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August 7, 2017

Ms. Kate A. Flemming
Legal Analyst/Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough Street
Suite 5000
Tallahassee, Florida 32301

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FLORIDA HOUSING
FINANCE CORPORATION

RE: Petition for Rule Waiver

Dear Ms. Flemming:

Enclosed is a Petition for Rule Waiver, submitted on behalf Cabana Club Preservation, L.P. for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,


Bridget Smitha

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2017-057VW
Application No. 2009-057X

CABANA CLUB PRESERVATION, L.P.,
a Florida Limited Partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 9I-40.020(12) AND (27) (1994) TO
PROVIDE FOR “ELDERLY DEVELOPMENT”**

Petitioner Cabana Club Preservation, L.P., a Florida limited partnership (“Petitioner”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of Rule 9I-40.020(12) and (27) (1994) (the “Rule”).

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner respectfully requests a waiver of the Rule to allow the modification of a Land Use Restriction Agreement to provide for an “Elderly Development” (as defined below) at 19701 SW 110th Court, Miami, Florida 33157 (“Cabana Club”).

A. THE PETITIONER.

1. The name, address, e-mail address, telephone number, and facsimile number for Petitioner and its qualified representative is:

Jonathan A. Gruskin
Cabana Club Preservation, L.P.
595 Madison Avenue 16th Floor
New York, NY 10022

e-mail: yoni@lincolnavicap.com
Tel: (212)554-2319
Fax: N/A

2. The name, address, e-mail address, telephone number, and facsimile number of Petitioner's attorney, for purposes of this Petition, is:

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
bmcdonough@stearnsweaver.com
Tel: (305) 789-3350
Fax: (305) 789-3395

B. BACKGROUND.

3. The Florida Housing Finance Agency¹ and Cabana Club Apartments Associates, Ltd. ("Developer"), entered into the Land Use Restriction Agreement ("LURA") attached as Exhibit A on or about January 30, 1996.

4. The Florida Housing Finance Agency agreed, under certain conditions, to approve and administer a loan to Developer under the HOME Program, codified at Chapter 9I-40, Florida Administrative Code (1994), for the purpose of providing construction and permanent financing for Cabana Club, which was to be occupied by "eligible persons" as determined by the Agency in accordance with Chapter 420, Part V, of the Florida Statutes.

5. At that time, Rule 9I-40.020(27), F.A.C. (1994), defined "special needs" as a "condition requiring support services, including homelessness, mental illness, developmental disability, physical handicap, **frail elderly**, or illness with AIDS." *Id.* (emphasis added). To be considered under the "Special Needs" set-aside, at least 40 percent of the HOME applicant's

¹ The assets and liabilities of the Florida Housing Finance Agency were transferred to the Florida Housing Finance Corporation on January 1, 1998. *See* A.G.O. 98-25 (citing Section 420.5061, Fla. Stat.).

development had to exclusively service Special Needs populations and offer significant support services from qualified professional staff. *Id.*

6. To satisfy the Special Needs set-aside, the LURA provided, among other things, that 40% of the 332 units (*i.e.*, 132 units) were to be occupied by persons qualifying as Frail Elderly. *See* LURA, Art. II, § 2.2. The LURA and Rule 9I-40.020(12), F.A.C. (1994), defined “Frail Elderly” as: “any persons, 60 years of age or older, with physical or mental limitations which restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently without the provision of support services.” *See* LURA, Art. I.

7. On or about February 24, 2004, Florida Housing and Developer entered into the First Amendment to Land Use Restriction Agreement, which amended the LURA to correct language regarding Developer’s provision of closing costs to tenants and to modify the tenant programs. The LURA otherwise remained in full force and effect.

8. Pursuant to the Assignment and Assumption of and Second Amendment to HOME Land Use Restriction Agreement, attached as Exhibit B (“Assignment”), Florida Housing authorized the transfer of ownership of Cabana Club to Rach Cabana LLC, a Florida limited liability company, SJA Cabana Club, LLC, a Florida limited liability company, and Roem Cabana, LLC, a Florida limited liability company, as tenants in common (“Tenants in Common”) via a special warranty deed dated June 18, 2014. Florida Housing, Developer, Tenants in Common, and First Housing Development Corporation of Florida (as servicer) entered into the Assignment on August 26, 2014. The Assignment provided that, although the loan was repaid, the Tenants in Common would assume the obligations under, and continue to comply with, the LURA until the LURA terminates on September 16, 2046.

9. Petitioner purchased Cabana Club on or about July 13, 2017 and assumed Tenants in Common's obligations under the LURA. However, due to the provisions currently in force under the LURA, Petitioner was only able to secure short term financing for the purchase. To continue operating Cabana Club as an Elderly Development beyond the short-term debt, and continue providing a benefit to persons within this targeted demographic, Petitioner must obtain long term financing through a bank insured by the Secretary of the U.S. Department of Housing and Urban Development ("HUD"). However, compliance with HUD's refinancing requirements is not possible without the requested Rule waiver.

C. RULES FROM WHICH WAIVER IS SOUGHT AND STATUTE IMPLEMENTED.

10. Petitioner requests a waiver of Rule 9I-40.020(12) and (27), F.A.C. (1994), which provided:

(12) Frail Elderly for the purpose of this program, means any persons, 60 years of age or older, with physical or mental limitations which restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently without the provision of support services.

(27) "Special Needs" means a condition requiring support services, including homelessness, mental illness, developmental disability, physical handicap, frail elderly, or illness with AIDS. To be considered under the "Special Needs" set-aside, at least 40 percent of the applicant's development must exclusively service Special Needs populations and must offer significant support services from qualified professional staff.

11. The Rule implemented Section 420.5089 ("HOME Investment Partnership Program; HOME Investment Partnership Fund") pursuant to the rulemaking authority provided under Section 420.507(12), Florida Statutes.

E. JUSTIFICATION FOR REQUESTED WAIVER.

12. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to rule requirements when strict application of the uniformly applicable rule requirements would lead to unreasonable, unfair and unintended results in particular instances. Waivers must be granted when: (1) 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 (2) when application of a rule would create a substantial hardship or would violate principles of fairness. *See* § 120.542(2), Fla. Stat.

13. Petitioner satisfies the prerequisites for a waiver.

14. Petitioner must refinance Cabana Club through a bank insured by HUD. Before this transaction may be completed, HUD is requiring that the LURA be amended so that the property may be operated as what Florida Housing refers to as an “elderly development.”

15. The LURA currently reflects Florida Housing’s former “Frail Elderly” requirement that was part of the original HOME loan for the property. HUD is now requiring, as a condition to the closing of Petitioner’s refinancing for the property, that the “Frail Elderly” designation be removed and the LURA be amended in accordance with the new HUD loan structure. Removal of the Frail Elderly designation would not require residents meeting that definition to leave, or prevent others meeting that definition from subsequently residing at, Cabana Club. Persons meeting the Frail Elderly definition may renew their leases, or enter into new leases, as long as they remain qualified under the LURA requirements.

16. To comply with HUD’s financing requirements, the LURA must: (i) include an age restriction that requires at least 80% of the 332 units to be occupied or held available for occupancy by at least one resident that is 55 years of age or older, and (ii) be modified to remove

the requirement that any of the units within the property are reserved for occupancy by persons designated as “Frail Elderly.” Additionally, the Extended Use Agreement must be extended forty years from the HUD endorsement of the refinancing closing.

17. To amend the LURA, Petitioner needs a designation for “Elderly Development,” *i.e.*, a development wherein (1) all units are intended for, and solely occupied by, persons 62 years of age or older, or (2) **at least eighty percent (80%) of the units shall be occupied or held available for occupancy by at least one (1) resident that is 55 years of age or older**, or (3) the development is provided for under any state or federal program that the Secretary of United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program. Cabana Club would satisfy HUD’s financing requirements and the Elderly Development designation via the bolded option.

18. Because the HOME and Low-Income Housing Tax Credit Program Disaster Relief II Application Packet was incorporated by reference into Chapter 9I-40 (*see* Rule 9I-40.080(1), F.A.C. (1994)) at the time the initial LURA was entered – and because Chapter 9I-40 (1994) included a special needs requirement and did not define “Elderly Development” – the requested LURA modification requires a rule waiver.

19. Absent the relief sought pursuant to this Petition, Petitioner will suffer substantial hardship. Petitioner will be unable to obtain the refinancing necessary to continue operating Cabana Club beyond the short-term debt, forcing Cabana Club into foreclosure. By its terms, the set-aside and operating covenants of the LURA for “frail elderly” would be nullified in the foreclosure.

20. The waiver would thus serve the purposes of the underlying statute by increasing the availability of affordable rental housing to a targeted demographic.

F. ACTION REQUESTED.

21. Petitioner respectfully requests a permanent waiver to allow for a modification of the LURA such that “Elderly Development” is substituted for all references to “Frail Elderly” and that “Elderly Development” is defined as: “a development wherein (1) all units are intended for, and solely occupied by, persons 62 years of age or older, or (2) at least eighty percent (80%) of the units shall be occupied or held available for occupancy by at least one (1) resident that is 55 years of age or older, or (3) the development is provided for under any state or federal program that the Secretary of United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program. For option (2) above, the Development must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older, in accordance with the factors listed in 24 C.F.R. Part 100.306 and Section 760.29(4)(b)(3), Florida Statutes.”

22. Petitioner further requests a waiver of the Special Needs set aside. Instead of requiring 40% of Petitioner’s units to exclusively service persons qualifying as “Frail Elderly,” at least 80% of the units will be occupied or held available for occupancy by at least one resident that is 55 years of age or older.

G. CONCLUSION.

23. Controlling statutes and Florida Housing’s Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results.

24. The requested waiver is necessary to prevent unreasonable, unfair, or unintended results.

25. The requested waiver will not adversely impact third parties or Florida Housing.

26. A denial of the requested waiver could result in a substantial hardship for Petitioner. Absent the waiver, Petitioner cannot obtain long-term debt that is consistent with all of LURA's terms. Lacking financing beyond the short-term debt, Cabana Club would fall into foreclosure. As a result of the foreclosure, the set-aside and operating covenants of the LURA for "frail elderly" would be nullified. Thus, denying the Petition would not only impose a substantial hardship on Petitioner, but would be contrary to the HOME Investment Partnership Program's goals.

27. By granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable housing. Granting the LURA modification will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by increasing the availability of multifamily housing that is affordable to targeted demographics.

28. Should Florida Housing require additional information, Petitioner's counsel is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein;
- B. Substitute "Elderly Development" for "Frail Elderly" in the LURA;

C. Define "Elderly Development" as "a development wherein (1) all units are intended for, and solely occupied by, persons 62 years of age or older, or (2) at least eighty percent (80%) of the units shall be occupied or held available for occupancy by at least one (1) resident that is 55 years of age or older, or (3) the development is provided for under any state or federal program that the Secretary of United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program. For option (2) above, the Development must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older, in accordance with the factors listed in 24 C.F.R. Part 100.306 and Section 760.29(4)(b)(3), Florida Statutes."

