

COATS | ROSE

A PROFESSIONAL CORPORATION

BARRY PALMER
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October 22, 2024

By Email to bobby.wilkinson@tdhca.state.tx.us

TDHCA Governing Board
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711
c/o Bobby Wilkinson, Executive Director

RE: Appeal of Notice of Debarment Determination for David B. Ratliff, Michael Volz, and Evan J. Hunden dated October 15, 2024.

Dear Chair Vasquez and Board Members:

This is an appeal of the October 15, 2024 Notice of Debarment Determination for David B. Ratliff, Michael Volz, and Evan J. Hunden sent by Bobby Wilkinson, Executive Director (the "Debarment Determination"). Each of the named individuals was determined to be debarred for a period of two (2) years, subject to the TDHCA Board's concurrence. We take issue with this Debarment Determination on the grounds that the debarment proceeding was brought under 10 (TAC §2.401(e)(2)(A)), but the conditions set out in that rule were not met.

We also suggest that a two-year debarment is not warranted for what were initially primarily late filing responses to noncompliance issues, for which the third party property management company accepted responsibility. Only with the September 26, 2023 REAC inspection of Rosemont at Meadow Lane (Score of 47 out of 100) did the condition of a single property slip to the point that it has been an incredible lift to resolve the physical noncompliances identified. Notwithstanding the severe issues, at the most recent NSPIRE inspection of Rosemont at Meadow Lane on September 26, 2024, the project obtained a passing score of 75.28, with 60 being the minimum passing score, as established by HUD. We note that under 10 TAC §2.401(d)(1), a project is referred to the Enforcement Committee for mandatory debarment if it has, on more than one occasion scored 50 or less on a UPCS or an NSPIRE inspection, or any combination thereof. That criterion has never been met in this portfolio, and we suggest that the two-year debarment terms recommended by the Staff do not match the standards suggested by this rule, especially in view of the extreme measures taken to bring Rosemont at Meadow Lane into compliance for the scheduled NSPIRE inspection.

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1. Background:

David B. Ratliff, Michael Volz, and Evan J. Hunden (collectively, the “Officers”) are all executive officers of DevCo, LLC, an integrated development and investment company headquartered in the State of Washington which is the largest provider of affordable housing in Washington State. Since 1994, DevCo, LLC has focused on developing, owning and managing 12,000 affordable and market rate apartment units throughout the United States. DevCo Preservation, LLC is a division that concentrates on rehabilitating affordable multifamily developments located outside the State of Washington. (DevCo, LLC and DevCo Preservation, LLC are collectively referred to hereafter as “DevCo”.)

2. Basis for Debarment Determination [10 TAC §2.401(e)(2)(A)]:

The TDHCA notified the of a referral for possible debarment pursuant to a specific provision of the Texas Administrative Code, which reads as follows:

(e) Repeated Violations of a LURA that shall be referred to the Committee for Debarment.

...

(2) Repeated violations in a portfolio. Persons who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee if an inspection or referral, after April 1, 2021, indicates the following:

(A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee within the last three years. The Enforcement Committee may increase this threshold at its discretion. For example, if three properties in a five-property portfolio are monitored in the same month, and then referred to the Enforcement Committee at the same time, it may be appropriate to increase the 50% threshold; or, ...

3. Definition of “Actively Monitored Development”:

In 10 TAC §2.102(1) the Texas Administrative Code specifically defines an “Actively Monitored Development” as used in Chapter 2 provisions relating to Enforcement:

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific chapters of this title that govern the program associated with the request, in Chapter 1 of this title (relating to Administration), or assigned by federal or state law.

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection, a National Standards for the Physical Inspection of Real Estate (NSPIRE) inspection, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS and NSPIRE inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

4. The DevCo portfolio:

DevCo currently has a 10-property Texas portfolio that consists of developments that have been re-syndicated after the expiration of the initial 15-year Compliance Period. The projects owned by DevCo are as shown on Exhibit 2 of the Debarment Determination (copy attached).

The TDHCA has listed all of the projects except Costa Almedena and Brookside Gardens as being Actively Monitored Developments. Under the applicable definition [10 TAC §2.102(1)], we assert that both of these projects should have been considered Actively Monitored Developments:

1. Costa Almedena received a physical inspection on July 7, 2021, as evidenced by a Close-out letter dated March 14, 2022. A physical inspection was also initially scheduled for April 9, 2024, by letter dated March 20, 2024, but was subsequently cancelled at the request of the Property Manager, as shown by email correspondence between Eric Rios and Jamila Ghadamosi dated March 25 – 26, 2024.
2. Brookside Gardens received a physical inspection on April 19, 2022, as referenced in the Close-out letter dated October 3, 2022.

These circumstances were previously brought to the attention of Staff by letter dated July 29, 2024. Staff rejected this information on the grounds that the inspections for Costa Almedena and Brookside Gardens were conducted during a predecessor in title's ownership and therefore the projects were not considered "Actively Monitored Developments" as they related to the Officers.

5. Number of Actively Monitored Developments should be 10:

We have been unable to identify any rule or precedent that suggests whether or not a project being "actively monitored" is dependent upon the identity of the owner of the project. The definition is tied to the dates that UPCS or NSPIRE inspections, or an onsite or desk file monitoring review, Affirmative Marketing Plan review or Written Policies and Procedures review took place. Nothing in the definition speaks to the ownership of a project at the time of such inspection or review. Accordingly, Costa Almedena and Brookside Gardens should have been counted as part of the portfolio of Actively Monitored Developments. This would mean that of the 10 projects owned by DevCo, all 10 should have been considered Actively Monitored Developments.

