STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

POAH CM Redevelopment, LLC,
a Florida limited liability company,

Petitioner,

CASE NO. 2025-003VW`

vs.

Application No. 2025-222BSA

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(3)(j) (8/27/24) AND RFA 2024-205 FOR A CHANGE IN THE TOTAL SET-ASIDE PERCENTAGE

POAH CM Redevelopment, LLC, a Florida limited liability company (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition on changes in the "Total Set-Aside Percentage" designated by an applicant as set forth in Rule 67-48.004(3)(j), F.A.C. (August 27, 2024) ("Rule"), and the requirement of Section 4 A.6.c.(2)(a)(i) of RFA 2024-205 SAIL Financing Of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bonds And Non-Competitive Housing Credits ("RFA") that at least 80% of the units be set-aside. Because of conflicting requirements between U.S. Department of Housing and Urban Development ("HUD") funding and the requirements of the RFA for this development, Petitioner respectfully requests that three 80% AMI units currently identified in the Set-Aside Commitment chart in Petitioner's application no. 2025-222BSA ("Application") be modified to now serve workforce families earning 80-120% AMI (and, for purposes of the chart, be classified as Unrestricted / Market Rate Housing Units). If this request is granted, the total set-aside commitment would decrease from

106 units (*i.e.*, 80.303%) to 103 units (*i.e.*, 78.030%), thereby necessitating a waiver of the Rule and RFA. In support of this waiver request, Petitioner states as follows:

A. THE PETITIONER

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

POAH CM Redevelopment, LLC
Aaron Gornstein
2 Oliver Street, Suite 500
Boston, MA 02109
Telephone: (617)261-9898
E-Mail: agornstein@poah.org

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorneys are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
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Tallahassee, Florida 32301
Telephone: (850)329-4852
Facsimile: (850)329-4864
E-mail: BSmitha@stearnsweaver.com

B. THE DEVELOPMENT

3. Petitioner timely submitted its Application on September 11, 2024 in response to the RFA for the following development (the "Development"):

- Development Name: CM Redevelopment II
- Developer: Preservation of Affordable Housing LLC
- County of Development: Miami-Dade
- Number of Units: 132

- Type: Garden Apartments
- Demographics: Family
- Funding Amounts: $1,618,503 non-competitive housing credits (annual amount); $6,750,000 SAIL (SAIL Base loan in an amount of $5,750,000 plus $1,000,000 ELI loan); $31,000,000 MMRB; and $1,544,500 HOME-ARP loan)

C. RULE AND RFA PROVISION FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(3)(j), Florida Administrative Code in effect as of the submission of Petitioner's Application:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
> **
> (j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. For the HOME Program, the total number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage, or total number of HOME-Assisted Units, as applicable, may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

Petitioner also seeks a waiver from Section 4 A.6.c.(2)(a)(i) of the RFA, which provides:

> Set-Aside Commitments per Corporation Requirements
>
> The Corporation has additional minimum set-aside requirements beyond those required by Section 42 of the IRC which must be reflected on the Total Set-Aside Breakdown Chart, as outlined below:
>
> (a) Total Income Set-Aside Commitment
>
> (i) Proposed Developments with a Demographic Commitment of Family or Elderly Non-ALF, or Applications that qualify as Non-

Profit Applications and select the Demographic Commitment of Elderly ALF

- If SAIL only is not selected and the Average Income Test is not selected, set aside a total of at least 80 percent of the Development's total units at 60 percent AMI or less.

- If the Average Income Test is selected, set aside a total of at least 80 percent of the Development's total units at 80 percent AMI or less, but the Average AMI of the Qualifying Housing Credit Units* cannot exceed 60 percent.

- If SAIL only is requested, set aside a total of at least 80 percent of the Development's total units at 60 percent AMI or less, of which at least 20 percent must be set aside below 50 percent AMI or less (which may include ELI units)

D. STATUTES IMPLEMENTED BY THE RULE

5. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, Section 420.5099 (Allocation of the low-income housing tax credit).

E. JUSTIFICATION FOR THE WAIVER

6. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., 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 shall 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. *See* § 120.542(2), Fla. Stat.