D. Remove the requirement in the LURA to reserve units for occupancy by persons designated as "Frail Elderly;" and

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

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Petitioner
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

By: s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being hand delivered for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 7th day of August, 2017.

By: s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

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THIS INSTRUMENT PREPARED
BY AND RETURN TO:
Warren S. Bloom, Esq.
Nabors, Giblin & Nickerson, P.A.
201 S. Orange Avenue, Suite 1060
Orlando, Florida 32801

ABOVE SPACE RESERVED FOR
RECORDING PURPOSES ONLY

LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (the "Agreement") is made and entered into as of this 30th day of January 1996, between Cabana Club Apartments Associates, Ltd., a Florida limited partnership, hereinafter called the "Developer" as party of the first part and the Florida Housing Finance Agency, an agency and instrumentality of the State of Florida (hereinafter called the "Agency") (which term as used in every instance shall include the Agency's successors and assigns), as party of the second part.

PREAMBLE

WHEREAS, the State of Florida has been designated by the United States Department of Housing and Urban Development as a participating jurisdiction for the receipt and use of funds as provided by the HOME Investment Partnerships Program ("HOME Program") as provided in 24 CFR Part 92; and

WHEREAS, the Florida Housing Finance Agency (the "Agency") has been designated by the State of Florida as the allocating authority for HOME funds; and

WHEREAS, the Agency has agreed under certain conditions to approve and administer a loan to Developer under the HOME Program for the purpose of providing construction and permanent financing for a residential project located in Dade County, Florida to be occupied by "eligible persons," as determined by the Agency in accordance with the Act; and

WHEREAS, not less than eight percent (8%) (twenty-six HOME units) of the units in the Project shall be leased, rented, or made available on a continuous basis for rental to persons or households whose incomes are fifty percent (50%) or less of the median annual gross household income for the area, adjusted for family sizes, and not less than ninety-two percent (92%) (306 HOME units) of the units in the Project shall be leased, rented or made available on

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a continuous basis for rental to persons or households whose incomes are sixty percent (60%) or less of the median annual gross household income for the area, adjusted for family sizes; of the 334 units 40% (134 units) must be occupied by qualifying as Frail Elderly.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Developer do hereby contract and agree as follows:

**Article I.
AGREEMENT**

Definitions and Interpretation. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Agreement:

"Act" means the Florida Housing Finance Agency Act as found in Chapter 420, Part V, of the Florida Statutes.

"Agency" means the Florida Housing Finance Agency.

"Applicant" means any public entity, private not-for-profit or for-profit sponsor or developer who wishes to provide housing affordable to very low-income persons pursuant to the provisions of the Program and who is requesting a loan from the Agency for such Project.

"County" means Dade County, Florida.

"Developer" means Cabana Club Apartments Associates, Ltd., a Florida limited partnership; an Applicant selected for participation in the HOME program and is also described as the "Sponsor".

"Developer Note" or "Note" means the Promissory Note, with the Developer as payor and the Agency as payee thereunder, reflecting the Loan to the Developer pursuant to the Loan Documents, as may be amended or supplemented from time to time.

"Frail Elderly" For the purpose of this Agreement, means any persons, 60 years of age or older, with physical or mental limitations which restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently without the provision of support services.

"Land Use Restriction Agreement" shall mean this Land Use Restriction Agreement, as amended or supplemented from time to time.

"Loan" means the mortgage loan from the Agency as lender to the Developer as borrower with respect to the Project to be made in accordance with the Note secured by the Mortgage for the purpose of financing the construction or substantial rehabilitation of the Project.

"Loan Documents" means this Agreement, the Mortgage, the Note, and all other documents executed by Developer or Agency relating to the Loan.

"Low-Income Families" means families whose annual incomes do not exceed eighty percent (80%) of median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty (80%) percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

"Mortgage" shall mean the Mortgage and Security Agreement of even date herewith from the Developer in favor of the Agency granting a second priority mortgage lien on and security interest in the land which is described in Exhibit "A" hereto, the buildings and equipment constituting the Project and the rents and income therefrom and securing the obligation of the Developer under the Loan Agreement and the Note, as amended and supplemented from time to time.

"Program" means the HOME Investment Partnerships Program created by Section 420.5089, Florida Statutes.

"Project" means Improvements to be constructed on the Real Property described in Exhibit "A" hereto.

"Sponsor" means an Applicant selected for participation in the HOME program and is also described as the "Developer".

"State" shall mean the State of Florida.

"Substantial Rehabilitation" means rehabilitation of residential property at an average cost in excess of \$25,000.00 per dwelling unit.

"Term of this Agreement" means the term determined pursuant to Article IX hereof.

"Very Low-Income Families" means low-income families whose annual incomes do not exceed fifty (50%) percent of the median family income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty (50%) percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement between the Developer and Agency dated the date hereof.

Article II.
RESIDENTIAL RENTAL PROJECT

The Agency and the Developer hereby declare their understanding and intent that, during the Term of this Agreement, the Project is to be owned, managed and operated according to the terms and conditions of the Act, the HOME Program thereunder, this Agreement and all Loan Documents. To that end, the Developer hereby represents, covenants and agrees as follows:

2.1. That the Project is being constructed for the purpose of providing rental housing, and the Developer, its successors or assigns, shall own, manage, and operate the Project as multi-family rental housing;

2.2. That under this Agreement, for fifty (50) years from the date that the last residential unit is placed in service, not less than eight percent (8%) or twenty-six (26) units in the Project shall be leased, rented, or made available on a continuous basis for rental to persons or households whose incomes are fifty (50%) percent or less of the median annual gross household income for the area adjusted for family size, as determined by HUD and not less than ninety-two percent (92%) (306 HOME units) of the units in the Project shall be leased, rented or made available on a continuous basis for rental to persons or households whose incomes are sixty percent (60%) or less of the median annual gross household income for the area, adjusted for family sizes. Of the 334 units in the Project, forty percent (40%) or one hundred thirty-four (134) units must be occupied by persons qualifying as Frail Elderly. Rents for HOME assisted units may not exceed the U.S. Department of Housing and Urban Development (HUD) Section 8 Fair Market Rent (FMR) for existing housing for comparable units in the area minus tenant paid utilities. When persons and families occupying HOME units income increases to more than eighty percent (80%) of the median income limit adjusted to family size, the tenants must pay as rent the lesser of the amount payable by the tenant under State or local law or thirty percent (30%) of the adjusted monthly income. The HUD

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January 30, 1996

regulations provide for allowances to be deducted from a person's gross income to achieve adjusted gross income. Note: HOME assisted units which have tax credits are exempt from this provision. Tenants may not pay more than the amounts allowed for rent and utilities under the Low Income Housing Tax Credit (LIHTC) Program;

2.3. That, upon rehabilitation, the Project will consist of three hundred and thirty-four (334) apartment units. One hundred percent (100%) of the units will be designated for rental as HOME units.

2.4. The Project will consist of 334 units in 2 eight-story buildings. Each building will be serviced by 2 elevators. The unit mix will consist of 2 efficiency units, 297 one bedroom/one bath units and 35 two bedroom/one bath units. Amenities include oven/range and range hoods, energy features, refrigerators, individual terraces, vertical blinds, cable T.V., cultured marble vanities in the bathrooms and all units will have new berber carpeting. Each unit will have 1/2 ton oversized HVAC and fan units, and emergency hall and stairwell lighting will be provided. Each unit will be equipped with a smoke detector which is connected to the centralized fire alarm system. Project amenities will include a very large pool, two tennis courts, two handball courts, a 5,700 square foot community building on the northeast corner of the site. The community building will be divided as follows: 1,650 square feet to be used as a clubhouse, and 4,050 square feet to house the pool pumps and restroom facilities. A gym facility with free-weights and exercise equipment will also be provided. Security will be provided with a manned guard house at the Project entrance. Each floor will have two washers and two dryers located in the common area near the elevators, except the ground floor

There will be 134 units set-aside for Frail Elderly. These units shall provide call buttons and grab bars in bathrooms, at the request of the tenants, as provided in the Loan Agreement.

Tenant programs will include elderly day care, counseling health care, educational courses, tenant activities, meals and transportation. The management company will provide good tenants with funding of closing costs upon the purchase of a home, provided such tenant, or tenants, qualify.

2.5. That during the Term of this Agreement the Developer will not convert the Project to condominium ownership;

2.6. That the Developer shall not discriminate on the basis of race, creed, religion, color, sex, familial status, national origin or handicap in the lease, use or occupancy of the Project. Age discrimination and discrimination against minor dependents, except when units are specifically being held for the elderly, is also not permitted;

2.7. The Developer hereby covenants and agrees that it will immediately withdraw from circulation any advertisement determined by the Agency to violate or be inconsistent with its policies, with respect to promoting rental housing for persons and families of very low income, and consents to the remedy of specific performance;

2.8. That the Developer shall annually certify the gross income of all persons occupying units set aside for low and very low-income persons or households pursuant to the Program. All persons or households qualified under the provisions of this Program to occupy set-aside units may continue to qualify to occupy set-aside units in a Project funded by this Program if the gross income of said persons or households at the time of annual recertification meets the requirements established in Chapter 91-40. Nevertheless, Mortgagor shall charge to any tenant who no longer qualifies as low-income a rent not less than thirty percent (30%) of the tenant family's adjusted monthly income, as recertified annually. Tenants in the HOME assisted units which have tax credits may not pay rents in excess of the amounts allowed under the Lower Income Housing Tax Credit Program (as such term is defined in Chapter 91-34, Florida Administrative Code). Should the annual recertification of persons or households result in noncompliance with income occupancy requirements, the next available unit must be rented to a person or household qualifying under the provisions of section 24 C.F.R. 92.252 in order to ensure compliance of the Project.

2.9. That prior to the leasing of any unit, the Developer must obtain the Agency's approval for the management company selected to manage the Project. The Agency must be advised of any change in the Developer's selection of a management company and the company must be approved by the Agency prior to the firm assuming responsibility for the Project. In addition, the Developer must keep the Agency's compliance staff apprised of the progress of Project completion and advised as to the expected opening date of the Project.

The provisions of this Article II shall remain in effect during the Term of this Agreement; provided, however, that after payment of the Note in full, the Developer may be discharged from its obligations under Articles II and III hereof to the extent that the same are assumed by any successor in interest to the Developer pursuant to Article VIII hereof.

Article III.
COMPLIANCE WITH HOME PROGRAM REQUIREMENTS

In order to comply with the Act and the Agency's rules and regulations thereunder, the Developer hereby covenants and agrees that, during the Term of this Agreement:

3.1. The units in the Project shall be set aside for persons and households whose incomes are equal to or less than the respective amounts specified in Paragraph 2.2 of this Agreement. These set-asides shall remain in effect for fifty (50) years from the date that the first residential unit in the Project is placed in service;

3.2 The Developer and its successors in interest shall at all times operate the Project in conformity with all statutes, rules and regulations of the State of Florida and the United States which may be applicable to the Project.

