

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Hidden Grove Housing, L.P.
a New York limited partnership,

Petitioner,

FHFC CASE NO. 2020-031VW
Application No. 2018-105B

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**AMENDED PETITION FOR WAIVER OF RULES 67-21.003(1)(b), 67-21.002(9), (85),
F.A.C. (2018) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS**

Petitioner Hidden Grove Housing, L.P. (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for: (1) a waiver of the prohibition under Rule 67-21.003(1)(b), Florida Administrative Code (“F.A.C.”) (07/08/2018) and the Non-Competitive Application Instructions against changing the principals of the Applicant identified in the Application; and (2) a waiver of the definition of “Applicant” as defined in subsection (9), and “Principal” as defined in subsection (85)(a)2.c.,g., of Rule 67-21.002, F.A.C. (07/08/2018), to the extent such definitions require that only natural persons be disclosed by or at the third principal disclosure level since Florida Housing subsequently enacted an exception to permit a trust to appear at the third disclosure level where all trust beneficiaries are natural persons (collectively referred to herein as the “Rules”). Indeed, Florida Housing enacted the exception within two months of Petitioner’s application submission; earlier enactment of the exception would have obviated the need for this requested waiver. Here, Petitioner seeks a waiver to add a trust to its organizational structure – the only beneficiary of that trust was disclosed on Petitioner’s application. Essentially, 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:

Hidden Grove Housing, L.P., a New York limited partnership
Attn: David Pearson
60 Columbus Circle
New York, NY 10023
Telephone: 212-801-3738
Email: david.pearson@related.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.
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Bridget Smitha, Esq.
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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: Hidden Grove Apartments
- Development Address: 13815 SW 271st Terrace, Miami, FL 33032
- County: Miami-Dade
- Developer: Hidden Grove Developer, LLC
- Number of Units: 222 rehab
- Type: Garden Apartments
- Set Asides: 40% of units at 60% AMI or less
- Demographics: Family
- Funding: \$23,000,000 Corporation-issued MMRB; \$1,320,988 Non-Competitive HC funding request (annual amount)¹

D. PETITIONER'S PRINCIPAL STRUCTURE.

5. Petitioner is a New York limited partnership whose first principal disclosure level comprises: (1) Hidden Grove Housing GP, LLC (0.005% General Partner); (2) Regions Affordable Housing, LLC (99.98% LP); (3) Sterling Corporate Service LLC (0.01% SLP); and (4) Hidden Grove Housing 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 Hidden Grove Housing GP, LLC is pertinent here, which level consists of: (1) SMR Holdings, L.L.C. (60.171% MM);

¹ Petitioner will assume some existing subordinate loans from the seller as part of its financing sources. One of the loans is a SAIL that was issued by FHFC in the amount of \$2,239,000. The other subordinate loan was issued by Miami-Dade County in the approximate outstanding amount of \$1,822,473, which will be partially paid down.

(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 pertinent here, which consists only of Stephen M. Ross as the sole 100% Member.²

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

E. THE RULES 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. (2018) 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

² See the entity denoted in green font on the Original Org Chart (Ex A).

³ The new entity (denoted in blue font) would be inserted at the third level and the original sole member (denoted in green font) 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. 05-2018) 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-09576>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Rule 67-21.003(1)(b), F.A.C. (2018) incorporates by reference the Non-Competitive Application Package ("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, any change (materially or non-materially) will require Board approval prior to the change. Changes to the Applicant entity 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 to 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.

Id. at Part A. 2. a. (2) (emphasis added).

9. To allow a trust to appear at Petitioner's third principal disclosure level, Petitioner also requests a waiver of the definitions of "Applicant" and "Principal" in Rule 67-21.002(9) and (85)(a)2.c., g., F.A.C. (2018), which provide as follows:

(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:

2. A limited partnership, at the first principal disclosure level, any general partner or limited partner of the Applicant limited partnership, and, unless otherwise excluded at subsection 67-21.002(9), F.A.C., with respect to any general partner or limited partner of the Applicant limited partnership, at the second principal disclosure level, that is:

c. A limited liability company, any manager or member of the limited liability company

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**

See Rule 67-21.002(9) and (85)(a)2.c.,g., F.A.C. (2018) (emphasis added).

10. Petitioner is requesting the foregoing waivers 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 RULES.

11. Rules 67-21.002 and 67-21.003, F.A.C. (2018), implement, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.502, Legislative findings.

- Section 420.503, Definitions.⁴
- 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.

12. 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.

13. Petitioner timely submitted a non-competitive application for Hidden Grove Apartments (the "Development") in May 2019. Petitioner received an invitation to underwriting on July 26, 2019. Between the date of submission and the invitation to underwriting, amendments to the Rules became effective that allow a trust to be disclosed at the third principal level if all of the trust's principals are natural persons. *See* Rule 67-21.0025(7)(c)-(d) (effective July 11, 2019). 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

⁴ Neither "applicant" nor "principal" are defined in Section 420.503, Fla. Stat.

this Petition is denied will have to pass through probate rather than be governed by his trust (*i.e.*, SMR Revocable Trust).