6. Ownership by Hunden is not shown in three instances:

The listing of projects and their ownership and referral status does not show that at the time of re-syndication, the following projects were acquired by entities in which Evan (Jack) Hunden held Controlling interests: (i) The Mondello (07/17/2024); (ii) The Positano (08/24/2023); and (iii) Costa Almadena (07/28/2023). Mr. Hunden's Control over The Mondello would be irrelevant to this procedure, since it was not acquired until after issuance of the Debarment Notice on April 24, 2024. His interests in The Positano and Costa Almadena should have been

considered at the time of the Debarment Notice, however. This would have given Mr. Hunden a portfolio of 8 Controlled Actively Monitored Developments. Copies of the organizational charts for these three projects post re-syndication are attached as Exhibit A, and copies of their organizational documents are available upon request.

7. Percentages of referred developments fail to meet 10 TAC §2.401(e)(2)(A) criteria:

Had the Staff used a portfolio count of 10 Actively Monitored Developments, then the portfolio number considered to be under the Control of the Officers would be 9 for David Ratliff and Michael Volz, and 6 for Evan (Jack) Hunden. The percentages of those Actively Monitored Developments under the Control of each of the Officers that were referred to the Enforcement Committee within the three years preceding the Debarment Notice dated April 24, 2024, would be as follows:

1. David Ratliff – 40%
2. Michael Volz – 40%
3. Evan (Jack) Hunden – 37.5% (At the time of the April 24, 2024 Debarment Notice, Jack Hunden did not have an ownership interest in The Mondello, so at the most, he could only “Control” 8 developments, of which 3 had been referred to the Enforcement Committee.)

Based upon these percentages, the referral of the Officers to the Enforcement Committee was not in accordance with the criteria set out in 10 TAD §2.401(e)(2)(A).

8. Extreme effort has been devoted to resolving physical noncompliance issues:

In December 2023 it became clear to DevCo and the Officers that their third party property management company was not taking adequate steps to resolve the outstanding noncompliances from the September 26, 2023 REAC inspection of Rosemont at Meadow Lane. They stepped in to directly supervise resolution of the noncompliance issues. They have undertaken an intense effort to resolve the physical noncompliances identified in the 2023 REAC inspection. Since December 2023 a total of **\$2,346,884.00** has been spent to bring the project up to TDHCA standards and to successfully pass the anticipated September 26, 2024 NSPIRE inspection. Please see the attached Exhibit B. Additionally, Devco has terminated the previous non-performing property management company and as of October 2024, Alpha Barnes Real Estate Services, LLC was engaged to serve as the third party Property Manager overseeing all efforts to fix physical problems with Rosemont at Meadow Lane and to bring it into compliance with the TDHCA standards and procedures. As of this time, DevCo has replaced the previous property manager with Alpha Barnes Real Estate Services, LLC on five of the portfolio projects, and the lenders of four additional projects have requests pending that HUD approve property management changes.

We believe that all of the above circumstances indicate that the Officers and DevCo are acting in good faith to bring the problematic Rosemont at Meadow Lane into compliance in all respects, and to the best of our knowledge, any noncompliances noted for other properties in DevCo’s Control per TDHCA rules have been resolved and close-out letters are in place.

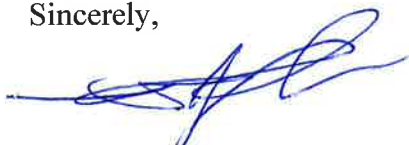
9. Summary:

In summary, we think that this Debarment Determination against the Officers is faulty in that it should not have been brought against them, given the size of their various Controlled Actively Monitored Development portfolios. We accordingly request that the debarment proceeding be terminated without any penalties to the Officers.

If, however, the Board does not agree with our analysis of the underpinnings of this debarment proceeding, then we request that the Board reduce the debarment terms, taking into consideration the major efforts that have been undertaken to resolve the outstanding noncompliances, and the really major turn-around that was made to enable Rosemont at Meadow Lane to pass the recent NSPIRE inspection. We point out that the NSPIRE inspection noted that all of the noncompliances still outstanding from the 2023 REAC inspection (window screens and faulty swimming pool equipment) were observed to have been cured.

Thank you for the opportunity to submit this appeal of the Debarment Determination. If there are any questions, we are glad to provide clarification.

Sincerely,



Barry J. Palmer, Director

Enclosures:

Copy of Exhibit 2 from Debarment Determination

Exhibit A - Copies of organizational charts (Mondello, Positano & Costa Almadena)

Exhibit B - Capital Expenditures for Rosemont at Meadow Lane

cc: Bobby Wilkinson
David B. Ratliff
Michael Volz
Evan (Jack) Hunden
Mattye Gouldsby Jones
Tamea A. Dula