Article IV.
INDEMNIFICATION

The Developer hereby covenants and agrees that it shall indemnify and hold harmless the Agency and its directors, officials, employees and agents from and against (i) any and all claims arising from any act or omission of the Developer or any of its agents, contractors, servants, employees or licensees in connection with the Loan Documents or the Project; and (ii) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon. In the event that any action or proceeding is brought against the Agency, or any of its directors, officials, employees, or agents with respect to which indemnity may be sought hereunder, the Developer, upon written notice from the indemnified party, shall assume the investigation and defense thereof including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to participate in the investigation and defense thereof and may employ separate counsel either with the approval and consent of the Developer, which consent shall not be unreasonably withheld, or in the event the indemnified party reasonably determines that a conflict of interest exists between such party and the Developer in connection therewith, in either of which events the Developer shall pay the reasonable fees and expenses of such separate counsel. Developer shall have no obligation to indemnify the Agency for its own negligence or willful misconduct.

Article V.
CONSIDERATION

In addition to other purposes, the Agency has authorized and issued a loan to the Developer as an inducement to the Developer to operate the units in the Project for the benefit of low-income and very low-income persons and households whose incomes are equal to or less than the amounts specified in Paragraph 2.2 of this Agreement, for fifty (50) years. In consideration of the issuance of the Loan by the Agency for the foregoing purposes, the Agency and the Developer have entered into this Agreement.

**Article VI.
RELIANCE**

In performing its duties hereunder, the Agency may rely upon statements and certificates of the Developer, and low income and very low-income households believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Developer pertaining to occupancy of the Project. In addition, the Agency may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Agency in good faith and in conformity with the opinion of such counsel. The Developer may rely upon certificates of low income and very low-income households reasonably believed to be genuine and to have been executed by the proper person or persons.

**Article VII.
PROJECT WITHIN THE COUNTY LIMITS**

The Developer hereby represents and warrants that the Project as of the date hereof is located entirely within the limits of Dade County.

**Article VIII.
SALE, TRANSFER OR REFINANCING OF PROJECT**

The loan for the Project hereunder as to both principal and interest shall be assumable upon project sale, transfer or refinancing if the following conditions are met:

8.1. The proposed owner of the project is an eligible sponsor as defined in Chapter 9I-40, Florida Administrative Code, and meets all specific sponsor identity criteria which were required as conditions of the original loan;

8.2. The proposed owner of the project agrees to maintain all set asides and other requirements of the HOME loan for the period originally specified;

8.3. The application receives a favorable recommendation from the Agency's credit underwriter and approval by the Board of Directors of the Agency.

In the event the above-stated conditions are not met, the loan for the Project hereunder as to both principal and interest shall be due in full upon the sale, transfer or refinancing of the Project.

Article IX.
TERM

This Agreement shall become effective upon its execution and delivery, and shall remain in full force and effect for a period of fifty (50) years from the date the last unit is occupied.

Article X.
DAMAGE, DESTRUCTION OR CONDEMNATION OF THE PROJECT

In the event that the Project is damaged or destroyed or title to the Project, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Developer shall deposit with the Agency any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Project in such manner as is consistent with the Loan Documents. The Agency shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Developer fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project, within a reasonable period of time, after notice from the Agency, the Agency shall have the right, in addition to any other remedies granted in the Loan Documents or at law or in equity, to repair, restore, rebuild or replace the Project so as to prevent the occurrence of a default hereunder.

Article XI.
ENFORCEMENT

If the Developer defaults in the performance of its obligations under this Agreement or breaches any covenant, agreement or warranty of the Developer set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by the Agency to the Developer (or for an extended period approved by Agency if such default stated in such notice can be corrected, but not within such thirty (30) day period, and if the Developer commences such correction within such thirty (30) day period, and thereafter diligently pursues the same to completion within such extended period), then the Agency may terminate all rights of the Developer under this Agreement and subject to Article XV hereof, may take any other action at law or in equity or otherwise, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effectual by the Agency to enforce the obligations of the Developer with respect to the Project. If a default by the Developer under this Agreement is not cured within a reasonable time, the Agency shall institute foreclosure proceedings against the Project, but only as provided in the Mortgage. Notwithstanding any of the foregoing, but subject

to Article XV hereof, the Agency will have the right to seek specific performance of any of the covenants and requirements of this Agreement concerning the construction and operation of the Project.

Article XII.

RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

12.1. Upon execution and delivery by the parties hereto, the Developer shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of Dade County and in such manner and in such other places as the Agency may reasonably request, and shall pay all fees and charges incurred in connection therewith.

12.2. This Agreement and the covenants contained herein shall run with the Land and shall bind, and the benefits shall inure to, respectively, the Developer and the Agency and their respective successors and assigns during the Term of this Agreement.

Article XIII.

PRIORITY OF AGREEMENT

In the event of a foreclosure and sale of the subject property or receipt of a deed in lieu of foreclosure pursuant to a default under the Mortgage or the mortgage of the First Mortgagee as defined in the Loan Agreement of even date herewith, this Agreement shall be null and void and of no further force and effect.

Article XIV.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies.

Article XV.

NONRECOURSE LIABILITY OF THE DEVELOPER

Other than as set forth in certain guaranty obligations of the Developer and Albert H. Sakolsky, notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, except as to the indemnification obligations in this Agreement, from and after the date of this Agreement (i) the liability of the Developer and its partners shall be limited to the interest in the Project, and the Agency shall look exclusively thereto, or to such other security as may from time to time be given for payment of the obligations hereunder; and any judgment rendered against the Developer or any related person under this Agreement shall be limited to the Project and any other security so given for

satisfaction thereof; and (ii) no deficiency or other personal judgment nor any order or decree of specific performance shall be rendered against the partners of the Developer or any partners of the partners, their heirs, personal representatives, successors, transferees or assigns, as the case may be, in any action or proceeding arising out of this Agreement except pursuant to the indemnification obligations in this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Article XVI.
NOTICE AND EFFECT

Any notice required to be given hereunder shall be given by personal delivery, by registered mail or by registered expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered mail.

Article XVII.
COMPLIANCE WITH LOW-INCOME HOUSING TAX CREDIT REQUIREMENTS

17.1. Nothing in this Agreement shall modify or affect any agreement to set-aside units in the Project that the Developer has made or may make with the Agency in its application for low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended and in effect with respect to such tax credits (the "Code") or in any Extended Low Income Housing Agreement (the "ELIHA") executed or to be executed in connection therewith. In the event of any conflict between the Agreement and the ELIHA, the Act, the HOME Program thereunder and this Agreement shall control with respect to the requirements of the HOME Program, and Section 42 of the Code and any such Extended Low Income Housing Agreement shall control with respect to the requirements of the eligibility for tax credits.

17.2. Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

17.3. The terms and phrases used in the recitals of this Agreement have been included for convenience of reference only and the meaning, construction and interpretation of all such terms and phrases for purposes of this Agreement shall be determined by references to Article I of this Agreement. The titles and headings

of the sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any questions of intent shall arise:

AGENCY: FLORIDA HOUSING FINANCE AGENCY
227 North Bronough Street - Suite 5000
Tallahassee, Florida 32301-1329

with a copy to: Warren S. Bloom, Esq.
Nabors, Giblin & Nickerson, P.A.
201 S. Orange Avenue, Suite 1060
Orlando, Florida 32801

DEVELOPER: Cabana Club Apartments Associates, Ltd.
550 Biltmore Way, Suite 720
Coral Gables, Florida 33134
Attn: Mr. Albert H. Sakolsky

with a copy to: Brian McDonough, Esquire
Stearns Weaver Miller Weissler Alhadeff &
Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130

SERVICER: First Housing Development Corp. of Florida
1715 N. Westshore Boulevard, Suite 375
Tampa, Florida 33607
Attn: Mr. John Simon

17.4. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

17.5. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

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DEVELOPER SIGNATURE PAGE
LAND USE RESTRICTION AGREEMENT

Cabana Club Apartments Project (Dade County)

IN WITNESS WHEREOF, the Agency and the Developer have caused this Agreement to be signed, sealed and attested on their behalf by duly authorized representatives, all as of the date first written hereinabove.

Cabana Club Apartments Associates, Ltd., a Florida limited partnership

By: Cabana Club Apartments, Inc., a Florida corporation, as its sole General Partner

By: Albert H. Sakolsky
Name: Albert H. Sakolsky
Title: President

James L. [Signature]
Witness
Lawrence A. [Signature]
Witness

STATE OF FLORIDA
COUNTY OF Dade

The foregoing Land Use Restriction Agreement was acknowledged before me this 20th day of January, 1996, by Albert H. Sakolsky as President of Cabana Club Apartments, Inc., a Florida corporation as a general partner of Cabana Club Apartments Associates, Ltd., a Florida limited partnership. He is personally known to me or has produced _____ as identification, and did/did not take an oath or affirmation.

Carmen M. Emerson
NOTARY PUBLIC
State of Florida

Printed Name _____

My Commission Expires: _____

(SEAL)



FLORIDA HOUSING FINANCE AGENCY
SIGNATURE PAGE

LAND USE RESTRICTION AGREEMENT

Cabana Club Apartments Project (Dade County)

IN WITNESS WHEREOF, the Agency and the Developer have caused this Agreement to be signed, sealed and attested on their behalf by duly authorized representatives, all as of the date first written hereinabove.

WITNESS:

FLORIDA HOUSING FINANCE AGENCY

Carmen M Emerson
Printed Name: CARMEN M. EMERSON

By: [Signature]
Susan J. Leigh
Executive Director

ANGELA HATCHER
Printed Name: Angela Hatcher

STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me this 30th day of January, 1996, by Susan J. Leigh, as Executive Director of the Florida Housing Finance Agency. She is personally known to me or has presented _____ as identification and [did] [did not] take an oath.

