STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-069VW **APPLICATION NO.:** 2021-___HB

IN RE: Cedar Grove, LP, a Florida limited partnership, Petitioner

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.0025(7)(d)

Cedar Grove MG LP, a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-21.0025(7)(d), Florida Administrative Code (May 18, 2021)("Rule" or "Fla. Admin. Code"), which limits the disclosure of entities to three principal disclosure levels with respect to (a) the applicant of four (4%) low income housing tax credits ("LIHTC"). Petitioner seeks the Board's approval to undertake the allocation of 4% LIHTC and the Developer notwithstanding the provisions in the Regulations for the reasons set forth herein. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner Cedar Grove MG LP, a Florida limited partnership ("Petitioner") is:

Petitioner's General Partner

Cedar Grove MG LP

...quiring an existing multi-family property at 20604 N.W. 17th ...rde... ...ida 33056 (interchangeably referred to as the "Property" or "Cedar

6. The Property is "fe...
and requires the submission of a...
Department of Housing and Urb...
Guidebook 4530.1 providing conse...
Petitioner ("TPA Process").

7. Upon HUD's consen...
a substantial rehabilitation of the Pr...

8. HUD's TPA process...
under the Rule, is substantially mor...
disclosures required under C. 67-21.0...

a. HUD prohibits...
the federally-assisted housing without...

b. Requires full di...
the filing of Form 2530).

9. HUD has approved Pe...

10. Petitioner's Property...
and further, will be deemed federall...

cc: Cedar Grove GP, LLC
Attn: Martin Bernstein, Vice President/Director of Tax Credits
11200 Rockville Pike, Suite 100
Rockville, Maryland 20852
Telephone: (301) 231-8700
E-mail: mbernstein@bozzuto.com

2. The Petitioner's counsel is:

Orlando J. Cabrera
Ansell Golden Gregory LLP
1775 Pennsylvania Avenue, N.W., Suite 1000
Washington, D.C. 20006
Telephone: (202) 877-4854
E-mail: orlando.cabrera@agg.com

3. Petitioner is the Applicant in connection with a private activity multifamily housing bond issuance ("Bonds") undertaken by Capital Trust Agency, a unit...
under Chapters 159, 163.01, and 166, Fla. Stat. (2020, as amended), and a component of the City of Gulf Breeze, Florida ("Capital Trust"). The Bonds will be issued pursuant to 42 U.S.C. §§ 42 (all references to 42 U.S.C. §§ ... as any, will be referred to as the "Code" or otherwise statutorily permitted under §142 of the Code. For purposes of compliance with C. 67-21, Fla. Admin. Code, Capital Trust is not the Corporation or a County, is the source of the private activity bonds, and has reserved the requisite volume cap for the Petitioner to undertake the tax-exempt bond transaction.

4. Petitioner is applying for non-competitive 30% present value tax exempt housing tax credits ("4% LIHTC") allocated by the Corporation pursuant to §§ 42 and 42, of the Code and the Corporation's 2021 Qualified Allocation Plan ("2021 QAP").

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PETITION FOR WAIVER OF RULE 67-21.0025(7)(d)

Cedar Grove MG LP, a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-21.0025(7)(d), Florida Administrative Code (May 18, 2021)("Rule" or "Fla. Admin. Code"), which limits the disclosure of entities to three principal disclosure levels with respect to (a) the applicant of four (4%) low income housing tax credits ("LIHTC"). Petitioner seeks the Board's approval to undertake the allocation of 4% LIHTC and the Developer notwithstanding the provisions in the Regulations for the reasons set forth herein. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner Cedar Grove MG LP, a Florida limited partnership ("Petitioner") is:

Petitioner's General Partner

Cedar Grove MG LP

c/o: Cedar Grove GP, LLC
Attn: Martin Bershtein, Vice President/Director of Tax Credits
11200 Rockville Pike, Suite 100
Rockville, Maryland 20852
Telephone: (301) 231-8700
E-mail: mbershtein@capreit.com

2. The Petitioner's counsel is:

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3. Petitioner is the Applicant in connection with a private activity multifamily housing bond issuance ("Bonds") undertaken by Capital Trust Agency, a housing finance agency organized under Chapters 159, 163.01, and 166, Fla. Stat. (2020, as amended) and a component of the City of Gulf Breeze, Florida ("Capital Trust"). The Bonds will be issued pursuant to 42 U.S.C. §§ 42 (all references to 42 U.S.C. §§1, et seq. will be referred to as the "Code") as otherwise statutorily permitted under §142 of the Code. For purposes of compliance with C. 67-21, Fla. Admin. Code, Capital Trust is not the Corporation or a County, is the source of the private activity bonds, and has reserved the requisite volume cap for the Petitioner to undertake the tax-exempt bond transaction.