Exhibit 2: Actively Monitored Development Analysis

Property	David Ratliff	Michael Volz	Evan Hunden	Referred for penalty during last 3 years?	Control Began (date)	Actively Monitored
The Mondello HTC 07053 / CMTS 4080	Managing Member	Managing Member	Guarantor. No Control authority	4/2022 File Monitoring Referral	11/3/2021	Yes
Rosemont Ash Creek HTC 23420 / HTC 03410 / Bond 03410B / CMTS 3399	Managing Member	Managing Member	Managing Member	2/2022 UPCS Referral	12/29/2020	Yes
Rosemont Meadow Lane HTC 03433 / CMTS 3421	Managing Member	Managing Member	Managing Member	11/2021 UPCS Referral 4/2024 UPCS Referral	1/29/2021	Yes
Rosemont Lancaster HTC 02479 / Bond 20034 / CMTS 3279	Managing Member	Managing Member	Managing Member	2/2022 UPCS Referral 6/2022 File Monitoring Referral	12/29/2020	Yes
Park at Humble HTC 23434 / HTC 03465 / 03465B / CMTS 4036	Managing Member	Managing Member	Managing Member	No	8/2/2021	Yes
Positano HTC 23421 / HTC 04490 / CMTS 4184	Managing Member	Managing Member	No Control authority	No	12/17/2021	Yes
Tigoni Villas HTC 23424 / HTC 03136 / CMTS 3353	Managing Member of the Limited Partner, but has primary Control authority per Section 5.1. of LPA)	Managing Member of the Limited Partner, but has primary Control authority per Section 5.1. of LPA)	Managing Member of the Limited Partner, but has primary Control authority per Section 5.1. of LPA)	No	1/7/2022	Yes