(NOTARY SEAL)

Carmen M Emerson
NOTARY PUBLIC - STATE OF FLORIDA
Printed Name: _____
My Commission Expires: _____



CARMEN M. EMERSON
COMMISSION # CC410781
EXPIRES OCT. 22, 1998
ALAN INSURANCE SERVICES
1-800-455-8910

That portion of Lots (or Tracts) 61, 67 and 68 of "PERRINE GRANT SUBDIVISION OF SECTION 6 TP. 56 S. R. 40 E.", according to the Plat thereof, recorded in Plat Book 1, at Page 5 of the Public Records of Dade County, Florida and a parcel of land in the Northeast $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East in Dade County, Florida, more particularly described as follows:

COMMENCE at the point of intersection of the South line of said Section 6 with the Northwesterly line of the Florida East Coast Railway right-of-way, said point being 1,457.64 feet East of the Southwest corner of the Southeast $\frac{1}{4}$ of said Section 6; thence run S. 89°48'56" W., along the South line of said Section 6, for a distance of 67.75 feet, to the POINT OF BEGINNING of the parcel of land hereinafter to be described, said Point of Beginning is also the point of intersection of the South line of said Section 6 with the Northwesterly right-of-way line of S.W. 200th Drive; thence continue S. 89°48'56" W., along the South line of said Section 6, for a distance of 286.77 feet to a point, said point being 100.00 feet East from the Southeast corner of the West $\frac{1}{4}$ of said Lot 67; thence run N. 0°11'05" E., 100 feet East of and parallel with the East line of the West $\frac{1}{4}$ of said Lot 67, for a distance of 200.00 feet, to a point; thence run S. 89°48'56" W., parallel with the South line of said Section 6, for a distance of 100.00 feet, to a point on the East line of the West $\frac{1}{4}$ of said Lot 67; thence run N. 0°11'05" E., along the East line of the West $\frac{1}{4}$ of said Lot 67, for a distance of 482.89 feet to the Northeast corner of the West $\frac{1}{4}$ of said Lot 67; thence run S. 89°49'49" W., along the North line of said Lot 67, for a distance of 334.48 feet, to the Northwest corner of said Lot 67, the same point being also the Southeast corner of said Lot 61; thence run N. 0°10'32" E., along the Eastline of said Lot 61, for a distance of 341.49 feet to the Northeast corner of the South $\frac{1}{4}$ of said Lot 61; thence run S. 89°50'16" W., along the North line of the South $\frac{1}{4}$ of said Lot 61, for a distance of 150.08 feet to a point on the East right-of-way line of S.W. 110th Court; thence for the next six courses run along the East right-of-way line of said S.W. 110th court, as follows: run S. 0°09'26" W., for a distance of 240.32 feet to the Point of Curve; thence run Southwesterly along the arc of a circular curve to the right, concave to the West, having a radial of 275 feet, a central angle of 16°42'46", through an arc distance of 80.22 feet, to the Point of Tangency; thence run S. 16°52'12" W., for a distance of 96.92 feet to the Point of Curve; thence run Southwesterly along the arc of a circular curve to the left, concave to the East, having a radial of 225 feet, a central angle of 16°42'46", through an arc distance of 65.63 feet, to the Point of Tangency; thence run S. 0°09'26" W., along a line 470 feet East of and parallel with the West line of said Tract 68 - as measured along the South line of said Section 6, for a distance of 482.73 feet, to the Point of Curve; thence run Southerly, Southeasterly and Easterly along the arc of a circular curve to the left, concave to the

Northeast, having a radial of 25 feet, a central angle of 90°20'30", through an arc distance of 39.42 feet, to the Point of Tangency, said point being 40 feet North of the South line of said Section 6, and also being on the Northerly right-of-way line of Caribbean Boulevard (S.W. 200th Street); thence for the next three courses run along the Northerly right-of-way line of said Caribbean Boulevard as follows: run N. 89°48'56" E., 40 feet North of and parallel with the South line of said Section 6, for a distance of 74.73 feet, to the Point of Curve; thence run Southeasterly along the arc of a circular curve to the right, crossing the South line of said Section 6 and running into the Northeast $\frac{1}{4}$ of said Section 7, having a radial of 570 feet, a central angle of 42°26'05", through an arc distance of 422.16 feet, to the Point of Tangency; thence run S. 47°44'59" E., for a distance of 147.42 feet, to a point on the Northwesterly right-of-way of said S.W. 200th Drive; thence run N. 42°15'01" E., along the Northwesterly right-of-way line of said S.W. 200th Drive; for a distance of 374.31 feet, to the POINT OF BEGINNING; containing a net area of 11.548 acres, more or less.

LESS AND EXCEPT:

- (i) a 1.8596 acre Tract (also labelled as Tract "B"); and
- (ii) a 1.5484 acre Tract (also labelled as Tract "C").

The legal descriptions of Tract "B" and Tract "C" referred to in (i) and (ii) above are attached hereto.

EXHIBIT "A" cont.

DESCRIPTION OF TRACT "B"

PROPOSED SUBDIVISION OF CABANA CLUB TOWERS
now in the process of being recorded

That portion of Lots (or Tracts) 67 and 68 of "PEARLINE GRANT SUBDIVISION OF SECTION 6, TP. 56 S., R. 40 E.", according to the Plat thereof, recorded in Plat Book 1, at Page 5 of the Public Records of Dade County, Florida and a part of the Northeast $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East, all in Dade County, Florida, more particularly described as follows:

COMMENCE at the point of intersection of the South line of said Section 6 with the Northwesterly line of the Florida East Coast Railway Right-of-way, said point being 1,457.64 feet East of the South $\frac{1}{4}$ corner of said Section 6, the same point being also the North $\frac{1}{4}$ corner of said Section 7; thence run S. $89^{\circ}48'56''$ W., along the North line of the Northeast $\frac{1}{4}$ of said Section 7, for a distance of 454.58 feet to the POINT OF BEGINNING of the parcel of land hereinafter to be described, and being labelled as TRACT "B" on the Plat of "CABANA CLUB TOWERS" now being recorded; thence run S. $23^{\circ}40'22''$ W., for a distance of 119.52 feet, to the point of curve of a circular arc, same arc being the Northerly Right-of-way line of S.W. 200th Street (Caribbean Boulevard); thence run Northwesterly along said circular arc, concave to the Southwest, having a radius of 570 feet, a central angle of $42^{\circ}26'05''$, for an arc distance of 422.16 feet, to the Point of Tangency, said point lying 40 feet North of the South line of said Section 6, and lies on the North Right-of-way line of S.W. 200th Street; thence run S. $89^{\circ}48'56''$ W., along the North Right-of-way line of said S.W. 200th Street, for a distance of 74.73 feet, to the Point of Curve; thence run Westerly, Northwesterly and Northerly, along a circular arc, concave to the Northeast, having a radius of 25 feet, a central angle of $90^{\circ}20'30''$, for an arc distance of 39.48 feet, to the Point of Tangency, said point being on the Easterly Right-of-way line of S.W. 110th Court; thence run N. $0^{\circ}09'26''$ E., along the

DESCRIPTION OF TRACT "B" cont.

said easterly Right-of-way line of S.W. 110th Court, for a distance of 124.85 feet, to a point; thence run N. $89^{\circ}48'56''$ E., 150 feet North of and parallel with the North Right-of-way line of said S.W. 200th Street, for a distance of 98.99 feet to the Point of Curve; thence run Southeasterly, 150 feet North of and parallel with the curved Northerly Right-of-way line of said S.W. 200th Street, along a circular arc having a radius of 720 feet, a central angle of $22^{\circ}30'00''$, for an arc distance of 282.74 feet to a point; thence run S. $22^{\circ}18'56''$ W., along the radial of the last described curve, for a distance of 15.00 feet to a point; thence run S. $67^{\circ}41'04''$ E., for a distance of 176.98 feet to a point; thence run S. $0^{\circ}11'05''$ W., for a distance of 53.61 feet, to the POINT OF BEGINNING; containing 1.0596 acres more or less.

NOTE:

- (1) Bearings shown refer to an assumed Meridian
- (2) "Radius" or "Radial" mean the same part of a curve, and the words are used inter-changeably.

DESCRIPTION OF TRACT "C"

PROPOSED SUBDIVISION OF CABANA CLUB TOWERS
now in the process of being recorded

That part of the Northeast $\frac{1}{4}$ of Section 7, Township 50 South, Range 40 East, Dade County, Florida, described as follows:

COMMENCE at the point of intersection of the Northerly line of the Northeast $\frac{1}{4}$ of said Section 7, with the Northwesterly line of the Florida East Coast Railway Right-of-way line, said point being 1,457.64 feet East of the North $\frac{1}{4}$ corner of said Section 7; thence run S. $89^{\circ}48'56''$ W., along the North line of the Northeast $\frac{1}{4}$ of said Section 7, for a distance of 67.75 feet to the POINT OF BEGINNING of the parcel of land hereinafter to be described and labelled as TRACT "C" on the plat of CABANA CLUB TOWERS now being recorded; thence continue S. $89^{\circ}48'56''$ W., along the last described course, for a distance of 306.03 feet, to a point; thence run S. $23^{\circ}40'22''$ W., for a distance of 119.52 feet to a Point of Tangency on the Northwesterly Right-of-way line of S.W. 200th Street (Caribbean Boulevard); thence run S. $47^{\circ}44'59''$ E., along the Northeasterly Right-of-way of said S.W. 200th Street, for a distance of 222.42 feet to the Point of Curve; thence run Southeasterly, Easterly and Northeasterly along a circular arc to the left concave to the North, having a radius of 25 feet, a central angle of $90^{\circ}00'00''$, through an arc distance of 39.27 feet to the Point of Tangency; thence run N. $42^{\circ}15'01''$ E., along the Northwesterly Right-of-way of S.W. 200th Drive, for a distance of 349.31 feet to the POINT OF BEGINNING; containing 1.5484 acres, more or less.

NOTE:

- (1) Bearings shown refer to an assumed Meridian
- (2) "Radius" or "Radial" mean the same part of a curve, and the words are used inter-changeably.

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
HARVEY RUVIN
CLERK CIRCUIT COURT

B I
8



CFN 2014R0622495
DR Bk 29299 Pgs 4773 - 4796; (24pgs)
RECORDED 09/08/2014 11:01:52
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

THIS INSTRUMENT PREPARED
BY AND RETURN TO:
Junious D. Brown III, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

**ASSIGNMENT AND ASSUMPTION OF
AND SECOND AMENDMENT TO HOME
LAND USE RESTRICTION AGREEMENT**

(Cabana Club Apartments / HOME / 94DRHR-013)

Dated as of August 26, 2014

Among

CABANA CLUB APARTMENTS ASSOCIATES, LTD. (SELLER)

and

RACH CABANA LLC, SJA CABANA CLUB LLC, and ROEM CABANA LLC,
as TENANTS IN COMMON (PURCHASER)

and

FLORIDA HOUSING FINANCE CORPORATION (FLORIDA HOUSING)

and

FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA (SERVICER)

24-205 50

Assignment and Assumption of and First
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DRHR-013)

**ASSIGNMENT AND ASSUMPTION OF
AND SECOND AMENDMENT TO HOME
LAND USE RESTRICTION AGREEMENT**

(Cabana Club Apartments / HOME / 94DRHR-013)

THIS ASSIGNMENT AND ASSUMPTION OF AND SECOND AMENDMENT TO HOME LAND USE RESTRICTION AGREEMENT (this "Agreement") is dated as of August 26, 2014 (the "Effective Date"), by and among CABANA CLUB APARTMENTS ASSOCIATES, LTD., a Florida limited partnership (the "Seller"), RACH CABANA LLC, a Florida limited liability company ("RACH"), SJA CABANA CLUB LLC, a Florida limited liability company ("SJA"), and ROEM CABANA LLC, a Florida limited liability company ("ROEM"), as Tenants in Common (RACH, SJA and ROEM are herein collectively referred to as, the "Purchaser"), FLORIDA HOUSING FINANCE CORPORATION (successor in interest to the Florida Housing Finance Agency (the "Agency")), a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Corporation" and, together with the Agency, "Florida Housing"), and FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA, a Florida corporation (the "Servicer"), solely with respect to Section 4 hereof, and among other things, amends that certain Land Use Restriction Agreement dated as of January 30, 1996 and recorded February 8, 1996, in O.R. Book 17090, Page 426, as affected by that certain Subordination Agreement dated as of June 7, 1996 and recorded June 13, 1996, in O.R. Book 17238, Page 452, as further affected by that certain Affidavit of Scrivener's Error executed March 12, 1997 and recorded April 22, 1997, in O.R. Book 17609, Page 2503, and as amended by that certain First Amendment to Land Use Restriction Agreement dated February 24, 2004 and recorded March 5, 2004, in O.R. Book 22094, Page 4140, all of the Public Records of Miami-Dade County, Florida (collectively, the "Original LURA" and, as amended by this Agreement and as may hereafter be amended, supplemented, assigned or otherwise modified, the "LURA").

