

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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Reflections Preservation, L.P.
a New York limited partnership,

FLORIDA HOUSING
FINANCE CORPORATION

Petitioner,

FHFC CASE NO. 2019-110VW
Application No. 2019-102B, 2002-111S, 2002-542C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) (2019)
AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS

Petitioner Reflections 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.") (2019) and the Non-Competitive Application Instructions against changing the principals of the Applicant identified in the Application. The Application indicated that Stephen M. Ross was the sole beneficiary of SMR Holdings, L.L.C. However, SMR Holdings, L.L.C. is owned entirely by SMR Revocable Trust, of which Stephen M. Ross is the sole beneficiary. Accordingly, Petitioner respectfully seeks a waiver so that the original org chart, attached as Exhibit A, may be revised to add SMR Revocable Trust at the third principal disclosure level and move Stephen M. Ross to the fourth principal disclosure level,¹ as depicted in Exhibit B. Per the Credit Underwriting Report, "Board approval of Rule Waiver is a condition to close." See Colonial Park Draft CUR dated December 24, 2019, pg.. A-8.

¹ Per Rule 67-21.0025(7)(d), trust beneficiaries that are natural persons may appear at the fourth disclosure level.

Petitioner essentially seeks a waiver to add a trust to its organizational structure – the only beneficiary of which was previously disclosed to Florida Housing. Petitioner disclosed in its application a limited liability company at the second disclosure level that had a natural person as its sole member. Petitioner now seeks to substitute a trust for that natural person member (the sole beneficiary of that trust is the same natural person previously disclosed as the sole member of the limited liability company). Put another way, the natural person will simply be moved from the third disclosure level to the fourth disclosure level and his trust – for estate planning purposes – will appear at the third 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:

Reflections Preservation, L.P., a New York limited partnership
Attn: Long Ha
315 S. Biscayne Blvd.
Miami, FL 33131
Telephone: 305-533-0047
Email: LHa@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

B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. The following information is provided for ease of reference for preparation of a memorandum to the Florida Housing Board:

- Development Name: Colonial Park
- Development Address: 1300 Banks Rd, Margate, FL 33063
- County: Broward
- Developer: Reflections Developer, LLC
- Number of Units: 160 acquisition/rehab
- Type: Mid-Rise, 4-stories
- Set Asides: 40% of units at 60% AMI or lower.²
- Demographics: Elderly, Non-ALF
- Funding: \$15,200,00 MMRB; \$777,484 annual HC allocation

D. PETITIONER'S PRINCIPAL STRUCTURE.

5. Petitioner is a New York limited partnership whose first principal disclosure level comprises: (1) Reflections Preservation GP, LLC (0.005% General Partner); (2) RAH Investor 231 LLC (99.98% LP); (3) Sterling Corporate Services LLC (0.01% SLP); and (4) Reflections Preservation Class B, LLC (0.005% Class B Limited Partner). Petitioner is not seeking a change at this level. *See* Original Org Chart, attached as Exhibit A.

6. Only the second principal disclosure level flowing from Reflections Preservation GP, LLC is pertinent here, which level consists of: (1) SMR Holdings, L.L.C. (60.171% MM);

² The Development is currently encumbered by an existing SAIL LURA, dated May 9, 2003, where 4% of the units (7 units) are set aside at or below 30% Average Median Income ("AMI") and 95% of the units (152 units) are set aside at or below 60% AMI for a period of 50 years. The Development is also encumbered by an existing ELIHA, dated October 14, 2003, where 99% of the units (159 units) are set aside at or below 60% AMI for a period of 50 years.

(2) Yukon California, LLC (17.842% Member); (3) BABJR Holdings LLC (9.987% Member); (4) Full Line, LLC (7.0% Member); and Wednesday Hill, LLC (5% Member). Petitioner is not seeking a change at this level.

7. Only the third principal disclosure level flowing from SMR Holdings, L.L.C. is at issue here, which consists – in the original org chart – only of Stephen M. Ross as the sole 100% Member.

