STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2021-088VW

POAH CUTLER MANOR, LLC,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULES 67-48.009(5)(D), 67-48.018(1)(C) AND 67-48.023(1)(C)

Petitioner POAH Cutler Manor, LLC, a Florida limited liability company ("Petitioner") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition against an applicant applying for SAIL program funding, HOME program funding, and/or competitive Housing Credits (collectively, "FHFC Funding") if 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 (with certain limited exceptions not applicable here). See *Rules 67-48.009(5)(d), 67-48.018(1)(c),* and *67-48.023(1)(c), F.A.C. (2021)* (collectively, the "Rules").

Petitioner owns that certain affordable housing complex known as "Cutler Manor Apartments", a 219-unit multi-family affordable housing complex located in southern Miami-Dade County (the "Apartment Complex"). The Apartment Complex is subject to an existing Land Use Restriction Agreement ("LURA"), as a result of the prior owner of the Apartment Complex having received a SAIL loan from the Corporation in 2002. As explained more fully herein, the Apartment Complex is in serious need of demolition and redevelopment; however, because the

Apartment Complex is subject to the LURA, Petitioner cannot apply to Corporation for funding in response to competitive solicitations which would provide the funds necessary to redevelop the development site upon which the Apartment Complex is located. Petitioner's proposed redevelopment of the development site cannot be accomplished without additional FHFC Funding and, due to the existence of the above-referenced LURA, strict application of the Rules prevents Petitioner from applying for the necessary FHFC Funding. Petitioner is not asking to be released from the existing LURA, but rather to be allowed to compete for additional FHFC Funding which would permit the redevelopment of the Apartment Complex.

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers for Petitioner and its qualified representative are:

POAH Cutler Manor, LLC
2 Oliver Street
Boston, MA 02109
Attn: Aaron Gornstein
617-261-9898 (telephone)
agornstein@poah.org (e-mail)

2. The name, address, telephone and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, Florida 33131
305-347-7308 (telephone)
305-347-7808 (facsimile)
gcohen@shutts.com (e-mail)

B. BACKGROUND

3. The Apartment Complex was originally constructed in 1971, and was acquired by Cutler Manor, LLC (an affiliate of Greater Miami Neighborhoods, Inc.) ("Prior Owner") in 2002. At that time, Prior Owner (utilizing a combination of first mortgage financing, a SAIL loan of

$1,900,000.00, and additional subordinate debt) undertook a rehabilitation of the Apartment Complex.

4. In 2008, Petitioner acquired the Apartment Complex after the Prior Owner became insolvent and filed for bankruptcy, and sold the Apartment Complex to Petitioner in connection with such bankruptcy.

5. Upon acquisition of the Apartment Complex, Petitioner undertook a $4,000,000.00 rehabilitation (approximately $18,200 per unit) of the Apartment Complex. In connection therewith, the SAIL loan was restructured and the first mortgage refinanced. The current first mortgage matures in June 2024; the SAIL loan and other local subordinate debt matures in December 2026. There is currently a Housing Assistance Payments contract on the Apartment Complex which expires in December 2028.

6. The Apartment Complex has significant issues. It was originally constructed in 1971, and suffers from a poorly designed site plan, giving rise to numerous security issues more fully detailed below. Compete redevelopment is needed to address substantial challenges at the Apartment Complex that date back to its original design, including but not limited to the following: an obsolete and inefficient site design including a court yard configuration that lacks defensible space; physical isolation from surrounding amenities; and stigmatization due to easy identification as subsidized housing. Notwithstanding FHFC having invested approximately $1,900,000.00 in 2002 towards the rehabilitation of the Apartment Complex, and Petitioner investing over $4,000,000.00 of its own funds in 2009 to undertake further rehabilitation, the Apartment Complex is aging poorly. It barely received a passing REAC score from HUD last year, notwithstanding extensive property maintenance undertaken by Petitioner. Sewer lines in the majority of the buildings need to be replaced as they continue to break; unfortunately, the sewer lines are located inside of the concrete foundations of the Apartment Complex, making repairs difficult and

expensive. Each building in the Apartment Complex contains dark/unsafe open-air hallways, poor ventilation design which creates mold issues, and unit square footages that are less than competing affordable housing projects.