W I T N E S S E T H:

WHEREAS, the Agency issued a loan to Seller under the HOME Investment Partnerships Program, and the rules of Florida Housing, codified at Rule Chapter 9I-40, Florida Administrative Code, thereunder, in the original principal amount of ONE MILLION, FIVE HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$1,545,000.00) (the "Loan") to provide a portion of the funds for the rehabilitation and permanent financing of a 332-unit multifamily residential rental development known as Cabana Club Apartments (the "Improvements"), located on property in Miami-Dade County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Land") (the Land and the Improvements are collectively referred to herein as the "Development"); and

WHEREAS, Florida Housing and the Seller executed the Original LURA, the terms of which are incorporated herein by this reference, setting forth certain terms and conditions relating to the acquisition of the Land and the construction and operation of the Improvements, and which sets forth various other covenants and agreements that run with the Land; and

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Assignment and Assumption of and Second
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DR-HR-013)

WHEREAS, on the Effective Date, the Seller has paid the outstanding balance of the Loan in full, and the Loan has been satisfied and is no longer outstanding; and

WHEREAS, notwithstanding the repayment and satisfaction of the Loan, pursuant to the terms of the Original LURA, the Seller is required to continuously comply with the LURA until the expiration thereof on September 16, 2046; and

WHEREAS, the Seller has requested and Florida Housing has approved such request for the (i) transfer of ownership of the Development to the Purchaser, (ii) satisfaction of the existing Loan, and (iii) assumption by the Purchaser of the LURA; and

WHEREAS, Seller has agreed to sell and Purchaser has agreed to purchase the Development pursuant to a Special Warranty Deed dated as of the Effective Date pursuant to that certain Agreement of Sale dated as of June 18, 2014, among Seller, RACH and SJA, as amended by that certain Amendment to Contract for Agreement of Sale of Property dated as of August 8, 2014, and as further amended by that certain Second Amendment to Contract for Agreement of Sale of Property dated as of August 6, 2014, both between Seller and Purchaser (collectively, the "Purchase and Sale Agreement"); and

WHEREAS, this Agreement is being delivered pursuant to the Agreement of Sale and the requirements of Florida Housing to effect the assignment of the Seller's rights and obligations under the LURA and the agreement by the Purchaser to assume the obligations of the Seller thereunder from and after the Effective Date, and to, from and after the Effective Date, be bound by and comply with all covenants, agreements, conditions, representations, warranties, restrictions and limitations contained in the LURA.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises and agreements set forth herein, the receipt and sufficiency of which the parties hereby acknowledge, the Purchaser, the Seller and Florida Housing agree as follows:

Section 1. Definitions and Incorporation of Recitals. All capitalized terms used in this Agreement and not otherwise defined herein shall have the same meanings as set forth in the Original LURA unless the context clearly requires otherwise. All references to the "Project" as such term is defined and used in the Original LURA shall be deemed to refer to the Development. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. Assignment of LURA. The Seller assigns to the Purchaser all of the Seller's right, title and interest in and to the Development, including, without limitation, all of the benefits, duties and obligations of the Seller under the LURA, which assignment shall be effective as of the Effective Date.

Section 3. Assumption of Obligations Under LURA. From and after the Effective Date, the Purchaser hereby assumes, covenants and agrees as follows: (a) to pay and perform all obligations and liabilities of the Seller under the LURA as the owner and operator of the Development, whether designated in the LURA as the "Principal," the "Developer," the

"Owner," or otherwise, as and when due under, and in accordance with the terms of, this Section 3, whether now or hereafter existing, fixed or contingent, and (b) to be bound by and comply with all covenants, agreements, conditions, representations, warranties, restrictions and limitations now or hereafter made by or applicable to the owner of the Development, whether designated therein as the "Principal," the "Developer," the "Owner," or otherwise, pursuant to the LURA, including, without limitation, the restrictions concerning the operation of the Development and the leasing of residential rental units therein. The Purchaser's agreement to perform, be bound by and comply with all of the obligations, liabilities, covenants, agreements, conditions, representations, warranties, restrictions and limitations referred to above shall have the same force and effect as though the Purchaser had originally executed and delivered the LURA as the "Principal," the "Developer," the "Owner," or otherwise thereunder. From and after the Effective Date, the Purchaser hereby assumes all liabilities and other obligations of the Seller under, and agrees to comply with and be bound by all the covenants, agreements, conditions, representations, warranties, restrictions and limitations contained in, the LURA.

Section 4. Compliance with LURA.

(a) **Compliance.** The Purchaser shall comply with and perform each and every one of the provisions, terms, conditions, requirements and contingencies embodied in the LURA and shall execute all instruments reasonably required to completely comply with and perform the same, and shall abide by, complete and carry out all of the Seller's representations, covenants and commitments made in the LURA.

(b) **Servicer.** Florida Housing has appointed FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA, a Florida corporation (the "Servicer"), which, together with its successors and assigns, shall service the LURA in accordance with all of the representations, warranties and agreements set forth in this Agreement, the requirements of Florida Housing and Florida Housing Contract #93-HF-2A-11-23-22-002. Florida Housing and the Purchaser agree that they shall do and perform all things reasonably necessary to assist the Servicer in performing its servicing duties.

(c) **Program Reports.** The Purchaser or management company shall complete a Program Report, which provides a unit-by-unit listing of all units in the Development and gives detailed information regarding the occupants' eligibility and set-aside requirements. The Program Report shall be submitted electronically or manually (as directed by Florida Housing) to the Servicer and Florida Housing as follows:

Program Reports shall be prepared as of the last day of each calendar month and are due electronically to Florida Housing only no later than the 15th day of each month throughout the Compliance Period. Annually, for each year of the Compliance Period, on a date established by Florida Housing, provide the Servicer only with a copy of the Program Report accompanied by Tenant Income Certification copies for ten percent (10%) of the executed Tenant Income Certifications that were effective during the reporting year. Additional reports and information shall be submitted to Florida Housing and the Servicer at such other times as Florida Housing or the Servicer may, in their discretion, request.

(d) Management Reviews and Physical Inspections. The Servicer shall conduct a management review consisting of a review of tenant files, the administrative procedures of the management company, and a physical inspection of the Development. The purpose of the management review and physical inspection is to evaluate management of the Development, to conduct an onsite inspection of the premises, and to provide any information needed by the Purchaser in order to fulfill the compliance requirements.

(e) Right of Entry. Subject to the rights of tenants under their respective leases, the Purchaser shall permit Florida Housing and the Servicer and their authorized employees, agents or representatives to enter upon the Development any time during normal business hours to inspect the Development and all books and records of the Purchaser and will cooperate with Florida Housing and the Servicer and their respective representatives to enable them to perform their functions hereunder. It is expressly agreed that any inspection made by Florida Housing, the Servicer or their representatives shall be made solely and exclusively for the protection and benefit of each of them and neither the Purchaser nor any third party shall be entitled to claim any loss or damage either against Florida Housing or the Servicer, or their employees, agents or representatives, for failure to properly discharge any alleged duties of Florida Housing or the Servicer, and they shall have no duty to make such inspections.

(f) Compensation of Servicer. The Purchaser shall make annual compliance monitoring fee payments to the Servicer for compliance monitoring services rendered by the Servicer in the amount of \$300.00 for the HOME Program (based on multiple program compliance fees for the Competitive Housing Credit Program and the HOME Program) through December 31, 2044 (the end of the Extended Use Period under the Extended Low-Income Housing Agreement dated December 18, 1995 and recorded December 19, 1995, in Official Records Book 17033, Page 683, in the Public Records of Miami-Dade County, Florida). Beginning January 1, 2045, the Purchaser shall make annual fee payments to the Servicer for compliance monitoring services rendered by the Servicer in the amount of \$1,200.00 until the termination of the LURA on September 16, 2046 (the ending date of the HOME affordability period under the LURA). If, as the result of revised laws and/or regulations governing the HOME Program, additional monitoring duties are required in order to assure compliance with such revised laws and/or regulations governing the HOME Program, or in the event of non-compliance by the Purchaser or subsequent owner, Florida Housing shall have the right to impose necessary additional compliance monitoring fees, and Purchaser (or any such subsequent owner, as applicable) agrees to pay such additional compliance monitoring fees as frequently and in such amounts as is necessary to pay for such additional compliance monitoring.

Unless otherwise terminated, the Servicer's rights to compensation for compliance monitoring shall continue for the duration of the "Term of this Agreement" (as such term is defined in the LURA).

The Purchaser agrees that, in exchange for the Servicer's agreement to accept annual payments, in the event the Purchaser hereafter transfers title to the Development, the full balance of all annual payments under this Agreement until the date of termination of the LURA shall be immediately due and payable to the Servicer.

Section 5. Waiver of Defenses. The Purchaser hereby waives, discharges, acquits, and forever releases any and all defenses, claims, causes of action, or rights to offsets to the obligations which it has assumed pursuant to Section 3 of this Agreement, with respect to the enforcement of the LURA or any of the transactions associated therewith, which the Purchaser may have against Florida Housing, or any of its respective officers, directors, employees, or agents, with respect thereto, whether now or hereafter existing, known or unknown, fixed or contingent, foreseen or unforeseen, accrued or unaccrued.

Section 6. Representations, Warranties and Agreements of the Purchaser. The Purchaser hereby represents and warrants to and agrees with the Seller and Florida Housing as follows:

(a) Executed counterparts or photocopies of executed counterparts of this Agreement and the Original LURA have been received and reviewed by the Purchaser and its counsel. The Purchaser is knowledgeable of the Development and has made an independent investigation of all facts and circumstances deemed relevant to it in connection with the acquisition of the Development and has reviewed and is familiar with all of the terms, provisions and conditions of the LURA and all of the obligations thereunder which have been assumed by the Purchaser under Section 3 of this Agreement. The Purchaser warrants it shall comply with the compliance monitoring, record keeping, certification, reporting and other requirements set forth in the LURA.

(b) To the extent required, the Purchaser has obtained all consents, authorizations and approvals from all governmental agencies and other authorities necessary for its acquisition of the Development.