4. Petitioner is applying for non-competitive 30% present value low income housing tax credits ("4% LIHTC") allocated by the Corporation pursuant to §§ 42 and 142 of the Code and the Corporation's 2021 Qualified Allocation Plan ("2021 QAP").

5. Petitioner is acquiring an existing multi-family property at 20604 N.W. 17th Avenue, Miami Gardens, Florida 33056 (interchangeably referred to as the "Property" or "Cedar Grove").

6. The Property is "federally-assisted" as that term is defined under 24 CFR Part 5.100 and requires the submission of a transfer of physical assets ("TPA") with the United States Department of Housing and Urban Development ("HUD') pursuant to Chapter 8 of HUD Guidebook 4530.1 providing consent for the Property to be conveyed from the current owner to Petitioner ("TPA Process").

7. Upon HUD's consent under the TPA Process, Petitioner will acquire and undertake a substantial rehabilitation of the Property.

8. HUD's TPA process and disclosure, while different than the disclosures required under the Rule, is substantially more expansive, and is similar in certain relevant aspects to the disclosures required under C. 67-21.0025, Fla. Admin. Code. For example:

a. HUD prohibits felons from participating in the entity that will be receiving the federally-assisted housing without HUD's consent; and

b. Requires full disclosure of all persons that participate in each entity (through the filing of Form 2530).

9. HUD has approved Petitioner's TPA application.

10. Petitioner's Property will remain federally encumbered by covenants with HUD, and further, will be deemed federally-assisted after closing.

11. On August 25, 2021, Petitioner submitted an application for 4% LIHTC together with this Petition.

12. Petitioner's co-general partners are Cedar Grove JV Members, LLC, a Maryland limited liability company that is authorized to do business in the State of Florida ("AM1") and AOF Florida Affordable Housing Corp., a Florida non-profit corporation that is an affiliate of the The American Opportunity Foundation, Inc., a Georgie non-profit corporation ("AM2").

13. No business entity or natural person who is a participant in the transaction being undertaken by the Petitioner has been sanctioned by HUD, the Corporation or any other state housing finance agency.

14. The draft credit underwriting report has been submitted with this Petition by Capital Trust's underwriter, AmeriNat, LLC, a Florida limited liability company.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

The Petitioner requests a waiver of or variance from Rule 67-21.0025 (7)(c), Florida Administrative Code (effective May 18, 2021) (the "Rule"), which provides in part: **67-21.0025(7)(c) – Miscellaneous Criteria.**

> (d) The Applicant must disclose all of the Principals of all the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, all of the Principals **must be natural persons**;
>
> [...]
>
> Ellipse and emphasis added.

C. STATUTES IMPLEMENTED BY THE RULES

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation pursuant to §§420.507, 420.5093, and 420.5099, Fla. Stat (2021, as amended).

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

8. The Petitioner is requesting to disclose through the fifth (5th) principal disclosure level, for the following reasons:

a. Petitioner's General Partner, Cedar Grove GP, LLC, a Delaware limited liability company ("CGGP") (first disclosure level) is composed of two administrative managers and members, AM1 and AM2, and a non-administrative member, Fundamental Partners III, L.P., a Delaware limited partnership ("Fundamental")(AM1, AM2, and Fundamental are the second disclosure level).

b. CGJV's sole member is CAPREIT Operating Limited Partnership, a Maryland limited partnership (third disclosure level) ("COLP").

(i). COLP is composed of a general partner, CAPREIT, Inc., a Maryland corporation, a family owned entity, and investor limited partners ("CAPREIT")(fourth disclosure level).

(ii). Each natural person and individual officer and director in CAPREIT, including the person identified in paragraph 1 above, has been disclosed to the Corporation.

c. AM2 has disclosed all natural persons on at the third disclosure level.

d. Fundamental is composed of its general partner, Fundamental Partners III GP, LLC, a Delaware limited liability company ("Fundamental GP") and

limited partners that are individual and institutional investors (third disclosure level).

