STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Cedar Oaks Senior Housing, LP FHFC CASE NO.: 2021-041VW

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ORDER GRANTING WAIVER OF RULE 67-48.0072(28)(g)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on July 30, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on June 29, 2021, from Cedar Oaks Senior Housing, LP ("Petitioner"). Notice of the Petition was published on June 30, 2021, in Volume 47, Number 126, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

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

2. Petitioner was selected to receive 9% Housing Tax Credits under Request for Applications (RFA) 2019-115, Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments, to assist in the acquisition and preservation of an Elderly Non-ALF Development in Volusia County, Florida.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 8/2/2021

3. Rule 67-48.0072(28)(g), Fla. Admin. Code (2019), provides in relevant part:

> (g) When utilizing the gap calculation in determining a recommendation for the amount of the Housing Credit Allocation as part of the process the Corporation uses to determine financial feasibility as set forth in Section 42(m)(2) of the IRC, the Credit Underwriter shall assume a first mortgage loan amount from a non-governmental agency (i.e., a traditional first mortgage lender) to be the greater of:
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> 1. The actual amount committed to the Development, or
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> 2. The amount of the proposed Development's minimum qualifying first mortgage as determined herein.

4. Petitioner was invited to enter credit underwriting on February 6, 2020, and a Carryover Allocation Agreement was executed on August 19, 2020. This Development has Project Rental Assistance Contracts ("PRACs") which require rents to be set well below market rates. Petitioner has applied to convert the PRACs to project based rental assistance, which would allow it to use housing tax credits to help fund long overdue capital improvements. Because of the rent limitations, traditional first mortgage lenders would not become involved with this PRAC deal, so Petitioner's Developer filled the gap with a Sponsor Note, a Seller Note, and Capital Magnet Fund.

5. Since the Seller Note and the Sponsor Note are essentially from the same source, Petitioner requests that they be combined for purposes of determining

the minimum qualifying first mortgage test used in the gap calculation. Petitioner asserts that if this waiver request is not granted, the Sponsor Note alone would be considered the first mortgage and the Development would not meet the minimum qualifying first mortgage requirement per the rule. In turn, an additional amount to make up for this shortfall would be included in the Gap Calculation and this in turn would result in a substantial reduction in the amount of housing tax credits awarded. Petitioner also asserts that if the waiver is granted it will still meet the intent of the rule, which is to require Petitioner to secure an amount of debt that is adequate to support the Development before accessing housing tax credits.

6. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

7. 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.

8. Petitioner has demonstrated that the waiver is needed in order to efficiently serve elderly persons. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income

housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

9. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.0072(28)(g), Fla. Admin. Code (2019), is hereby **GRANTED** to allow to allow Petitioner to combine the Seller Note and Sponsor Note for purposes of determining the minimum qualifying first mortgage test utilized in the gap calculation.

DONE and ORDERED this 30th day of July, 2021.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

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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.