(c) The Purchaser represents to Florida Housing that:

(i) Purchaser has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now conducted, including, without limitation, its acting as owner and operator of the Development;

(ii) Purchaser has full power, authority and legal right to enter into, execute and deliver this Agreement and to assume and perform the obligations under the LURA, and to engage in the transactions contemplated thereby;

(iii) Purchaser has the creditworthiness and the management ability to operate the Development in the manner contemplated by the LURA;

(iv) Subject to the terms of this Agreement, Purchaser accepts and unconditionally assumes the obligations, duties and liabilities of the Seller under the LURA, as amended from time to time, all as of the Effective Date, and Purchaser agrees to keep all fees due to Florida Housing (and its agent conducting compliance monitoring under the LURA) current, from and after the Effective Date;

(v) Purchaser agrees to execute or allow the filing of such other modification agreements, documents and statements as may be reasonably appropriate to document this transaction;

(vi) Purchaser acknowledges that, pursuant to the Purchase and Sale Agreement, it will acquire fee simple ownership to the Development, which Development is subject to the restrictions and limitations of the LURA. The Purchaser further agrees and acknowledges that, so long as the LURA encumbers the Development, any subsequent transfer of the Development (other than a transfer resulting from a foreclosure or deed in lieu of foreclosure), or interests in the Purchaser, must be (1) approved in advance by Florida Housing, and (2) accompanied by a written agreement (in form approved by Florida Housing) of the proposed owner of the Development to assume the Purchaser's duties, liabilities and obligations under the LURA; and

(vii) Purchaser warrants that its correct legal name is RACH CABANA LLC, SJA CABANA CLUB LLC, and ROEM CABANA LLC, as Tenants in Common, and that each entity comprising the Purchaser has been properly organized in the State of Florida, is in good standing in such state, and is legally qualified to transact business in Florida as a limited liability company.

Section 7. Assumption of Fees, Costs, Etc. The Purchaser acknowledges that from and after the Effective Date, the Purchaser will be responsible for the payment of any fees, costs, liabilities and payments due in accordance with the LURA and assumed thereunder, including but not limited to an annual compliance monitoring fee, if required pursuant to Section 4(f) of this Agreement. Florida Housing shall have the right to increase the annual compliance monitoring fee, and the Purchaser agrees to pay the increased annual compliance monitoring fee (in excess of the amount paid as of the Effective Date) throughout the remainder of the term of the LURA.

Section 8. Seller's Representations and Liabilities.

(a) The Seller represents and warrants to Florida Housing that:

(i) Seller is a Florida limited partnership, authorized to transact business in Florida, with full power, authority and legal right to enter into, execute and deliver this Agreement, to transfer the Development to Purchaser, and to engage in the transactions contemplated hereby;

(ii) The LURA is in full force and effect;

(iii) To the best knowledge of the Seller, as of the Effective Date, the use and operation of the Development is compliant in all material respects with the provisions of Articles II and III of the LURA, and the Seller has not received any written notice of default under or non-compliance with the provisions of Articles II and III of the LURA and, to the best knowledge of the Seller, as of the Effective Date, the Development is in compliance with the provisions of Articles II and III of the LURA.

(iv) To the best knowledge of the Seller, as of the Effective Date, the Seller has not received any written notice from any governmental body or agency that it or the Development is not in compliance with environmental laws, or with any rules, regulations and administrative orders of any governmental agency having regulatory jurisdiction over the Development, or with any judgments, decrees or orders of any court of competent jurisdiction or governmental authority with respect thereto that has not been cured;

(v) The execution, delivery and performance of this Agreement: (i) have been duly authorized on behalf of the Seller by all necessary corporate, company, partnership or judicial action as the case may be and, upon its execution by the other parties hereto, this Agreement shall be in full force and effect as of the execution of this Agreement; (ii) do not contravene any federal, state or local law, statute, ordinance, rule or regulation, or any judgment, decree or order of any federal, state or local court of competent jurisdiction or governmental body or agency by which the Seller or its properties and assets, including the Development, are bound; and (iii) do not violate or result in a default under any agreement, contract, indenture, mortgage, deed of trust, security agreement or other instrument to which the Seller is a party or by which its properties and assets, including the Development, are bound;

(vi) Except as otherwise disclosed to Florida Housing, the Seller has no knowledge of any action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, administrative agency, department or public body or arbitration panel, pending or threatened against or affecting the Seller or its assets and properties including but not limited to the Development, nor, to the best knowledge of the Seller, is there any basis therefor wherein an unfavorable decision, ruling or finding would, in any way, materially and adversely affect the Seller's ability to assign the LURA or any of the other obligations with respect thereto or adversely affect the operation of the Development or any part thereof, or which might result in any material adverse change in the business, operations, properties, assets, liabilities or condition (financial or otherwise) of the Seller; and

(vii) To the best knowledge of the Seller, Seller has not been notified of any violation that has not been cured and, to the Seller's knowledge, the Development is in compliance with all applicable laws and ordinances and rules and regulations of governmental bodies and agencies thereunder, and with all orders and judgments of any court or governmental body or agency of competent jurisdiction affecting the existence, power and authority of the Seller and its operation and use of the Development.

(b) The Seller represents to Florida Housing that there exists no defaults known to Seller under the terms of the LURA. The Seller further represents to Florida Housing that all fees due to Florida Housing in connection with Seller's ownership of the Development are paid in full as of the Effective Date.

(c) Except as otherwise provided in this Section 8(c), the Seller shall have no responsibility for any obligations or liabilities or for any defaults under the LURA arising on or

after the Effective Date. The Seller acknowledges and agrees that it shall remain liable for (i) all of its obligations under the LURA which accrued on or prior to the Effective Date, (ii) all of its obligations under the LURA which arise from events, actions or omissions that occurred during Seller's ownership of the Development, and (iii) any obligation or liability in connection with any violation of, or misrepresentation by, Seller during the period Seller owned the Development contained in or made in connection with, the LURA.

Section 9. Management Company. The Purchaser acknowledges and agrees that Florida Housing must approve the selection or replacement of the management company of the Development prior to such company assuming responsibility for the Development.

Section 10. Authorization by Florida Housing; Representations and Warranties. Based upon the representations, warranties and agreements set forth herein, and in material reliance thereon by Florida Housing, Florida Housing has authorized the execution of this Agreement and hereby consents to the transfer of the Development to the Purchaser. By executing this Agreement, Florida Housing acknowledges that all conditions necessary for the approval of the transfer have been satisfied. Furthermore, Florida Housing hereby acknowledges and agrees that (a) there is no existing default by Seller or Florida Housing under the LURA, nor has any event occurred which, with the passage of time or the giving notice or both, would constitute such a default, and (b) there are no amounts owed by Seller to Florida Housing under the LURA.

Section 11. Amendment to Original LURA. The Purchaser and Florida Housing hereby acknowledge and agree that, as of the Effective Date, the Original LURA shall be amended as follows:

(a) *Amendment to Article I – Definitions and Interpretation.* As of the Effective Date, all defined terms used in the Original LURA shall remain in full force and effect except as modified below:

“Agency” shall mean Florida Housing Finance Corporation (successor in interest to the Florida Housing Finance Agency), a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida, and its successors and assigns.

“Agreement” or “Land Use Restriction Agreement” shall mean, collectively, that certain Land Use Restriction Agreement dated as of January 30, 1996 and recorded February 8, 1996, in O.R. Book 17090, Page 426, as affected by that certain Subordination Agreement dated as of June 7, 1996 and recorded June 13, 1996, in O.R. Book 17238, Page 452, as further affected by that certain Affidavit of Scrivener's Error executed March 12, 1997 and recorded April 22, 1997, in O.R. Book 17609, Page 2503, as amended by that certain First Amendment to Land Use Restriction Agreement dated February 24, 2004 and recorded March 5, 2004, in O.R. Book 22094, Page 4140, and as further affected by that certain Assignment and Assumption of and Second Amendment to HOME Land Use Restriction Agreement dated as of August 26, 2014, by and among the Agency, the Developer and Cabana Club Apartments Associates, Ltd., a Florida

limited partnership, all in or to be recorded in the Public Records of Miami-Dade County, Florida, as the same may be hereafter amended, supplemented or modified from time to time in accordance with its terms.

“County” shall mean Miami-Dade County, Florida, formerly known as Dade County, Florida.

“Developer” shall mean, collectively, RACH CABANA LLC, a Florida limited liability company, SJA CABANA CLUB LLC, a Florida limited liability company, and ROEM CABANA LLC, a Florida limited liability company, as Tenants in Common, and its successors and permitted assigns.

“First Mortgagee” means the holder of any first mortgage secured by the Project. First Mortgagee shall provide notice to the Agency pursuant to the terms of the Land Use Restriction Agreement indicating that First Mortgagee is the holder of a mortgage secured by the Project and designating an address for delivery of any notice contemplated by the Land Use Restriction Agreement. As of August 26, 2014, the First Mortgagee shall be Arbor Commercial Funding, LLC, located at 3370 Walden Avenue, Suite 114, Depew, New York 14043, until notice is provided to the Agency of a different First Mortgagee.

(b) *Amendment to Article X – Damage, Destruction or Condemnation of the Project.* Article X of the Original LURA is hereby deleted in its entirety.

(c) *Amendment to Article XI – Enforcement.* The penultimate sentence of Article XI of the Original LURA, which reads, “If a default by the Developer under this Agreement is not cured within a reasonable time, the Agency shall institute foreclosure proceedings against the Project, but only as provided in the Mortgage.”, is hereby deleted in its entirety.

(d) *Amendment to Article XVII – Compliance with Low-Income Housing Tax Credit Requirements.* The notice addresses for the parties set forth in Section 17.3 of Article XVII of the Original LURA are hereby deleted and replaced with the following addresses:

Agency: Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Attention: Executive Director
Phone: (850) 488-4198
Fax: (850) 488-9809

with a copy to: Nabors, Giblin & Nickerson, P.A.
1500 Mahan Street, Suite 200
Tallahassee, Florida 32308
Attention: Junious D. Brown III, Esq.
Phone: (850) 224-4070
Email: jbrown@ngn-tally.com

Developer: RACH Cabana LLC
SJA Cabana Club LLC
ROEM Cabana LLC
c/o John Goede
Goede Adamczyk & Deboest, PLLC
8950 Fontana Del Sol Way, Suite 100
Naples, Florida 34109
Attention: John Goede, Esq.
Phone: (239) 331-5100
Email: john@gad-law.com

with a copy to: Goede, Adamczyk & DeBoest, PLLC
Attention: John Goede, Esq.
8950 Fontana del Sol Way, Suite 100
Naples, Florida 34109
Phone: (239) 331-5100
E-mail: john@gad-law.com

Servicer: First Housing Development Corporation of Florida
107 S. Willow Avenue
Tampa, Florida 33606-1945
Attention: Edward Busansky
Phone: (813) 289-9410
Email: ebusansky@firsthousingfl.com

(e) *Provisions Relating to the Developer Note, Loan, Loan Documents, Mortgage and Note.* All references in the Original LURA to the "Developer Note," "Loan," "Loan Documents," "Mortgage," and/or "Note," are hereby deleted due to the fact that the Loan has been paid in full and satisfied. Notwithstanding the foregoing, any references to the above terms shall remain in effect when needed to construe or enforce the provisions of the LURA, to provide definitions or to determine the compliance monitoring obligations related to the LURA.

