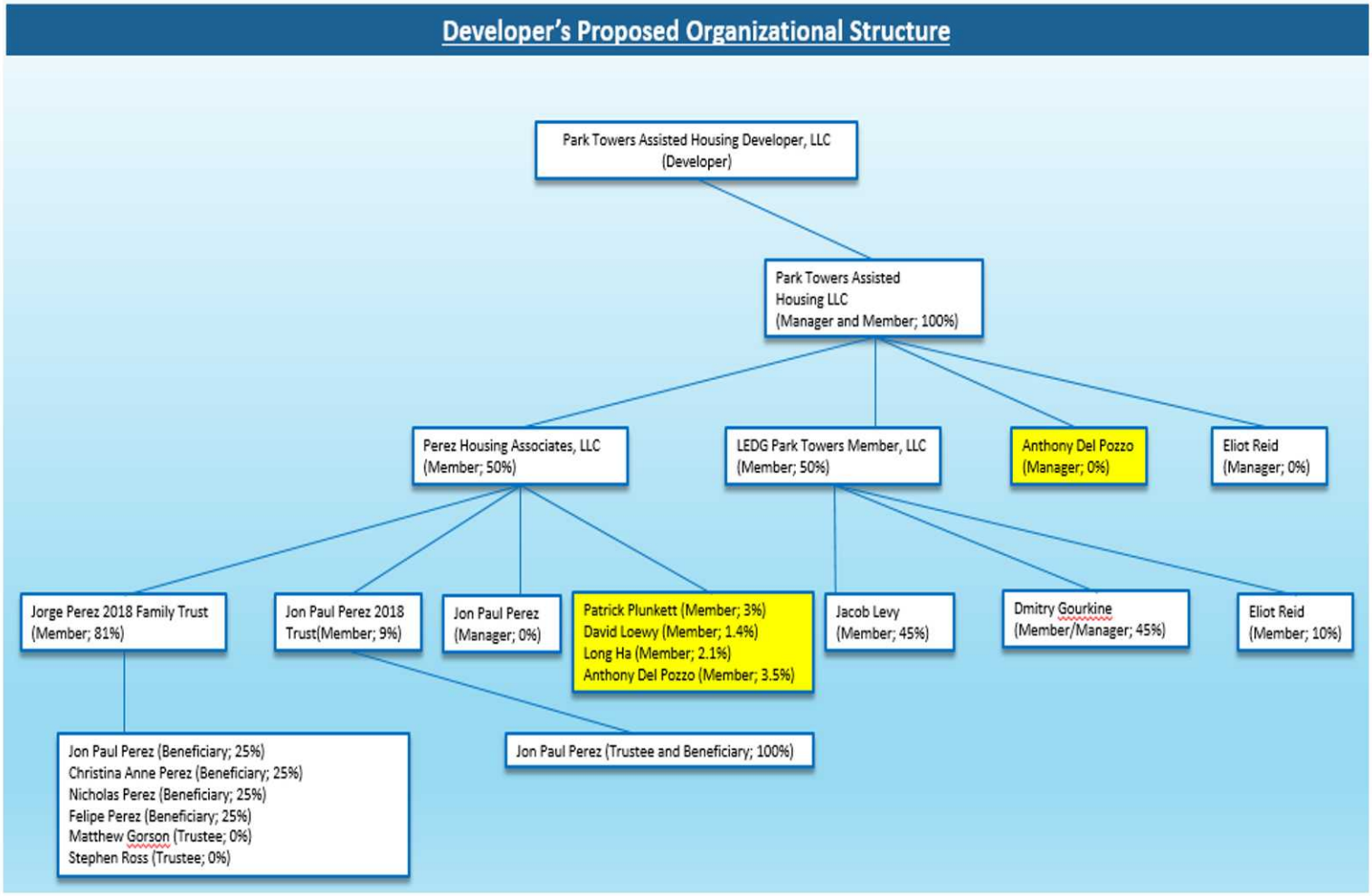

Developer's Current Organizational Structure
Park Towers Assisted Housing Developer, LLC (Developer)
Park Towers Assisted Housing LLC (Manager and Member; 100%)
Perez Housing Associates, LLC (Member; 50%)
LEDG Park Towers Member, LLC (Member; 50%)
Patrick Plunkett (Manager; 0%)
Eliot Reid (Manager; 0%)
Jorge Perez 2018 Family Trust (Member; 81%)
Jon Paul Perez 2018 Trust(Member; 9%)
Jon Paul Perez (Manager; 0%)
Patrick Plunkett (Member; 10%)
Jacob Levy (Member; 45%)
Dmitry Gourkine (Member/Manager; 45%)
Eliot Reid (Member; 10%)
Jon Paul Perez (Beneficiary; 25%)
Christina Anne Perez (Beneficiary; 25%)
Nicholas Perez (Beneficiary; 25%)
Felipe Perez (Beneficiary; 25%)
Matthew Gorson (Trustee; 0%)
Stephen Ross (Trustee; 0%)
Jon Paul Perez (Trustee and Beneficiary; 100%)

Exhibit D


Developer's Proposed Organizational Structure
Park Towers Assisted Housing Developer, LLC (Developer)
Park Towers Assisted Housing LLC (Manager and Member; 100%)
Perez Housing Associates, LLC (Member; 50%)
LEDG Park Towers Member, LLC (Member; 50%)
Anthony Del Pozzo (Manager; 0%)
Eliot Reid (Manager; 0%)
Jorge Perez 2018 Family Trust (Member; 81%)
Jon Paul Perez 2018 Trust(Member; 9%)
Jon Paul Perez (Manager; 0%)
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