Plainview Vistas HTC 04154 / CMTS 4073	No Control authority	No Control authority	No Control authority	No	1/7/2022	Yes, but not in Control. Verified by Coats Rose 5/15/2024

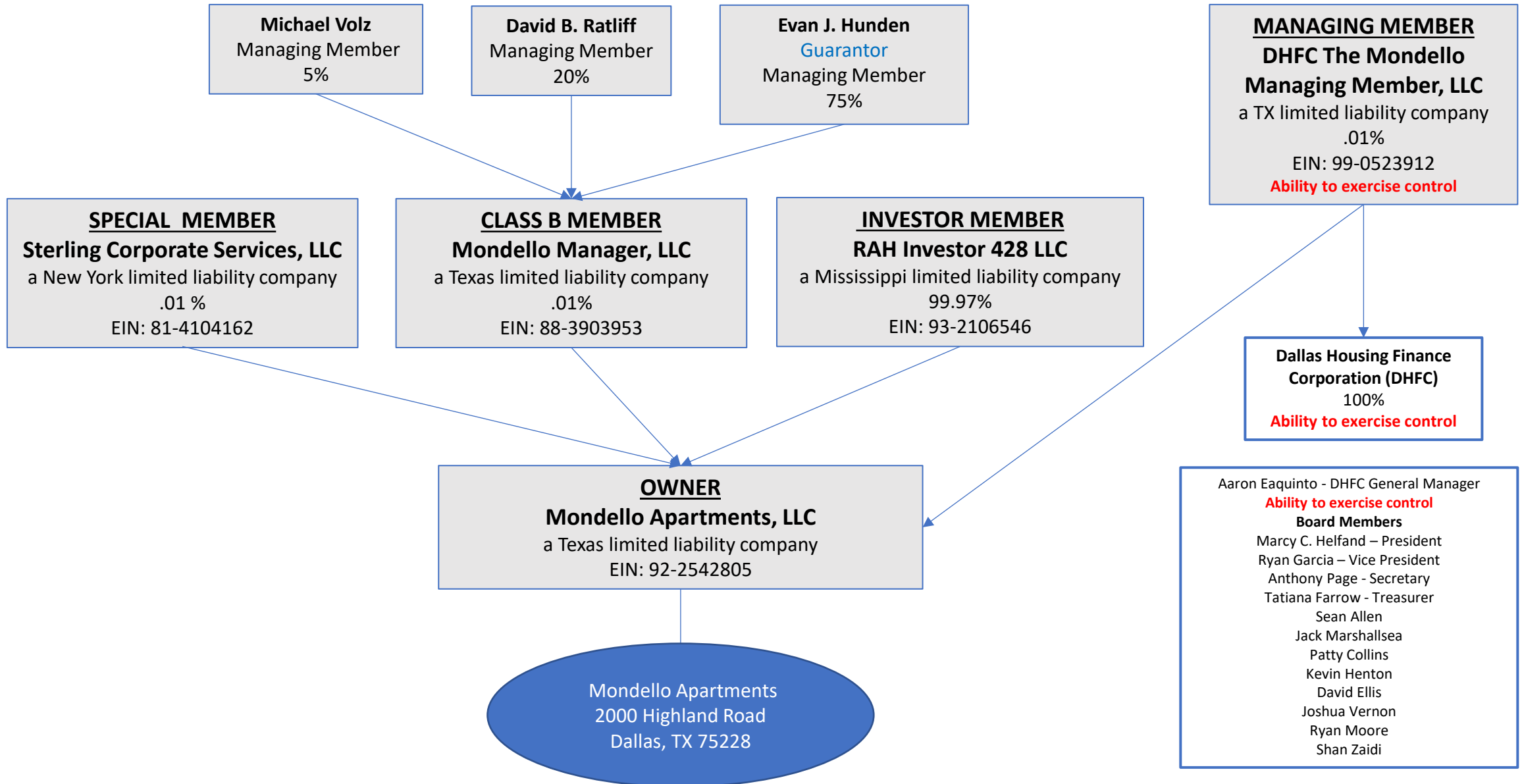
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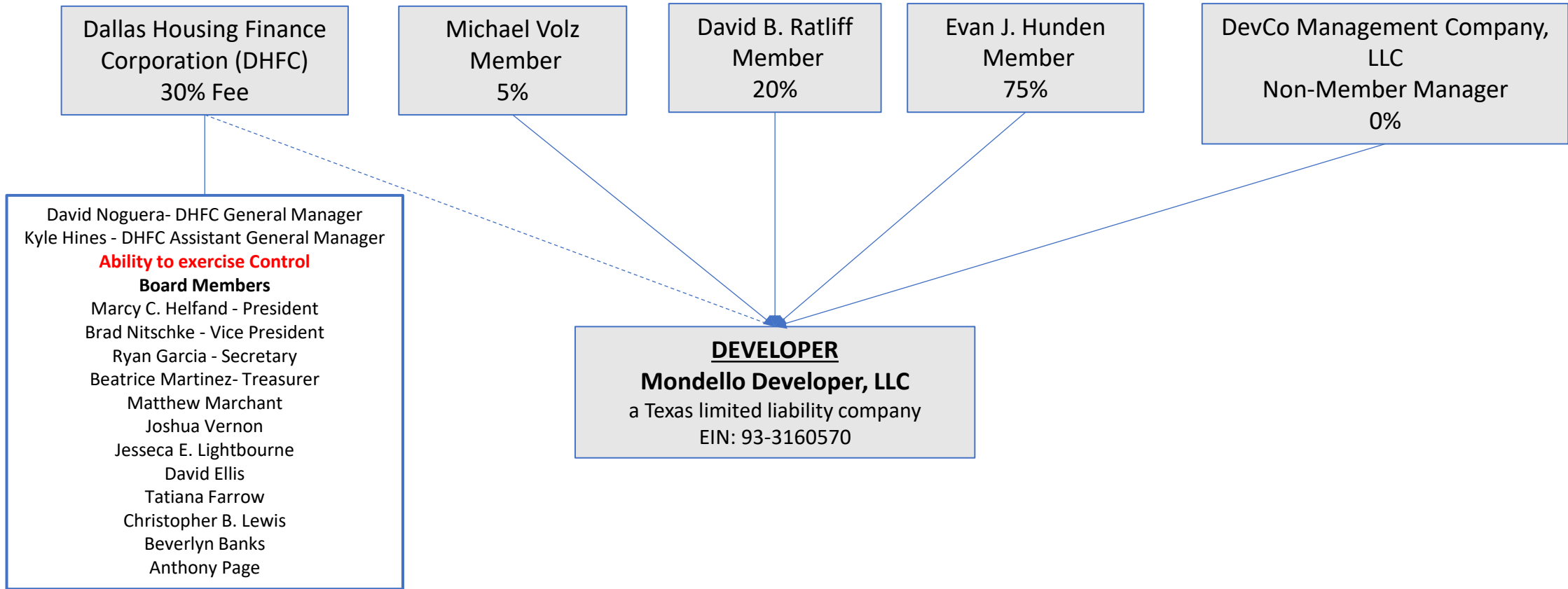
Property	David Ratliff	Michael Volz	Evan Hunden	Referred for penalty during last 3 years?	Control Began (date)	Actively Monitored
Costa Almedena HTC 23437 / HTC 060426 / CMTS 4429	Managing Member of Co-GP (primary control authority)	Managing Member of Co-GP (primary control authority)	No Control authority	No	12/1/2021	No. Inspected 7/7/2021. Report issued 8/6/2021. Corrections submitted by prior owner 10/18/2021. Property sold 12/1/2021. TDHCA close-out letter was issued 3/14/2022, after the sale, but none of the above monitoring events were during their Control, so it is not considered an Actively Monitored Development for purposes of this analysis
Brookside Gardens HTC 23454 / HTC 04611 / Bond 04611B / CMTS 4160	Managing Member	Managing Member	Managing Member & Guarantor	No	6/22/2022	No. Inspected 4/19/2022. Report issued 5/20/2022. Corrections submitted by prior owner 6/6/2022. Property sold 6/22/2022. TDHCA close-out letter was issued 10/3/2022, after the sale, but none of the above monitoring events were during their Control, so it is not considered an Actively Monitored Development for purposes of this analysis
Total Actively Monitored Developments in Control	7	7	5	4 Developments referred		