Section 12. Authority. The signatories to this Agreement represent that they have the requisite capacity and authority to execute this Agreement and to assume the obligations referenced herein.

Section 13. Notices. Any notices regarding this Agreement or the underlying LURA will be provided to:

Purchaser: RACH Cabana LLC
SJA Cabana Club LLC
ROEM Cabana LLC
c/o John Goede
Goede Adamczyk & Deboest, PLLC
8950 Fontana Del Sol Way, Suite 100
Naples, Florida 34109
Attention: John Goede, Esq.
Phone: (239) 331-5100
Email: john@gad-law.com

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Assignment and Assumption of and Second
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DR-HR-013)

with a copy to: Goede, Adamczyk & DeBoest, PLLC
Attention: John Goede, Esq.
8950 Fontana del Sol Way, Suite 100
Naples, Florida 34109
Phone: (239) 331-5100
E-mail: john@gad-law.com

Seller: Cabana Club Apartments Associates, Ltd.
19701 SW 110th Court
Cutler Bay, Florida 33157-8429
Attention: Peter Bunassar
Phone: (305) 710-5006
Email: pbunassar@aol.com

with a copy to: Greenberg Traurig
333 S.E. 2nd Avenue
Miami, Florida 33131
Attention: Laura Gangemi Vignola, Esq.
Phone: (305) 579-0877
E-Mail: gangemil@gtlaw.com

Florida Housing: Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Attention: Executive Director
Phone: (850) 488-4198
Fax: (850) 488-9809

with a copy to: Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Attention: Junious D. Brown III, Esq.
Phone: (850) 224-4070
Email: jbrown@ngn-tally.com

Servicer: First Housing Development Corporation of Florida
107 S. Willow Avenue
Tampa, Florida 33606-1945
Attention: Edward Busansky
Phone: (813) 289-9410
Email: ebusansky@firsthousingfl.com

Section 14. Miscellaneous. This Agreement will be construed in accordance with Florida law and will be recorded in Miami-Dade County, Florida. The recordation of this Agreement is not intended to affect the priority of the LURA and the Purchaser specifically agrees that the LURA is senior in status and priority to any later recorded claims, liens, or

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Assignment and Assumption of and Second
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DR-HR-013)

restrictions against the Development, other than as specifically subordinated. In the event that any party should have to retain counsel to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its costs including a reasonable fee for the legal services rendered on its behalf.

Section 15. Remaining Provisions Unaffected. Except as expressly modified and amended by this Agreement, the covenants, terms and conditions of the Original LURA shall remain unaffected and shall remain in full force and effect.

Section 16. Covenants to Run With the Land. Section 11 of this Agreement and the covenants contained therein shall run with the land and shall bind the Purchaser, and its successors and assigns, and the benefits shall inure to Florida Housing, and its respective successors and assigns, during the term of the LURA; provided, however, nothing contained in this paragraph shall be deemed to authorize or consent to any assignment by the Purchaser, other than the consent to the acquisition of the Development provided hereunder. This Agreement shall terminate when the LURA terminates as provided in the LURA.

Section 17. Further Assurances. The parties hereto hereby agree to execute and deliver, record and file, at any time and from time to time, such additional documents, instruments and agreements deemed necessary or desirable for more fully amending and supplementing the LURA to reflect the Purchaser's assumption of the obligations, duties and liabilities thereunder consistent with the provisions of this Agreement.

Section 18. Future Amendments. The LURA may not be further amended except by an instrument in writing signed by the Purchaser and Florida Housing.

Section 19. No Third Party Beneficiary. The representations and warranties of Seller contained herein are solely for the benefit of Florida Housing, and this Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to Purchaser or any other person or entity as a third party beneficiary or otherwise.

Section 20. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

Section 21. Counterparts. This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.

Section 22. Governing Law. Notwithstanding that, for the convenience of the parties, the parties may be executing this Agreement outside the State of Florida, this Agreement, the Original LURA and all amendments thereto shall be governed by the laws of the State of Florida, both substantive and remedial.

Section 23. Severability. If any covenant, condition, term, or provision contained in this Agreement or the LURA, as amended hereby, is held to be invalid by final judgment of any

court of competent jurisdiction, the invalidity of such covenant, condition, term, or provision shall not in any way affect any other covenant, condition, term, or provision contained in this Agreement.

Section 24. No Personal Liability or Accountability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any present, past or future member, agent or employce of Florida Housing, in his or her individual capacity, and neither the members of Florida Housing nor any official, agent or employee of Florida Housing shall be liable personally under the LURA or be subject to any personal liability or accountability by reason of this Agreement.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR
ASSIGNMENT AND ASSUMPTION OF
AND SECOND AMENDMENT TO HOME
LAND USE RESTRICTION AGREEMENT**

(Cabana Club Apartments / HOME / 94DRHR-013)

IN WITNESS WHEREOF, Florida Housing, the Purchaser, the Seller, and the Servicer have executed this Agreement as of the date first set forth above.

FLORIDA HOUSING:

**FLORIDA HOUSING FINANCE
CORPORATION**

WITNESSES:

Jimmy Bearden
Print: Jimmy Bearden
Jade Grubbs
Print: Jade Grubbs

By: *David R. Westcott*
David R. Westcott
Director of Homeownership Programs

Address: 227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

[SEAL]

**STATE OF FLORIDA
COUNTY OF LEON**

The foregoing instrument was acknowledged before me this 6th day of August, 2014, by DAVID R. WESTCOTT, as Director of Homeownership Programs of the FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida, on behalf of Florida Housing. Said person is personally known to me or has produced a valid driver's license as identification.

Jade M. Grubbs
Notary Public; State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____



S-1

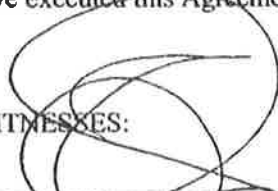
Assignment and Assumption of and Second
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DRHR-013)

**COUNTERPART SIGNATURE PAGE FOR
ASSIGNMENT AND ASSUMPTION OF
AND SECOND AMENDMENT TO HOME
LAND USE RESTRICTION AGREEMENT**

(Cabana Club Apartments / HOME / 94DRHR-013)

IN WITNESS WHEREOF, Florida Housing, the Purchaser, the Seller, and the Servicer have executed this Agreement as of the date first set forth above.

WITNESSES:

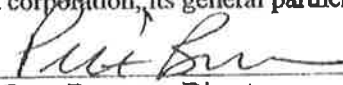

Print: LURA CASTELLON


Print: LURA CASTELLON

SELLER:

CABANA CLUB APARTMENTS ASSOCIATES, LTD., a Florida limited partnership

By: CABANA CLUB APARTMENTS, INC., a Florida corporation, its general partner

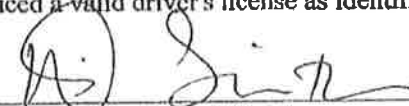
By: 
Peter Bunassar, Director

Address: 19701 SW 110 Ct.
MIAMI, FL 33157

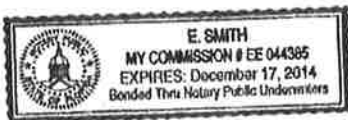
[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 12 day of August, 2014, by PETER BUNASSAR, as Director of CABANA CLUB APARTMENTS, INC., a Florida corporation, the general partner of CABANA CLUB APARTMENTS ASSOCIATES, LTD., a Florida limited partnership on behalf of the corporation and limited partnership. Said person is personally known to me or has produced a valid driver's license as identification.


Notary Public; State of Florida
Print Name: E. Smith
My Commission Expires: December 17, 2014
My Commission No.: EE 044385

[NOTARY SEAL]



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Assignment and Assumption of and Second
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DRHR-013)

**COUNTERPART SIGNATURE PAGE FOR
ASSIGNMENT AND ASSUMPTION OF
AND SECOND AMENDMENT TO HOME
LAND USE RESTRICTION AGREEMENT**

(Cabana Club Apartments / HOME / 94DRHR-013)

IN WITNESS WHEREOF, Florida Housing, the Purchaser, the Seller, and the Servicer have executed this Agreement as of the date first set forth above.

SERVICER:

FIRST HOUSING DEVELOPMENT
CORPORATION OF FLORIDA, a Florida
corporation

WITNESSES:

Tonia Labadie
Print: Tonia Labadie

Brian Borer
Print: BRIAN BORER

By: *Edward Busansky*
Edward Busansky, Senior Vice President

Address: 107 S. Willow Avenue
Tampa, Florida 33606-1945

[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 6th day of August, 2014, by EDWARD BUSANSKY, as Senior Vice President of FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA, a Florida corporation, on behalf of the corporation. Said person is personally known to me or has produced a valid driver's license as identification.

[NOTARY SEAL]

Joann H. Lundquist
Notary Public; State of Florida
Print Name: JOANN H. LUNDQUIST
My Commission Expires: Commission # EE 015137
Expires: August 8, 2014
My Commission No.: 800.345.1313

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Assignment and Assumption of and Second
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DRHR-013)

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**COUNTERPART SIGNATURE PAGE FOR
ASSIGNMENT AND ASSUMPTION OF
AND SECOND AMENDMENT TO HOME
LAND USE RESTRICTION AGREEMENT**

(Cabana Club Apartments / HOME / 94DRHR-013)

IN WITNESS WHEREOF, Florida Housing, the Purchaser, the Seller, and the Servicer have executed this Agreement as of the date first set forth above.

PURCHASER:

WITNESSES:

Print: *[Signature]*

Print: JAKE NABER

RACH CABANA LLC, a Florida limited liability company, SJA CABANA CLUB LLC, a Florida limited liability company, and ROEM CABANA LLC, a Florida limited liability company, as Tenants in Common

RACH CABANA LLC, a Florida limited liability company

By: *[Signature]*
Name: David Shweky
Title: as Manager

Address: Goede Adamczyk & Deboest, PLLC
c/o John Goede
8950 Fontana Del Sol Way, Suite 100
Naples, Florida 34109

STATE OF New Jersey
COUNTY OF Monmouth

The foregoing instrument was acknowledged before me this 21 day of August, 2014, by David Shweky, as Manager of RACH CABANA LLC, a Florida limited liability company, on behalf of the limited liability company. Said person is personally known to me or has produced a valid driver's license as identification.



[Signature]

Notary Public: State of Florida New Jersey
Print Name: William O'Brien
My Commission Expires: 12/15/15
My Commission No.: 2403129

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Assignment and Assumption of and Second
Amendment to HOME LURA
(Cabana Club Apartments / HOME / 94DRHR-013)

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WITNESSES:

SJA CABANA CLUB LLC, a Florida limited liability company

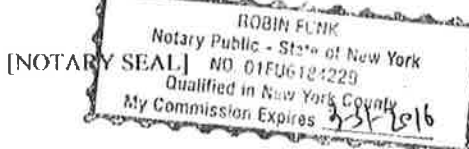
[Signature]
Print: RAHAMON KOHAN
[Signature]
Print: Sina Kohan

By: [Signature]
Name: Sion Saparzaldeh
Title: as Manager

Address: Goede Adamczyk & Deboest, PLLC
c/o John Goede
8950 Fontana Del Sol Way, Suite 100
Naples, Florida 34109

STATE OF NY
COUNTY OF NY

The foregoing instrument was acknowledged before me this 20 day of August, 2014, by Sion Saparzaldeh, as Manager of SJA CABANA CLUB LLC, a Florida limited liability company, on behalf of the limited liability company. Said person is personally known to me or has produced a valid driver's license as identification.