7. This Development is part of a phased redevelopment of Cutler Manor, an existing 218-unit apartment complex with a Section 8 HAP contract. Cutler Manor was constructed in 1971 and the buildings are now functionally obsolete. Petitioner is planning to demolish and redevelop

the existing site in three phases to provide a total of 324 mixed-income units. The Development is the first phase of the on-site redevelopment.

8. Cutler Manor was awarded HUD Choice Neighborhoods Initiative ("CNI") funding in 2023 to provide gap financing for all phases of the new construction. CNI awards are highly competitive and are funded for the redevelopment of rent-subsidized apartment communities that will be seen as transformative for both the existing site and for the surrounding neighborhood. One important component of the CNI program is that the Housing Plan be truly mixed-income to include one-for-one replacement of the rent subsidized units but also provide a significant number of workforce (80%-120% AMI) and market-rate units.

9. Unfortunately for Petitioner, a mismatch exists between the number of market-rate units that were allowed in the RFA and the number of workforce and market-rate units that have been required by HUD as part of the CNI approved Housing Plan. The RFA only allowed for 20% of the units to be market-rate (above 80% AMI), or 26 units for this project. The HUD-approved CNI Housing Plan requires Petitioner to provide 21.9% workforce/market rate units totaling 29 units.

10. The following chart reflects the Set-Aside Commitments for the Development as outlined in the Application. Pertinent to the waiver request, the Development committed to 26 market-rate units, the maximum allowed under the RFA at time of application, for a total qualifying HC and joint SAIL set aside of 80.303%:

Number of Residential Units	Percentage of Units	AMI Level, at or below:	Types of Units
	0.000%	20%	Housing Credit and SAIL Units
20	15.152%	30%	
	0.000%	40%	
46	34.848%	50%	
8	6.061%	60%	
	0.000%	70%	
32	24.242%	80%	
26	19.697%	Unrestricted	Market Rate Housing Units
106	80.303%		Total Qualifying HC & Joint SAIL Units
132	100.000%		Total Units
		56.038%	Average AMI of the Qualifying Units

11. However, to remain in compliance with the HUD CNI Housing Plan, Petitioner must have a total of 29 units for residents earning above 80% AMI. Fifteen (15) are workforce units reserved for families earning between 80-120% AMI; the remaining 14 units are market-rate. If this Petition is granted, the following reflects the revised Set-Aside Commitment chart that would account for the changes required by the HUD CNI funding. Specifically, it removes three 80% AMI units and adds them to the market-rate units. While this chart does not show 80-120% units, some or all of the three additional units in the market-rate column may be restricted to serve 80-120% AMI families under the CNI requirements. The effect of the foregoing changes is to decrease the total qualifying HC and joint SAIL set aside to 78.030%:

Number of Residential Units	Percentage of Units	AMI Level, at or below:	Types of Units
	0.000%	20%	Housing Credit and SAIL Units
20	15.152%	30%	
	0.000%	40%	
46	34.848%	50%	
8	6.061%	60%	
	0.000%	70%	
29	21.970%	80%	
29	21.970%	Unrestricted	Market Rate Housing Units
103	78.030%		Total Qualifying HC & Joint SAIL Units
132	100.000%		Total Units
		55.340%	Average AMI of the Qualifying Units

12. Here, the purpose of the underlying statute (*i.e.*, increasing the supply of affordable housing through private investment) will still be achieved, even if the total set aside is reduced by 2.273%.

13. A waiver of the restrictions in the Rule and RFA that would otherwise prevent changing the Total Set-Aside Percentage in Petitioner's Application would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

14. The requested waiver will not prejudice the Development or the Corporation.

15. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. PERMANENCY

16. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

Petitioner requests the following:

a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(j), Florida Administrative Code, and from Section 4 A.6.c.(2)(a)(i) of RFA 2024-205, allowing it to decrease the Total Set-Aside Percentage from 80.303% to approximately 78.030%;

b. Grant the Petition and all the relief requested therein; and

c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.

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By: *s/Brian J. McDonough*

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, *CorporationClerk@FloridaHousing.org*, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 7th of January, 2025.

s/Brian J. McDonough