Exhibit A

Copies of organizational charts (Mondello, Positano & Costa Almadena)

Mondello Apartments, LLC Resyndication Org Chart of Owner & Developer DRAFT





*This is proposed partnership with DHFC and has not yet been finalized or approved by DHFC.

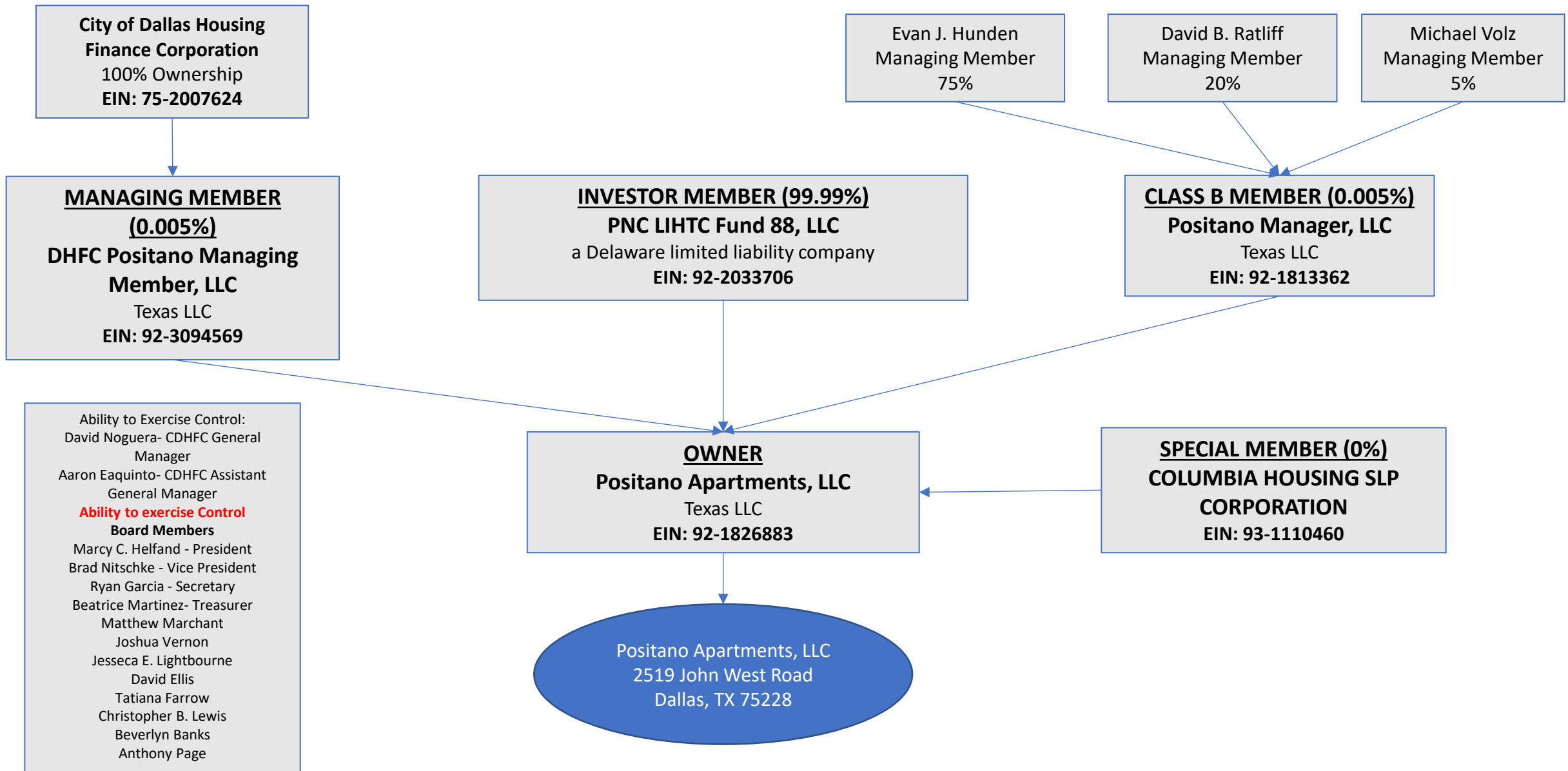
Guarantor Chart

Evan J. Hunden

Sole Guarantor

Positano Apartments, LLC Resyndication Org Charts of Owner and Developer

Dated as of Amended & Restated OA 2023-08-23



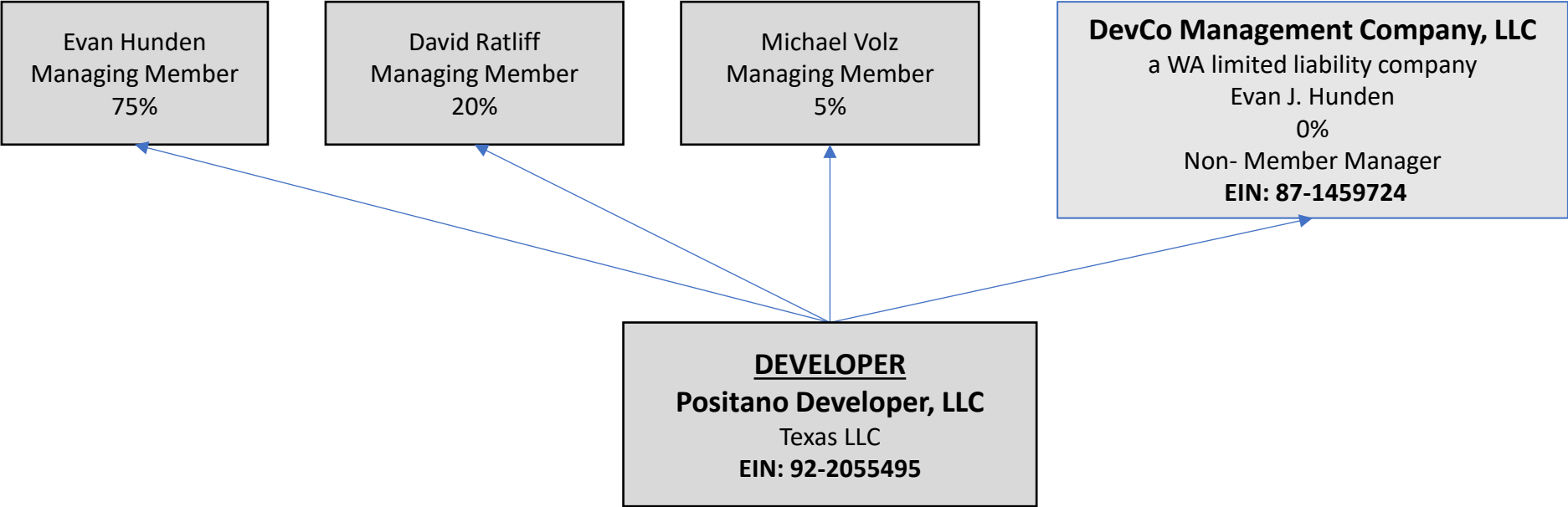
Evan Hunden
Managing Member
75%

David Ratliff
Managing Member
20%

Michael Volz
Managing Member
5%

DevCo Management Company, LLC
a WA limited liability company
Evan J. Hunden
0%
Non- Member Manager
EIN: 87-1459724

