STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SJ RESIDENCES PRESERVATION, LP

FHFC Case No.: 2021-077VW

_____/

ORDER GRANTING WAIVER FROM RULE 67-21.0025(7)(d)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 22, 2021. On October 5, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.0025(7)(d), F.A.C. (5/18/2021) (the "Petition") from SJ Residences Preservation, LP (the "Petitioner"). Notice of the Petition was published on October 6, 2021, in Volume 47, Number 194, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner submitted a non-competitive application package.

3. Rule 67-21.0025(7)(d) Fla. Admin. Code (2021), in relevant part, states:

> (7) Disclosure of the Principals of the Applicant must comply with the following:

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...

(d) If any of the entities identified in paragraph (c) above are a trust, the Applicant must disclose all of the Principals of the trust (fourth principal disclosure level), all of whom must be natural persons.

4. Petitioner requests a waiver of the prohibition of a non-natural person appearing as a trustee at the fourth level. Petitioner asserts that the trustee performs a strictly administrative role for the trust, which is wholly unrelated to the Development. Petitioner states that the trustee receives no financial benefit directly or indirectly from the funding, nor from Florida Housing. Petitioner states that the trustee is a state-chartered nondespository trust company in good standing with the state of New Hampshire, and technically exists as a "state bank," and therefore is exempt, by definition, from the beneficial ownership disclosure requirements of the Bank Secrecy Act

5. Petitioner asserts that a trust appears at Petitioner's third level, which is permitted by the Rule. Petitioner states that while the trust's sole beneficiary is a natural person, the trustee is not. Petitioner asserts that the trust disclosed only has one beneficiary, and that beneficiary is a natural person. Petitioner further asserts that all persons financially benefiting by the funding are disclosed natural persons in accordance with the purpose of the Rule.

6. Petitioner states that the beneficiary of the trust is a natural person (Mr. Ross). Petitioner asserts Mr. Ross determined that, for estate planning purposes, his real estate holdings should be owned ultimately by his revocable trust, rather than by him individually. Petitioner further asserts that Mr. Ross determined that the entity most capable of administering the trust is a limited liability company in New Hampshire that provides trust solutions

7. Petitioner states that 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. Petitioner asserts that this will create an immense administrative burden upon Mr. Ross's passing as the entity he will have to create will have to pass through probate rather than be governed by his trust.

8. Section 120.542(2), Florida Statutes, provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

9. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

10. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

11. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-21.0025(7)(d), F.A.C., is hereby **GRANTED** to allow a limited liability company to appear as a trustee at the fourth principal disclosure level

DONE and ORDERED this 22nd day of October, 2021.



Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.