Notary Public; State of Florida NY
Print Name: Robin Funk
My Commission Expires: 3-31-2016
My Commission No.: _____

WITNESSES:

ROEM CABANA LLC, a Florida limited liability company

[Signature]
Print: YAKOVABW
[Signature]
Print: JAKE NAASR

By: [Signature]
Name: David Shweky
Title: as Manager

Address: Goede Adamczyk & Deboest, PLLC
c/o John Goede
8950 Fontana Del Sol Way, Suite 100
Naples, Florida 34109

STATE OF New Jersey
COUNTY OF Monmouth

The foregoing instrument was acknowledged before me this 21 day of August, 2014, by David Shweky, as Manager of ROEM CABANA LLC, a Florida limited liability company, on behalf of the limited liability company. Said person is personally known to me or has produced a valid driver's license as identification.



[Signature]
Notary Public; State of ~~Florida~~ New Jersey
Print Name: William O'Brien
My Commission Expires: 12/15/15
My Commission No.: 2403129

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Assignment and Assumption of and Second Amendment to HOME LURA (Cabana Club Apartments / HOME / 94DRHR-013)

Exhibit "A"
Legal Description

(Cabana Club Apartments)

That portion of Lots (or Tracts) 61, 67 and 68 of "FERRINE GRANT SUBDIVISION OF SECTION 6 TP. 36 S. R. 40 E.", according to the Plat thereof, recorded in Plat Book 1, at Page 5 of the Public Records of Dade County, Florida and a parcel of land in the Northeast ¼ of Section 7, Township 36 South, Range 40 East in Dade County, Florida, more particularly described as follows:

COMMENCE at the point of intersection of the South line of said Section 6 with the Northwesterly line of the Florida East Coast Railway right-of-way, said point being 1,457.64 feet East of the Southwest corner of the Southeast ¼ of said Section 6; thence run S. 89°48'56" W., along the South line of said Section 6, for a distance of 67.75 feet, to the POINT OF BEGINNING of the parcel of land hereinafter to be described, said Point of Beginning is also the point of intersection of the South line of said Section 6 with the Northwesterly right-of-way line of S.W. 200th Drive; thence continue S. 89°48'56" W., along the South line of said Section 6, for a distance of 286.77 feet to a point, said point being 100.00 feet East from the Southeast corner of the West ¼ of said Lot 67; thence run N. 0°11'05" E., 100 feet East of and parallel with the East line of the West ¼ of said Lot 67, for a distance of 200.00 feet, to a point; thence run S. 89°48'56" W., parallel with the South line of said Section 6, for a distance of 100.00 feet, to a point on the East line of the West ¼ of said Lot 67; thence run N. 0°11'05" E., along the East line of the West ¼ of said Lot 67, for a distance of 482.89 feet to the Northeast corner of the West ¼ of said Lot 67; thence run S. 89°49'49" W., along the North line of said Lot 67, for a distance of 334.48 feet, to the Northwest corner of said Lot 67, the same point being also the Southeast corner of said Lot 61; thence run N. 0°10'32" E., along the Eastline of said Lot 61, for a distance of 341.49 feet to the Northeast corner of the South ¼ of said Lot 61; thence run S. 89°50'16" W., along the North line of the South ¼ of said Lot 61, for a distance of 150.08 feet to a point on the East right-of-way line of S.W. 110th Court; thence for the next six courses run along the East right-of-way line of said S.W. 110th Court, as follows: run S. 0°09'26" W., for a distance of 240.32 feet to the Point of Curve; thence run Southwesterly along the arc of a circular curve to the right, concave to the West, having a radial of 275 feet, a central angle of 16°42'46", through an arc distance of 80.22 feet, to the Point of Tangency; thence run S. 16°52'12" W., for a distance of 96.92 feet to the Point of Curve; thence run Southwesterly along the arc of a circular curve to the left, concave to the East, having a radial of 225 feet, a central angle of 16°42'46", through an arc distance of 65.63 feet, to the Point of Tangency; thence run S. 0°09'26" W., along a line 470 feet East of and parallel with the West line of said Tract 68 - as measured along the South line of said Section 6, for a distance of 482.73 feet, to the Point of Curve; thence run Southerly, Southeasterly and Easterly along the arc of a circular curve to the left, concave to the

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Northeast, having a radial of 25 feet, a central angle of 90°20'30", through an arc distance of 39.42 feet, to the Point of Tangency, said point being 40 feet North of the South line of said Section 6, and also being on the Northerly right-of-way line of Caribbean Boulevard (S.W. 200th Street); thence for the next three courses run along the Northerly right-of-way line of said Caribbean Boulevard as follows: run N. 89°48'56" E., 40 feet North of and parallel with the South line of said Section 6, for a distance of 74.73 feet, to the Point of Curve; thence run southeasterly along the arc of a circular curve to the right, crossing the south line of said Section 6 and running into the Northeast $\frac{1}{4}$ of said Section 7, having a radial of 570 feet, a central angle of 42°26'05", through an arc distance of 422.16 feet, to the Point of Tangency; thence run S. 47°44'59" E., for a distance of 247.42 feet, to a point on the Northwesterly right-of-way of said S.W. 200th Drive; thence run N. 42°15'01" E., along the Northwesterly right-of-way line of said S.W. 200th Drive; for a distance of 374.31 feet, to the POINT OF BEGINNING; containing a net area of 11.548 acres, more or less.

LESS AND EXCEPT:

- (i) a 1.8596 acre Tract (also labelled as Tract "B"); and
- (ii) a 1.5484 acre Tract (also labelled as Tract "C").

The legal descriptions of Tract "B" and Tract "C" referred to in (i) and (ii) above are attached hereto.

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DESCRIPTION OF TRACT "B"

PROPOSED SUBDIVISION OF CABANA CLUB TOWERS
now in the process of being recorded

That portion of Lots (or Tracts) 67 and 68 of "FAIRFAX GRANT SUBDIVISION OF SECTION 6, TP. 56 S, R. 40 E.", according to the Plat thereof, recorded in Plat Book 1, at Page 5 of the Public Records of Dade County, Florida and a part of the Northeast $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East, all in Dade County, Florida, more particularly described as follows:

COMMENCE at the point of intersection of the South line of said Section 6 with the Northwesterly line of the Florida East Coast Railway Right-of-way, said point being 1,457.64 feet East of the South $\frac{1}{4}$ corner of said Section 6, the same point being also the North $\frac{1}{4}$ corner of said Section 7; thence run S. $00^{\circ}48'56''$ W., along the North line of the Northeast $\frac{1}{4}$ of said Section 7, for a distance of 454.58 feet to the POINT OF BEGINNING of the parcel of land hereinafter to be described, and being labelled as TRACT "B" on the Plat of "CABANA CLUB TOWERS" now being recorded; thence run S. $23^{\circ}40'22''$ W., for a distance of 110.52 feet, to the point of curve of a circular arc, same arc being the Northerly Right-of-way line of S.W. 200th Street (Caribbean Boulevard); thence run Northwesterly along said circular arc, concave to the Southwest, having a radius of 570 feet, a central angle of $42^{\circ}26'05''$, for an arc distance of 422.16 feet, to the Point of Tangency, said point lying 40 feet North of the South line of said Section 6, and lies on the North Right-of-way line of S.W. 200th Street; thence run S. $00^{\circ}48'56''$ W., along the North Right-of-way line of said S.W. 200th Street, for a distance of 74.73 feet, to the Point of Curve; thence run Westerly, Northwesterly and Northerly, along a circular arc, concave to the Northeast, having a radius of 25 feet, a central angle of $90^{\circ}20'30''$, for an arc distance of 39.48 feet, to the Point of Tangency, said point being on the Easterly Right-of-way line of S.W. 110th Court; thence run N. $0^{\circ}09'26''$ E., along the

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DESCRIPTION OF TRACT "B" cont.

said easterly right-of-way line of S.W. 110th Court, for a distance of 124.85 feet, to a point; thence run N. $89^{\circ}48'56''$ E., 150 feet North of and parallel with the North right-of-way line of said S.W. 200th Street, for a distance of 98.99 feet to the Point of Curve; thence run Southeasterly, 150 feet North of and parallel with the curved Northerly right-of-way line of said S.W. 200th Street, along a circular arc having a radius of 720 feet, a central angle of $22^{\circ}30'00''$, for an arc distance of 282.74 feet to a point; thence run S. $22^{\circ}18'56''$ W., along the radial of the last described curve, for a distance of 15.00 feet to a point; thence run S. $67^{\circ}41'04''$ W., for a distance of 176.98 feet to a point; thence run S. $0^{\circ}11'05''$ W., for a distance of 53.61 feet, to the POINT OF BEGINNING; containing 1.8596 acres more or less.

NOTE:

- (1) Bearings shown refer to an assumed Meridian
- (2) "Radius" or "Radial" mean the same part of a curve, and the words are used inter-changeably.

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DESCRIPTION OF TRACT "C"

PROPOSED SUBDIVISION OF CABANA CLUB TOWERS
now in the process of being recorded

That part of the Northeast $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East, Dade County, Florida, described as follows:

COMMENCE at the point of intersection of the Northerly line of the Northeast $\frac{1}{4}$ of said Section 7, with the Northwesterly line of the Florida East Coast Railway Right-of-way line, said point being 1,457.64 feet East of the North $\frac{1}{4}$ corner of said Section 7; thence run S. 89°48'56" W., along the North line of the Northeast $\frac{1}{4}$ of said Section 7, for a distance of 67.75 feet to the POINT OF BEGINNING of the parcel of land hereinafter to be described and labelled as TRACT "C" on the Plat of CABANA CLUB TOWERS now being recorded; thence continue S. 89°48'56" W., along the last described course, for a distance of 386.03 feet, to a point; thence run S. 23°40'22" W., for a distance of 119.52 feet to a Point of Tangency on the Northwesterly Right-of-way line of S.W. 200th Street (Caribbean Boulevard); thence run S. 47°44'57" E., along the Northeasterly Right-of-way of said S.W. 200th Street, for a distance of 222.42 feet to the Point of Curve; thence run Southeasterly, Easterly and Northeasterly along a circular arc to the left concave to the North, having a radius of 25 feet, a central angle of 90°00'00", through an arc distance of 39.27 feet to the Point of Tangency; thence run N. 42°15'01" E., along the Northwesterly Right-of-way of S.W. 200th Drive, for a distance of 349.31 feet to the POINT OF BEGINNING; containing 1.5484 acres, more or less.

NOTE:

- (1) Bearings shown refer to an assumed Meridian
- (2) "Radius" or "Radial" mean the same part of a curve, and the words are used inter-changeably.

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