STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: POAH Cutler Manor, LLC FHFC CASE NO.: 2021-088VW

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ORDER GRANTING WAIVER OF RULES
67-48.009(5)(d), 67-48.018(1)(c) and 67-48.023(1)(c)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 10, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 16, 2021, from POAH Cutler Manor, LLC ("Petitioner"). Notice of the Petition was published on November 18, 2021, in Volume 47, Number 224, 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. The Development was originally constructed in 1971. It was acquired by Cutler Manor, LLC in 2002 and was awarded a SAIL loan to assist in rehabilitation. Petitioner acquired the property in 2008 and commenced further

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 12/13/2021

rehabilitation. The SAIL loan was restructured and matures in 2026. The property is subject to a Land Use Restriction Agreement (LURA).

3. Rule 67-48.009(5)(d), Fla. Admin. Code (2021), states in relevant part:

> (5) Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for SAIL Program funding if any of the following pertain:
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> (d) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following exceptions applies:
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> 1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program,
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> or
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> 2. A LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the deadline to apply for the applicable SAIL funding, where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Acquisition and Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Preservation, or Acquisition and Preservation.

4. Rules 67-48.018(1)(c) and 67-48.023(1)(c) Fla. Admin. Code (2021) contain essentially the same restrictions for the HOME and Housing Tax Credits programs respectively. Petitioner concedes that neither of the exceptions noted above applies in this case.

5. Petitioner asserts that further rehabilitation of the Development is not practical because the original site design is obsolete and inefficient, leading to significant safety and security issues. Petitioner desires to redevelop the property by replacing the current buildings with new residential buildings. Because the development is currently subject to the LURA, Florida Housing's rules prohibit Petitioner from applying for SAIL, HOME, or Tax Credit funding. Petitioner asserts that it will be unable to accomplish the redevelopment without additional funding from Florida Housing.

6. Petitioner is not asking to be released from the existing LURA, but rather to be allowed to compete for additional funding with the understanding that any such funding will require a new LURA that would restrict additional new affordable units. Petitioner also understands that the existing set-aside commitments will be included in part of the restrictions set forth in any competitive solicitation to which Petitioner applies.

7. Petitioner asserts that if the requested waivers are not granted it will be unable to redevelop the property to provide new affordable housing units. Petitioner also asserts that such redevelopment is consistent with the Corporation's Portfolio Preservation Action Plan.

8. 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.

9. 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.

10. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income families. 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.

11. 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 Rules 67-48.009(5)(d), 67-48.018(1)(c) and 67-48.023(1)(c) Fla. Admin. Code (2021) is hereby **GRANTED** to permit

Petitioner (or any entity related to Petitioner through common principals) to apply for competitive funding from Florida Housing in future solicitations.

DONE and ORDERED this 10th day of December, 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.