8. For estate planning purposes, Mr. Ross would like to substitute his trust (*i.e.*, SMR Revocable Trust) as the sole member of SMR Holdings, L.L.C. *See* Revised Org Chart, attached as Exhibit B. If this Petition is granted, the trust would appear at the third disclosure level and Mr. Ross would appear at the fourth level.³ *Id.* No other change to the Petitioner’s organizational structure is requested.

E. THE RULE FROM WHICH WAIVER IS REQUESTED.

4. To change Petitioner’s principals, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (2019) 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

³ The new entity (denoted in green highlighting) would be inserted at the third level and the original sole member (denoted in blue highlighting) would move to the fourth level. *See* Ex. B.

in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 04-2019) 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-10774>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Rule 67-21.003(1)(b), F.A.C. (2019) incorporates by reference the Non-Competitive Application Package (Rev. 04-2019) ("NCA"). The NCA includes the following requirement:

The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and **cannot be changed in any way** (materially or non-materially) until after the MMRB Loan closing. After loan closing, (a) any material change will require review and approval of the Credit Underwriter, as well as Board approval prior to the change, and (b) any non-material change will require review and approval of the Corporation, as well as Board approval 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 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).

9. Petitioner is requesting the foregoing waiver so that it may amend its organizational structure such that an LLC appearing at its second disclosure level may replace the LLC's sole member with the sole member's trust (of which the sole member is the only trust beneficiary).

F. STATUTES IMPLEMENTED BY THE RULE.

10. Rule 67-21.003, F.A.C. (2019), 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 timely submitted a non-competitive application for Colonial Park (the “Development”). Petitioner received an invitation to underwriting on September 26, 2019.

13. Petitioner was subsequently notified by one of its principals of the need to make a change to the organizational structure. Specifically, Mr. Stephen M. Ross determined that, for estate planning purposes, his real estate holdings should be owned ultimately by his revocable trust, rather than by him individually.

14. If the request for waiver is denied, Mr. Ross will be required to form an entity specifically for this Development, which will not ultimately roll up to a trust. This will create an immense administrative burden upon Mr. Ross’s passing as the entity he will have to create if this Petition is denied will have to pass through probate rather than be governed by his trust (*i.e.*, SMR Revocable Trust).

15. As set forth above, Petitioner’s natural person principals disclosed in its application will not change if the Petition is granted. Rather, one principal (*i.e.*, Mr. Ross) will simply move from the third level of disclosure down to the fourth level of disclosure – a move

expressly permitted by Rule 67-21.0025(7)(d) (effective July 11, 2019). 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 financially benefitted by the funding 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) because FHFC 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). Here, the sole principal of SMR Revocable Trust is a natural person and that natural person was disclosed in Petitioner's application – the natural persons benefitted by the funding will not change if the Petition is granted. Accordingly, granting the Petition – and allowing the Trust to be substituted for that natural person – should not impact FHFC's confidence in the Petitioner or its principals.

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,⁴ 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).

⁴ "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.* (2019).

17. If the Rule is imposed, Petitioner's principal (Mr. Ross) will suffer a substantial and unnecessary operational hardship.

18. Because all natural persons financially benefitting from the Development were disclosed to Florida Housing via the Petitioner's initial principal disclosures, 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.

19. If the Petition is denied, Petitioner will have to form a new entity to replace SMR Holdings, L.L.C. Issues associated with forming the new entity may cause delays which could impact whether the Development satisfies the Placed-in-Service Date requirements.