15. Given the recent Rule changes, discussed in paragraph 13 (above), Petitioner seeks this waiver so that all of Mr. Ross's transactions with FHFC financing subject to the Rule may be treated the same (*i.e.*, owned ultimately via SMR Revocable Trust).

16. 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.

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,⁵ 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. (2018).

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

19. 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.

20. 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.

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.

H. ACTION REQUESTED.

23. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that Petitioner may maintain a trust at the third

⁵ "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. (2018).

principal disclosure level and a natural person at 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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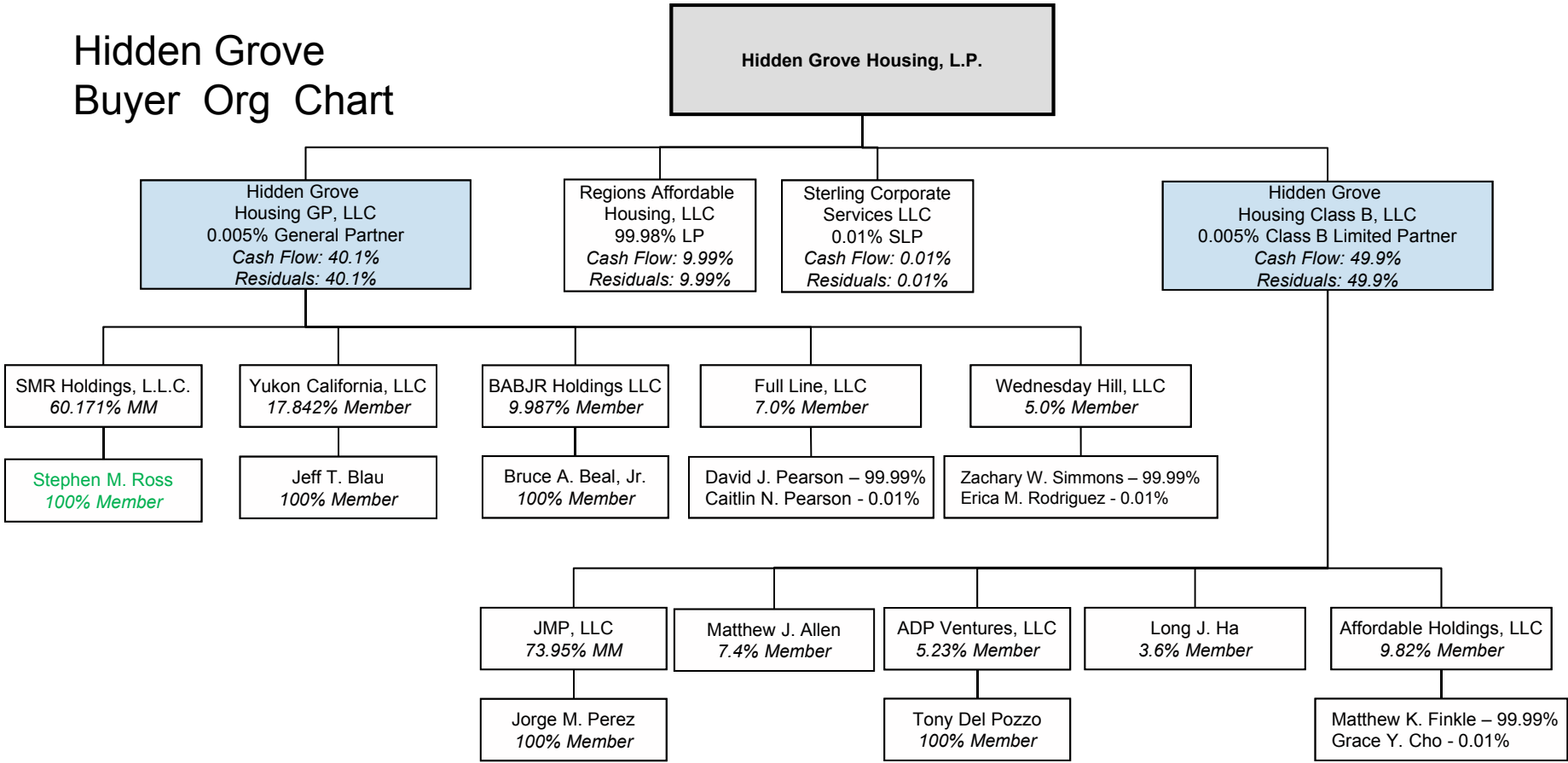
By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

