STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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SA RESIDENCES PRESERVATION, L.P.
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-076VW
Application No. 2021-502C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.0025(7)(d), F.A.C. (5/18/2021)

Petitioner SA Residences 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 67-21.0025(7)(d), Florida Administrative Code ("F.A.C.") (5/18/2021) (the "Rule") against a non-natural person appearing as a trustee at the fourth level. As disclosed in the Application, and as permitted by Rule, a trust appears at the third level, the sole beneficiary of which is a natural person. However, the trustee, which appears at the fourth level, is a limited liability company. The trustee performs a strictly administrative role for the trust, which is wholly unrelated to the development. Specifically, the trustee is a New Hampshire based trust company that provides comprehensive trust solutions and management. The trustee receives no financial benefit directly or indirectly from the funding, nor from FHFC. Accordingly, Petitioner respectfully requests a Rule waiver to allow a limited liability company to appear as a trustee at the fourth 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:

SA Residences Preservation, L.P.
Attn: Dave Pearson
30 Hudson Yards, 72nd Floor
New York, NY 10001
Telephone: 212-419-8588
Facsimile number: N/A
Email: DPearson@related.com

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

Brian J. McDonough, 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 pertains to the development underlying this Petition:

- Development Name: St Andrews Residences
- Development Address: 208 Fern St, West Palm Beach, FL 33401
- County: Palm Beach
- Developer: SA Residences Developer, LLC
- Number of Units: 177 acquisition/rehab

- Type: High Rise
- Set Asides: 47 units (26.554.373%) at 60% AMI or lower, 28 units (15.819%) at 80% AMI or lower and 102 units (57.627%) at 50% AMI or lower.[1]
- Demographics: Elderly, Non-ALF
- Funding: $1,628,798.76 annual 4% Housing Credit allocation.

D. PETITIONER'S PRINCIPAL STRUCTURE.

5. Petitioner is a limited partnership whose first principal disclosure level comprises: (1) Rainbow Housing Assistance Corporation (0.0025% General Partner); (2) SA Residences Preservation Class B, LLC (0.005% Non-Investor LP); (3) The Diocese of Southeast Florida, Inc. (0.0025% Non-Investor LP); and (4) Wells Fargo Affordable Housing Community Development Corporation, (99.99% Investor LIP). *See* Organizational Structure, attached as Exhibit A. Petitioner's request for Rule waiver does not apply to this level.

6. Only the second principal disclosure level flowing from SA Residences Preservation Class B, LLC is pertinent here, which level consists of: (1) SMR Holdings, L.L.C. (86% Managing Member); (2) Full Line, LLC (7% Member); (3) Wednesday Hill LLC (5% Member); and (4) Race Pace, LLC (2% Member). Petitioner's request for Rule waiver does not apply to this level.

7. Only the third principal disclosure level flowing from SMR Holdings, L.L.C. is at issue here, which consists solely of SMR Revocable Trust U/A/D 12/12/2013. Petitioner's request for Rule waiver does not apply to this level.

8. At the fourth principal disclosure level flowing from SMR Revocable Trust U/A/D 12/12/2013, the sole beneficiary is Stephen M. Ross (100%). The Trustee is Jordan Park

[1] The unit count per income band is only preliminary at this stage and will be determined based on final tenant income certifications conducted at the property.

Trust Company LLC (0%). Because the trustee is a non-natural person appearing at the fourth disclosure level, Petitioner is in need of a Rule waiver.

E. THE RULE FROM WHICH WAIVER IS REQUESTED.

4. To allow fictitious entities to appear below the third principal disclosure level, Petitioner requests a waiver of Rule 67-21.0025(7)(d), F.A.C. (5/18/2021), which provides in pertinent part:

> (7) Disclosure of the Principals of the Applicant must comply with the following:
>
> ***
>
> (d) **If any of the entities** identified in paragraph (c) above **are a trust**, the Applicant must disclose all of the Principals[2] of the trust (fourth principal disclosure level), **all of whom must be natural persons**.

Id. (emphasis added).

F. STATUTES IMPLEMENTED BY THE RULE.

9. Rule 67-21.0025, F.A.C. (5/18/2021), implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

10. 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.