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 a trust at the third principal disclosure level and move the natural person previously disclosed down to 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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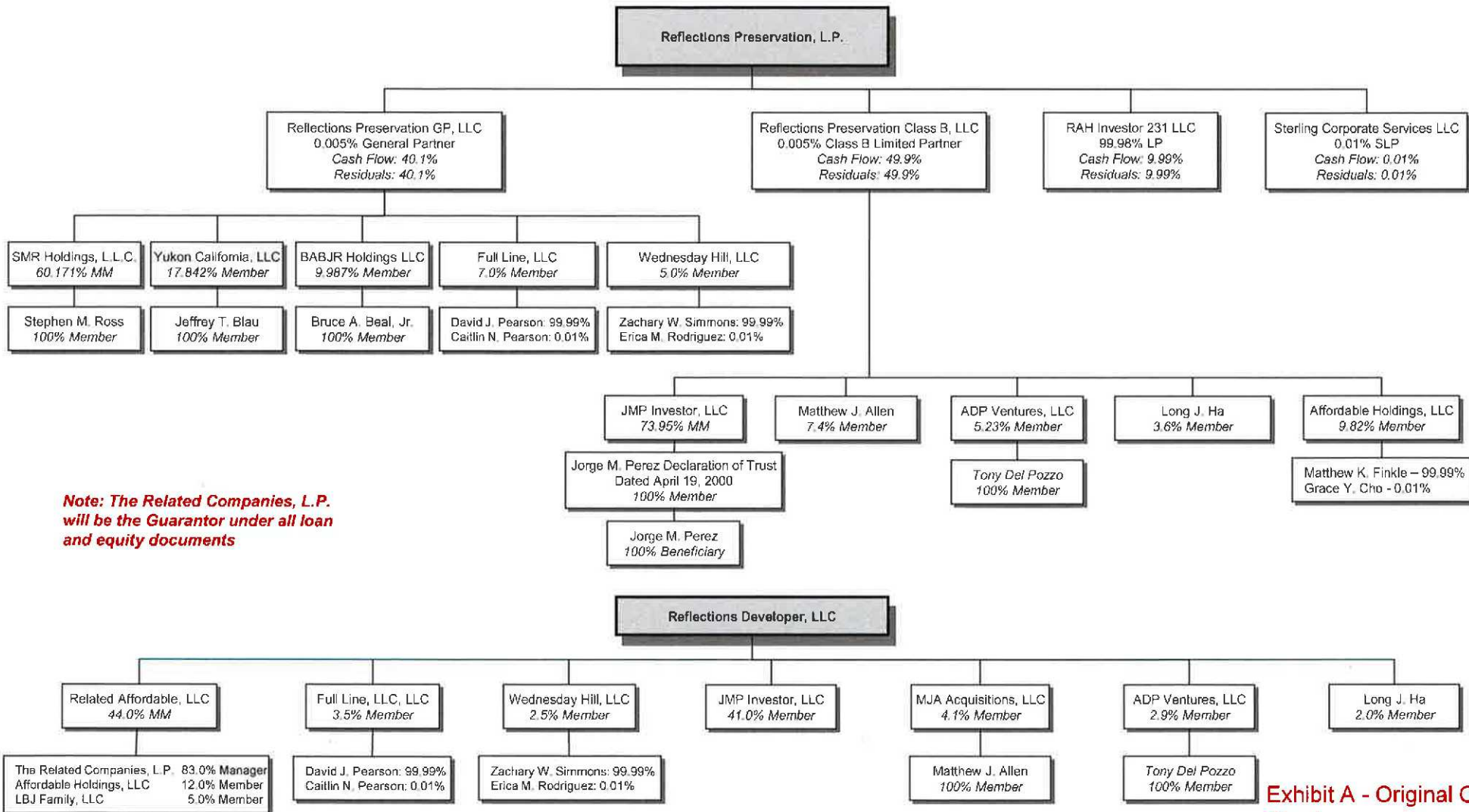
Counsel for Petitioner