DEVELOPER
Positano Developer, LLC
Texas LLC
EIN: 92-2055495

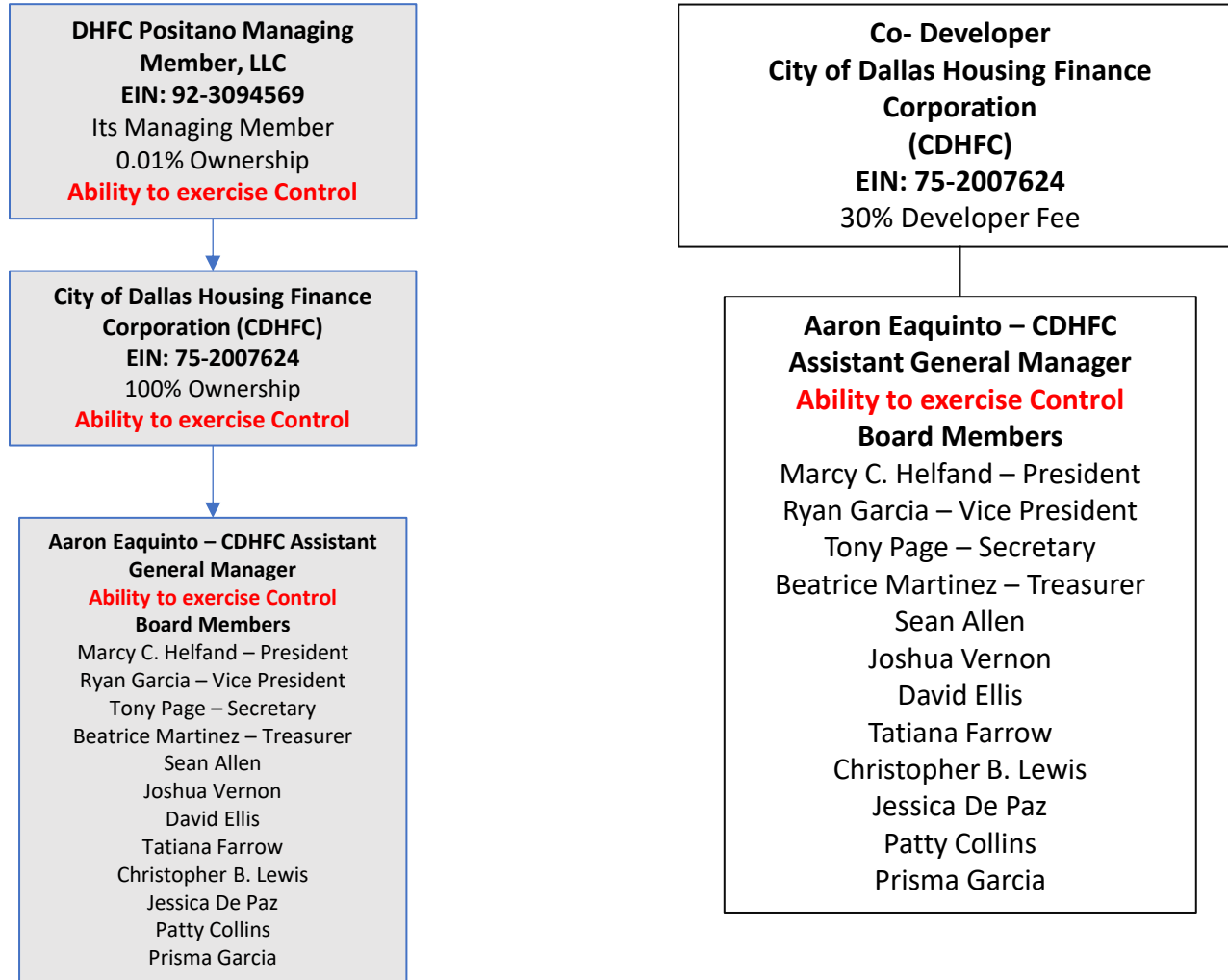


Guarantor Chart

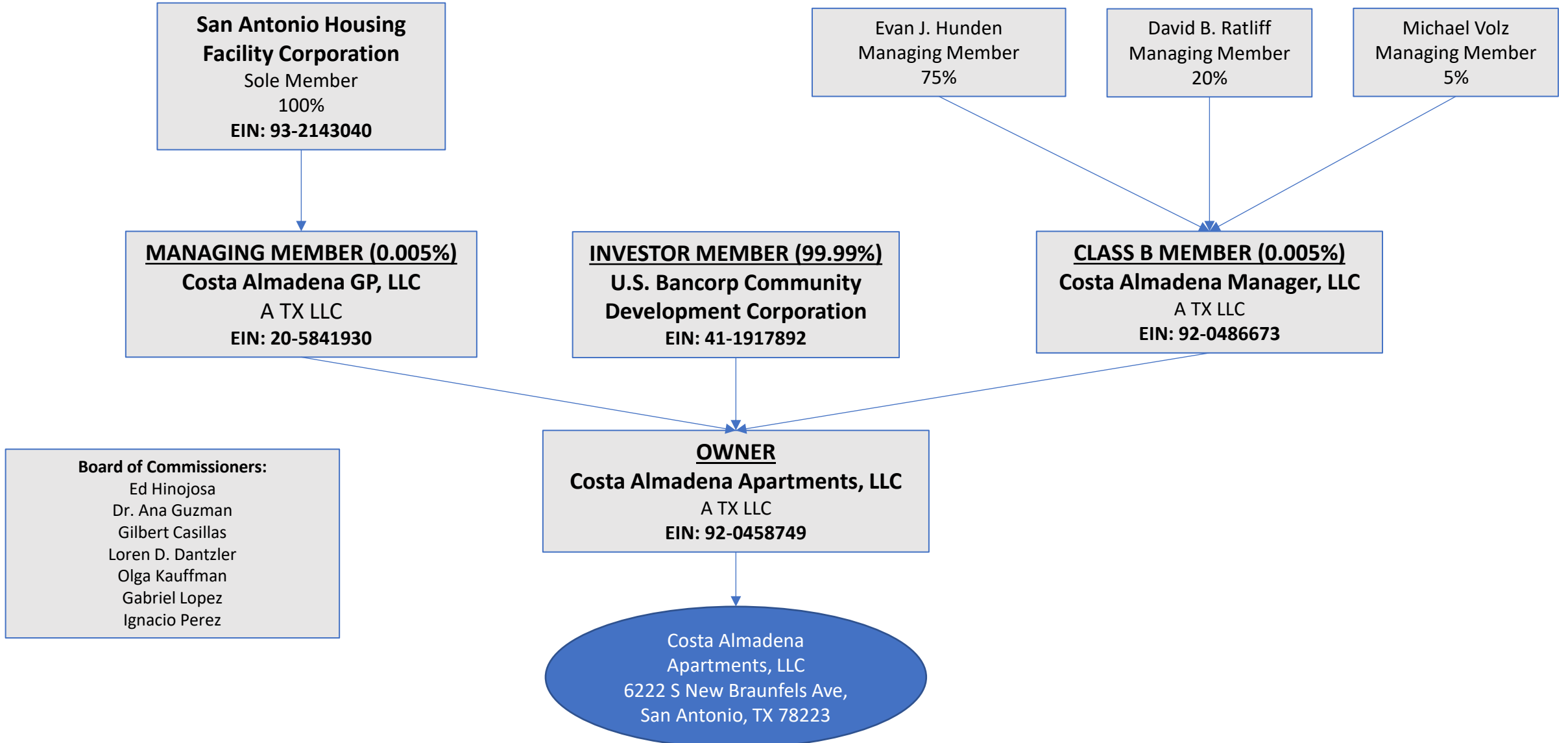
Evan J. Hunden

Sole Guarantor

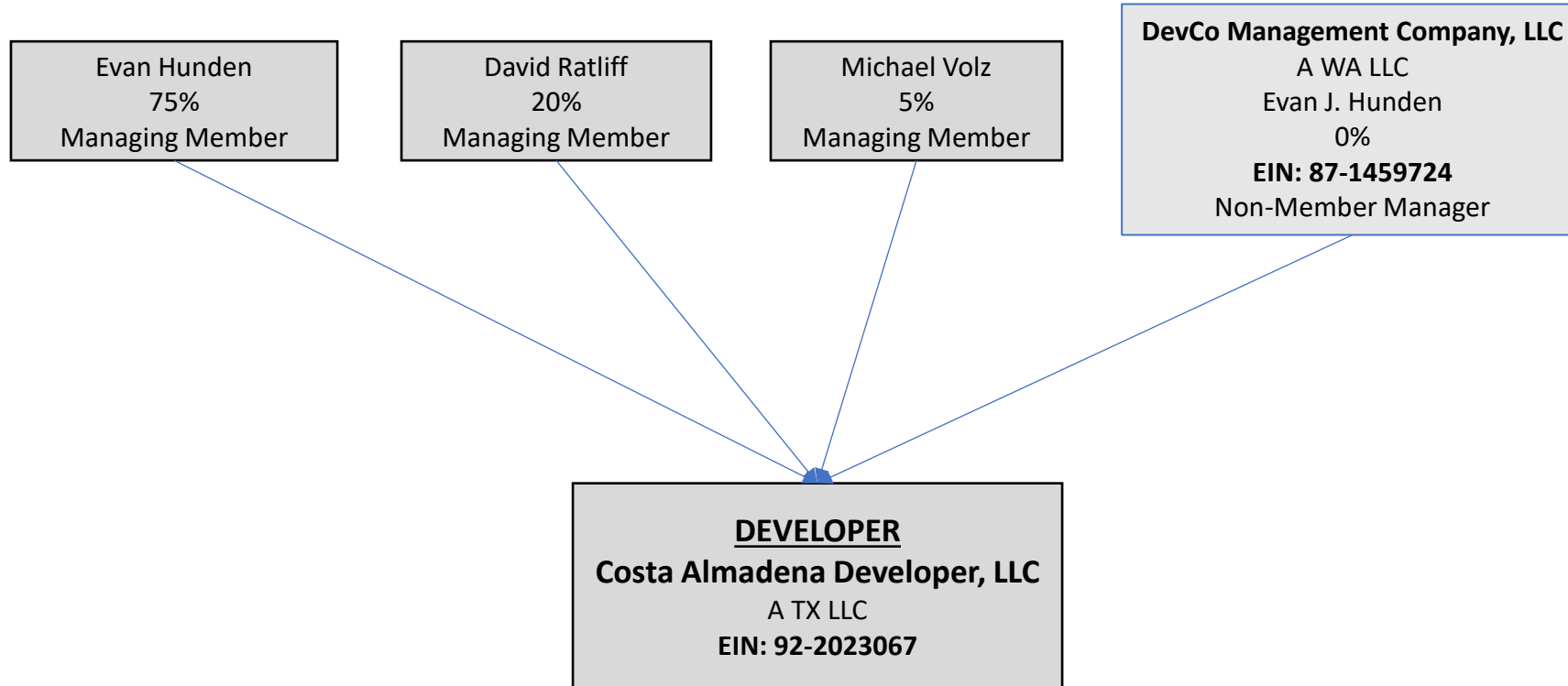
DHFC Org Chart



Costa Almadena Apartments, LLC Org Chart of Owner
Dated as of A&R OA 2023-07



Costa Almadena Developer Org Chart



Guarantor Chart

Evan J. Hunden

Sole Guarantor

Exhibit B

CAPITAL EXPENDITURES FOR ROSEMONT AT MEADOW LANE

(Repairs, replacements, deferred maintenance and making ready of over 100
vacant units)