(i). Fundamental GP's manager and one of its members is Fundamental Partners Management LLC, a Delaware limited liability company ("FPM"), and its non-managing members are Fundamental GP Holdings, III, LLC, a Delaware limited liability company ("FGPH III") and Institutional Investors (fourth disclosure level).

(ii) Laurence J. Gottlieb is the Chairman of FPM (fifth disclosure level).

(iii) Laurence J. Gottlieb is the Manager of FGPH III.

(iv) The individual investors in FGPH III are Dana Fusaris, Justin Vinci, Bruce Kayle, Richard Beecher, Robyn Huffman, Robert Jacobsen, Jonathan Stern, Ryan Keane, Alexander Glassman, Jason Black, Robert Weiss, Ryan Martin, and Jon Kong; all are employees of Fundamental.

(v) An institutional investor is a limited partner investor in Fundamental Partners III GP, LLC, the limited partner.

9. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, the Corporation has the power and 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. A waiver shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (a) create a substantial hardship[1] *or* violate principles of fairness, and

(b) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.[1]

11. Compliance with the Rule would undermine the preservation and rehabilitation of affordable housing by denying the Petitioner's application for non-competitive 4% LIHTC that would be a critical resource for the Petitioner's efforts undertake the rehabilitation of the Property and preserve existing affordable housing, despite the disclosure of all relevant natural persons. The disclosure of natural persons on the "third disclosure level" instead of the "fifth disclosure level" defeats the purpose of allocating 4% LIHTC and assist in the preservation of units encouraged federally (by HUD) and the Corporation. Moreover, requiring compliance with the "third disclosure level" instead of the "fifth disclosure level" accurately reflects the actual structure of the transaction and to restructure and disclose the transaction in any other way in order to comply with the Rule would make the Bond transaction legally and economically non-viable. Finally, compliance would create a substantial economic hardship to the Petitioner by altering its transaction structure in a manner that would terminate the transaction because current significant economic participants that are indispensable to the transaction would no longer be able to participate.

12. Additionally, compliance would cause a legal hardship by forcing the entities that compose the Petitioner's general partner to breach various executed agreements. Moreover, compliance would cause Petitioner to incur considerable costs in obtaining financing. Furthermore, it would deprive the City of Miami Gardens and Miami-County the preservation and renovation of

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "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. *See* Fla. Stat. § 120.542.

much needed affordable housing and violate principles of fairness given the circumstances surrounding the delays are outside of the Petitioner's control.

13. Consequently, permitting disclosure of natural persons at the fifth disclosure level instead of the third is necessary is accurate, preserves much needed affordable housing, and avoids unfairness and substantial hardship on the Petitioner and the Property. By granting the requested extension, the Property will be able to proceed to reach completion in the future, which will assure that 288 much needed affordable housing units remain affordable, and such a result assists the Corporation with fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

14. Further, a waiver of this Rule will serve the purposes of Section 420.5089 and the Act that are implemented by Chapter 67-21 of the Fla. Admin. Code, because one of the goals is for the federal and state allocated resources of Corporation be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, *et seq.*) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase and preserve the supply of affordable housing for low-income persons and households. Denial of the waiver would deprive the City of Miami Gardens and Miami-Dade County, Florida of essential and affordable housing units. By granting this Petition, the Corporation would recognize the goal.

15. The requested waiver will not adversely affect Petitioner, the Property, any other party or the Corporation.

E. TYPE OF WAIVER

16. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

17. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of the Rule to allow for a full disclosure of all relevant participants beyond the Rule required "third disclosure level" and allow the Petitioner to disclose the relevant "natural persons" through a "fifth disclosure level;" (ii) grant this Petition and all the relief requested herein;

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COUNSEL FOR PETITIONER

and (iii) grant such further relief as it may deem appropriate.

18. Granting this waiver furthers a more accurate disclosure of the structure of the transaction and all natural persons involved in the transaction.

Respectfully submitted,

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Fla. Bar Number 0894151

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Email: corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Email: joint.admin.procedures@leg.state.fl.us

Filed and date June 25, 2021

By: _____
Orlando J. Cabrera
Fla. Bar No. 0894151