11. Petitioner submitted a non-competitive application package for the Development on September 10, 2021.

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[2] For a trust, "principal" is defined as: "each trustee of the trust and all beneficiaries of majority age (*i.e.*; 18 years of age) as of Application deadline." *See* Rule 67-21.002(86)(d), F.A.C.

12. Petitioner's organizational structure is attached as Exhibit A. A trust appears at Petitioner's third level, which is permitted by Rule 67-21.0025(7)(d). However, the Rule requires that the trust have only natural person principals. While the trust's sole beneficiary is a natural person, the trustee is not.

13. 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 Trust disclosed at the third level only has one beneficiary, and that beneficiary is a natural person (Stephen M. Ross, as disclosed in the Application), as required by the Rule. Thus, all persons financially benefitted by the funding are disclosed natural persons, in accordance with the purpose of the Rule. While the trust is administered by a non-natural person, that entity is not benefitted directly or indirectly by the funding. Accordingly, granting the Petition – and allowing the trustee to be a non-natural person – should not impact FHFC's confidence in the Petitioner or its principals.

14. Likewise upon information and belief, the purpose of the exception of Housing Credit Syndicators and Housing Credit investors from the need to disclose their principals is because such entities are generally a bank or otherwise bear the indicia of trust. *See* Rule 67-21.0025(7)(a), F.A.C. The Trustee is a state-chartered nondepository trust company in good standing with the state of New Hampshire. As such, it is technically a "state bank" (and is not a "legal entity customer") and is therefore exempt by definition from the beneficial ownership

disclosure requirements of the Bank Secrecy Act. *See* 31 C.F.R. § 1010.100(d)(1) (defining "bank" to include a "commercial…trust company organized under the laws of any State"); 31 C.F.R. § 1010.230(e)(2)(i) ("[f]or the purposes of this section…[l]egal entity customer does not include…a bank regulated by a State bank regulator"). Petitioner respectfully submits that waiving the principal disclosure requirement for a state bank would serve the same purpose as the exception provided for Housing Credit Syndicators and Housing Credit investors.

15. 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,[3] 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).

16. If the Petition is denied, the trust's beneficiary (*i.e.*, Mr. Ross) will suffer a substantial and unnecessary operational hardship. 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. Mr. Ross also determined that the entity most capable of administering the trust is Jordan Park Trust Company LLC, a New Hampshire based trust company that provides comprehensive trust solutions and management to a distinct global community of individuals and

[3] "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).

families with uniquely complex trust management needs.[4] 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).

17. Because all natural persons financially benefitting from the Development are natural persons disclosed in accordance with the Rule, 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.

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

19. The requested waiver will not adversely impact the Development or Florida Housing; particularly where Florida Housing's only involvement with the Development is acting as an allocating agency on a non-competitive tax credit application. All of the real parties in interest that Florida Housing would be interacting with are natural persons disclosed by the fourth level as required by the Rule.

20. Neither Florida Housing, nor any other applicant, would be prejudiced by granting this waiver for the same reason no prejudice occurs when Housing Credit Syndicators and Housing Credit investors are exempted from the principal disclosure rules.

H. ACTION REQUESTED.

21. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that Petitioner may have fictitious entities appear

[4] *See* https://jptc.com/ for more information about the trustee.