By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

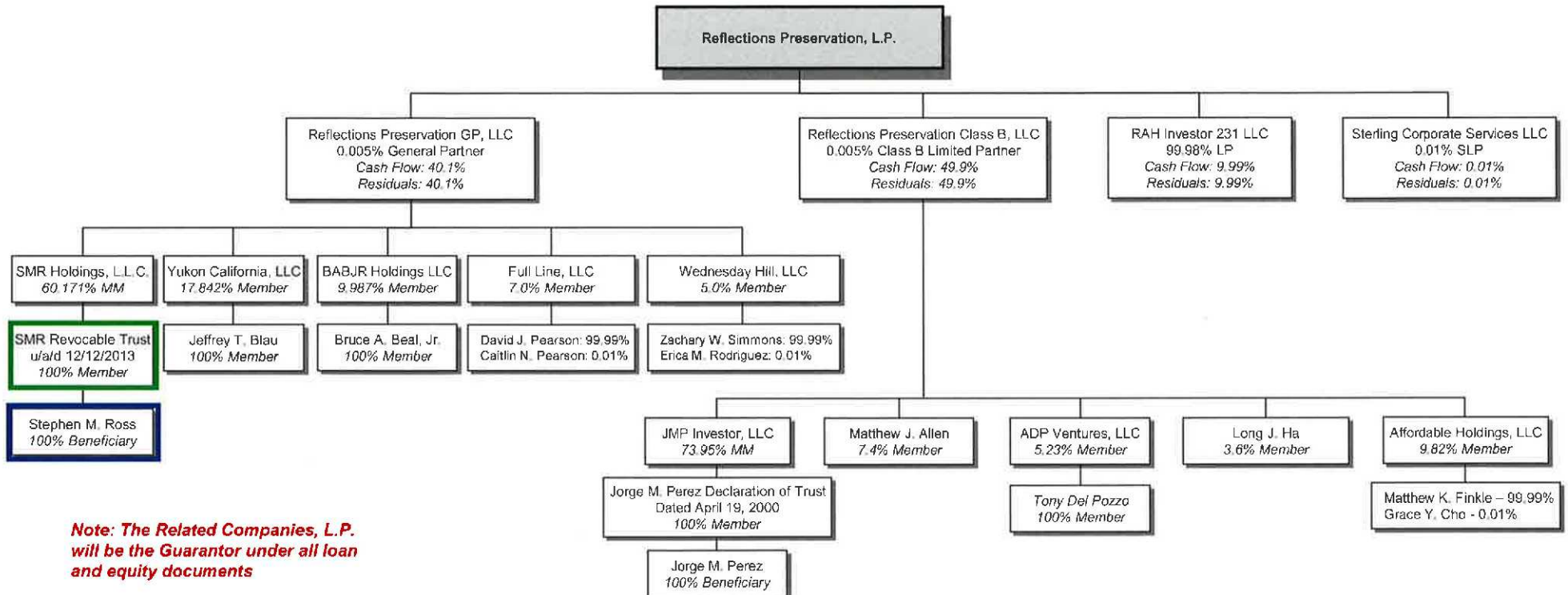
This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 30th day of December, 2019.

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



Note: The Related Companies, L.P. will be the Guarantor under all loan and equity documents

Exhibit A - Original Org Chart



Note: The Related Companies, L.P. will be the Guarantor under all loan and equity documents

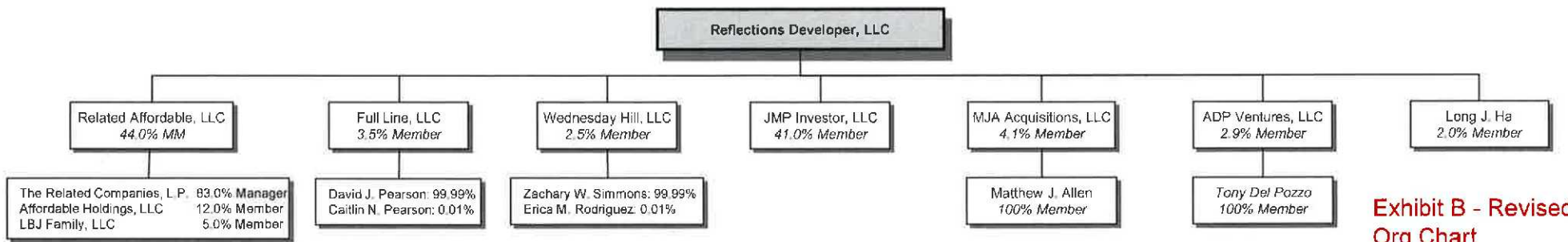


Exhibit B - Revised Org Chart