7. In addition, the Apartment Complex encountered continuing security issues, including incidents of violent criminal activity. The design/site plan of the Apartment Complex (including, but not limited to open parking lots along SW 109th Avenue where it is difficult to control ingress and egress) has exacerbated these issues. Petitioner has added landscaping and exterior lighting to the development, and has worked closely with the Miami-Dade County Police Department in an attempt to curtail criminal activity on the site. Petitioner has engaged off-duty police and private security companies in order to attempt to control criminal activity at the development site. Petitioner has employed a full-time social services coordinator and employed young adult residents in the maintenance and office functions at the Apartment Complex, and has conducted regularly scheduled meetings with the residents, all in an attempt to improve the safety conditions at the Apartment Complex. Unfortunately, numerous drive-by shootings from SW 109th Avenue have occurred, including, but not limited to, a recent shooting which occurred just after a school bus dropping off children stopped at the Apartment Complex.

8. Unfortunately, further rehabilitation of the Apartment Complex does not appear to be financially logical. Substantial renovation to address challenges throughout the site would cost nearly as much as new construction based on input received from general contractors. The scope of rehabilitation work would require upgrading or replacing all mechanical, electrical and plumbing systems; reconfiguring the site through selective demolition; enclosing open stairwells and adding resident-only entrances and access control; and updating all interiors and including kitchens, bathrooms and flooring. This rehabilitation would not address the crime and safety challenges along Southwest 109th Avenue, which are exacerbated by the parking lots that run the

entire length of the site and serve as gathering places for residents and their guests. Redevelopment would eliminate the poor site design of the development, and create individual 3-story walk-up buildings, opening up the site, improving visibility and removing indefensible spaces across the site. Resident-only entrances would be created at each building with intercom access for visitors, and new centralized management space would be added as well as resident amenities for fitness, education and recreation. Demolition and construction of new affordable units would be preferable to rehabilitation of an old/obsolete apartment complex which suffers from the foregoing issues.

C. RULES FROM WHICH WAIVER IS SOUGHT

9. Petitioner requests a waiver from Rule 67-48.009(5)(d) (pertaining to SAIL applicants), 67-48.018(1)(c) (pertaining to HOME applicants), and 67-48.023(1)(c) (pertaining to applicants for Housing Credits), F.A.C., which provide:

> Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible for apply for [SAIL Program funding, HOME Program funding, or Competitive Housing Credits] if any of the following pertain [to the proposed Development]: . . . .
>
> 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:
>
> (1) a LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program, or
>
> (2) a LURA or EUA, or both, for an existing building or buildings, originally constructed at least twenty-five (25) years prior to the deadline to apply for the applicable [SAIL Funding, HOME Funding, or Competitive Housing Credits] 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.

D. STATUTES IMPLEMENTED BY THE RULES

10. The Rules implement, among other sections of the Florida Housing Finance Corporation Act, Section 420.5099 (allocation of the low-income housing tax credit), Section 420.5089 (HOME Investment Partnership Program), and Section 420.5087 (State Apartment Incentive Loan Program). As demonstrated above, the requested waiver serves the purposes of the Act, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households.

E. JUSTIFICATION FOR REQUESTED WAIVERS

11. Under Section 120.542(1), Florida Statutes, and Chapter 28-104, Florida Administrative Code, the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers will be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person.

12. As explained above, the Rules preclude Petitioner from submitting an application for FHFC Funding because the Apartment Complex is subject to the LURA. Accordingly, Petitioner is requesting a waiver from the Rules to allow it to compete for FHFC Funding necessary to redevelop the Apartment Complex.

13. The facts set forth in Sections 5 through 8 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for Rule waiver.

14. Further, by granting the requested waiver, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. In addition, grant of the

requested waiver will permit the construction of much needed housing for low-income and very low-income tenants.