December 2023 - Present

Item	Cost	Vendor	Date	Notes
Blind Replacement	\$16,096	Various	12/31/2023	Blind replacement '23 YTD.
Cabinet Replacement	\$17,900	Various	12/31/2023	Cabinet replacement '23 YTD.
Door and Hardware	\$38,251	Various	12/31/2023	Door & hardware replacement '23 YTD.
HVAC Replacement (2023)	\$147,316	Various	12/31/2023	HVAC system replacement '23 YTD.
Window Repair/Replacement (2023)	\$26,324	Various	12/31/2023	Window repair/replacement '23 YTD.
Appliances (2023)	\$31,323	Various	12/31/2023	Appliance replacement '23 YTD.
Flooring Replacement (2023)	\$223,109	Various	12/31/2023	Flooring replacement '23 YTD.
Fence Repair	\$12,331	Various	12/31/2023	Fence repair '23 YTD.
Landscaping - Tree Trimming (2023)	\$36,156	Black Diamond	12/31/2023	
Roof Replacement	\$596,844	Wells and Son	2/29/2024	
Surveillance Cameras	\$105,860	Stealth Monitoring	3/31/2024	
Electrical Repair	\$8,162	Cano Electric	4/30/2024	
Parking Lot Restripping	\$15,720	Fireman's Paving	4/30/2024	
Window Screens	\$56,195	Lone Star Solar Screens	5/8/2024	
Painting - Carports	\$19,682	Centex	5/31/2024	
Painting - Fence	\$26,884	Centex	5/31/2024	Includes all perimeter metal, pool, playground, and unit railings.
Concrete Repairs	\$4,113	Centex	5/31/2024	
Speed Bump Installation	\$12,021	Centex	5/31/2024	
Dumpster Enclosure Repairs/Repaint	\$18,510	Centex	5/31/2024	
Gutter Repair/Replacement	\$37,357	Centex	5/31/2024	
Splash Blocks	\$7,500	Indigo Construction	5/31/2024	
Landscaping - Erosion Control	\$17,861	Black Diamond	5/31/2024	
Landscaping - Tree Trimming	\$25,385	Black Diamond	5/31/2024	
Landscaping - Irrigation Repair	\$58,671	Rivera Brothers	5/31/2024	
Lighting Repair/Replacement	\$60,056	Centex	5/31/2024	Includes carport, building, and site.
Storm Drain Repair	\$12,000	Indigo Construction	5/31/2024	
Painting - Exterior Façade	\$175,032	Centex	6/30/2024	
Carpentry - Exterior Repair/Replacement	\$36,820	Centex	6/30/2024	Repair/replacement of all rotten wood on exterior façade.
Window Repair/Replacement	\$14,300	AmeriStar	6/30/2024	
Appliances	\$17,011	HD Supply	6/30/2024	Various appliance, YTD.
Flooring Replacement	\$51,420	Various	6/30/2024	Carpet and vinyl flooring replacement, YTD.
Water Meter installation	\$23,826	YES Energy Management	6/30/2024	Water & sewer meter installation.
HVAC Replacement	\$15,114	Various	6/30/2024	HVAC system replacement, YTD.

Pool Repair	\$17,781	Swim Solution	7/1/2024	Work is still pending on this item and should be completed by 8/9 weather dependent.
Entrance/Exit Gate Repair	\$38,208	Indigo Construction, Guardian Construction, and GateWise	7/15/2024	
100% Unit Prevenative Mainteance	\$22,500	ALFA2B Solutions	8/22/2024	Includes replacing A/C filters, smoke detectors, HVAC, GFCI and window inspections
100% Unit Pest Control	\$23,599	Massey Services	8/16/2024	Unit and Attic Pest Control
HVAC Replacements, Window Replacements, Various Repair Costs	\$50,246	ALFA2B Solutions	August and September 2024	Replaced multiple broken AC units, window replacements, electrical repairs and various other unit work that the prior Management Agent did not address
HVAC Drain Line Flushing	\$30,360	ALFA2B Solutions	8/28/2024	A/C flushing and drain pan tablet installation
Unit Turns/Repairs/Painting	\$48,390	Rivera's Painting	August and September 2024	Turned for occupancy multiple units that needed to be turned that the prior Management Unit did not address (including units needed rebuild work due to mitigation)
Unit Turns/Repairs/Painting	\$40,493	I&G's Painting	9/1/2024	Engagement of a second vendor to work on turning 100 vacant units that Management had neglected
Unit Turns/Repairs/Painting	\$26,350	S.A. Texas Construction	9/24/2024	Engagement of a third vendor to work on turning 100 vacant units that Management had neglected
Unit Appliances and Materials	\$83,808	H.D. Supply	August and September 2024	Supplies and appliances to make the vacant units rent ready
Total	\$2,346,884			