below the third principal disclosure 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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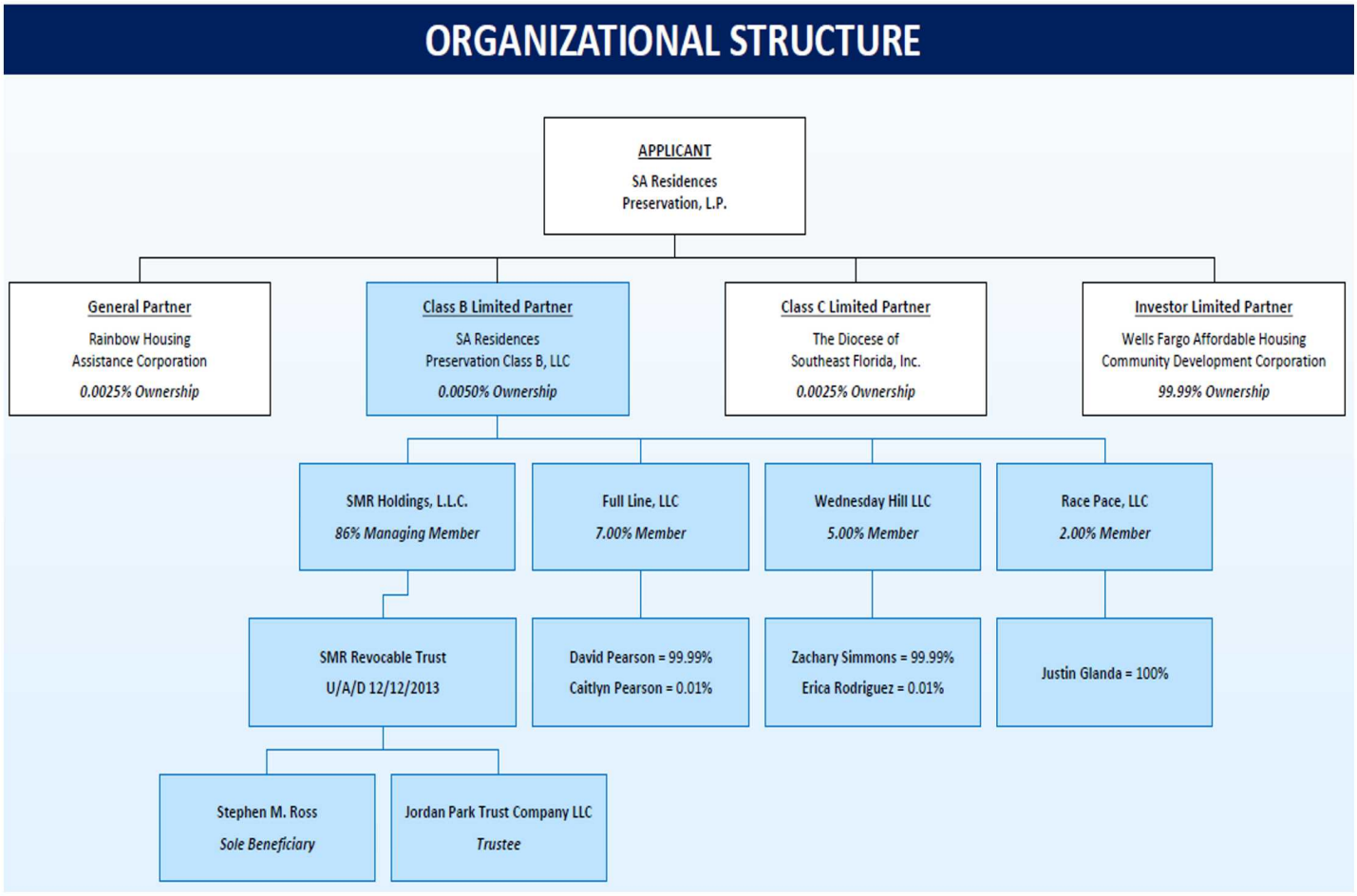
By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

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 5th day of October, 2021.

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

Exhibit A


ORGANIZATIONAL STRUCTURE
APPLICANT
SA Residences Preservation, L.P.
General Partner
Rainbow Housing Assistance Corporation
0.0025% Ownership
Class B Limited Partner
SA Residences Preservation Class B, LLC
0.0050% Ownership
Class C Limited Partner
The Diocese of Southeast Florida, Inc.
0.0025% Ownership
Investor Limited Partner
Wells Fargo Affordable Housing Community Development Corporation
99.99% Ownership
SMR Holdings, L.L.C.
86% Managing Member
Full Line, LLC
7.00% Member
Wednesday Hill LLC
5.00% Member
Race Pace, LLC
2.00% Member
SMR Revocable Trust U/A/D 12/12/2013
David Pearson = 99.99%
Caitlyn Pearson = 0.01%
Zachary Simmons = 99.99%
Erica Rodriguez = 0.01%
Justin Glanda = 100%
Stephen M. Ross
Sole Beneficiary
Jordan Park Trust Company LLC
Trustee