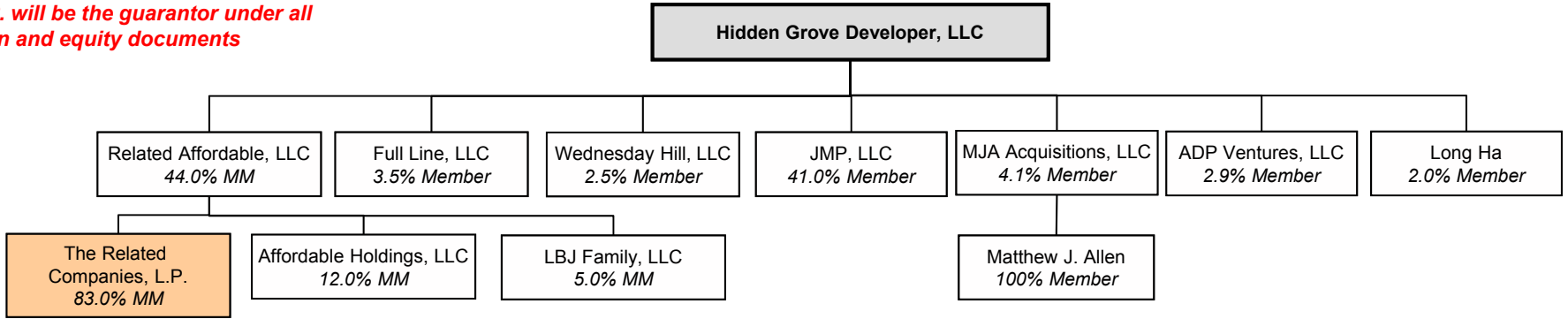
This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 8th day of May, 2020.

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

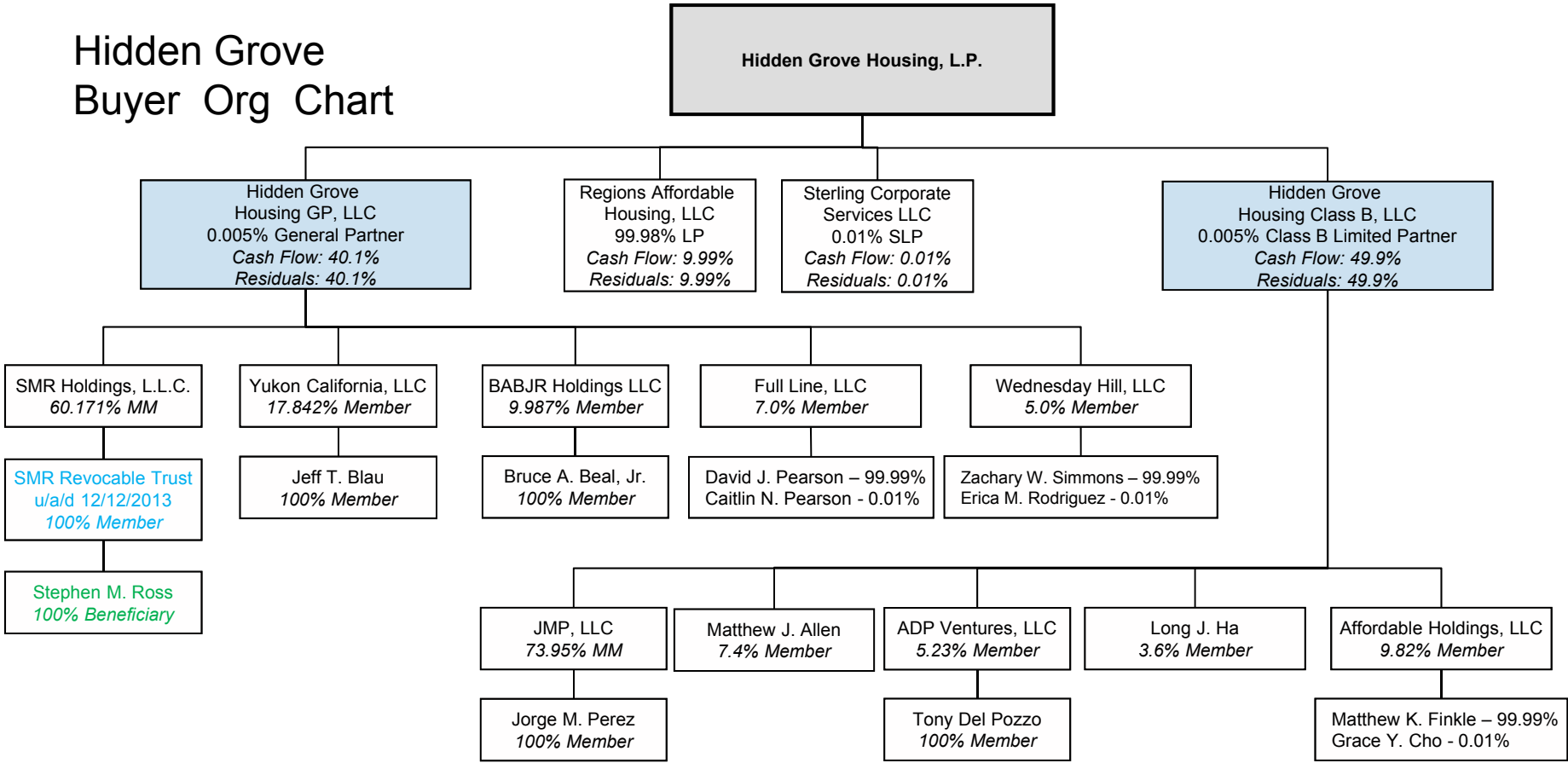
Hidden Grove Buyer Org Chart



**** NOTE: The Related Companies, L.P. will be the guarantor under all loan and equity documents**



Hidden Grove Buyer Org Chart



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