15. The requested waiver will not adversely impact the Development or the Corporation.

16. The waiver being sought is permanent in nature.

17. Petitioner is committed to continuing to own and operate the Apartment Complex, pending receipt of funds necessary for redevelopment. Petitioner is wholly owned by the Preservation of Affordable Housing, Inc., a nationally recognized and sophisticated well-capitalized Section 501(c)(3) tax exempt organization which is committed to redeveloping the Apartment Complex. If Petitioner is eligible to apply to FHFC Funding and is awarded same, such funds would be used to provide an entirely new development in lieu of the existing Apartment Complex which is approaching obsolescence. In the absence of redevelopment, it is unclear how much longer the existing Apartment Complex can continue to operate. Loss of the Apartment Complex (due to operational and/or financial feasibility) would deprive Miami-Dade County of much needed affordable housing. Currently, over 500 people live at the Apartment Complex, including over 150 children.

18. The Rules prohibit Petitioner from applying for FHFC Funding because the Apartment Complex is subject to the existing LURA.

19. The requested waiver is essential in order to provide new affordable housing in replacement of the existing Apartment Complex, which residents in southern Miami-Dade County desperately need. Petitioner would utilize new FHFC Funding to demolish the Apartment Complex and construct new affordable housing. Without such funding, Petitioner cannot continue to indefinitely own and operate the Apartment Complex (which will continue to suffer from safety/security issues and physical obsolescence), and new affordable units will not be constructed.

20. The requested waivers will not adversely affect the Apartment Complex or the Corporation, but would allow Petitioner to seek additional funding and ensure that affordable units in a newly constructed project are available for families of lesser means in Miami-Dade County.

21. Petitioner has invested over $4,000,000.00 of its own funds to date in the Apartment Complex, but does not believe that significant further capital investment in the current Apartment Complex is advisable. Rather, Petitioner believes that (upon receipt of additional FHFC Funding) redevelopment of the development site with new affordable housing will provide the best opportunity for the provision of affordable housing at the development site.

22. The Corporation's Portfolio Preservation Action Plan ("Action Plan") sets forth criteria for prioritizing developments for recapitalization within each program strategy. Petitioner's redevelopment plan should be prioritized in light of the following factors and criteria identified in such Action Plan:

(a) Demographic Served. The Apartment Complex houses primarily families, including a significant number of children. Notwithstanding its challenges, the Apartment Complex has remained fully occupied over the years with a substantial wait list due to its affordability and the fact that many residents have built a strong sense of community over decades of living at the Apartment Complex.

(b) Project Based Rental Assistance. All of the units in the project have long term rental assistance.

(c) ELI Units. The Apartment Complex has a high percentage (over 15%) of ELI units.

(d) Location. The Apartment Complex is located close to nearby schools, transit and job centers.

(e) Owner Performance. Notwithstanding the challenges faced and described herein, the Petitioner has resolutely performed its ownership/management function, including

funding a substantial amount of rehabilitation from its own funds and rolling over operating cash flow back into the development to cover the needs described herein. In fact, Petitioner's performance has been so exemplary that the "property risk factors" contained in the Action Plan do not exist, due to Petitioner continually "plugging the gaps" and handling issues as and when they arise.

23. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver.

WHEREFORE, Petitioner POAH Cutler Manor, LLC, respectfully requests that the Corporation:

A. Grant Petitioner (and any entity related to Petitioner through common principals that seek funding in relation to a redevelopment of the current development site that is subject to the existing LURA) a waiver from Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C. (2021), allowing Petitioner to apply for FHFC Funding even though the development site and the Apartment Complex are subject to the existing Land Use Restriction Agreement;

B. grant the Petition and all the relief requested therein; and

C. award such further relief as may be deemed appropriate.

GARY A. COHEN
Shutts & Bowen LLP
200 S. Biscayne Blvd., Suite 4100
Miami, Florida 33131
(305) 347-7308
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The Original Petition is being served by email and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 16th day of November, 2021.

GARY J. COHEN