

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Cabana Club Preservation, LP.,

FHFC Case No.: 2017-057VW

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**ORDER GRANTING WAIVER OF RULES 9I-40.020(12) and (27)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 22, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 7, 2017, from Cabana Club Preservation, LP. (“Petitioner”). Notice of the Petition was published on August 9, 2017, in Volume 43, Number 154, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner was selected to receive a HOME loan from Florida Housing to assist in the construction of a Development serving low-income elderly tenants in Miami, Florida. Chapter 9I-40, F.A.C., an emergency rule promulgated in 1994, required that at least one rental project serving Special Needs (and located south of

Kendall Drive in Dade County) would be set aside; Cabana Club was that development and the Special Needs type chosen was Frail Elderly.

3. Petitioner seeks a Waiver of Rules 9I-40.020(12) and (27), F.A.C. (1994), which would allow Petitioner to amend its Land Use Restriction Agreement (LURA) so that the property may be operated as an “elderly development.”

4. Rules 9I-40.020(12) and (27), F.A.C. (1994) provided the following:

(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.

5. Petitioner is refinancing the property through the U.S. Department of Housing and Urban Development (HUD) which has new requirements for their loan structure. To comply with the new requirements the property must be designated an “elderly development,” the LURA must be amended to 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 to remove the requirement that 40% of the units service persons qualifying as “frail elderly.” In addition, the Extended Low-Income Housing Agreement needs to be extended for a

period of approximately 13 additional years (a total of forty years beyond the date of the HUD loan endorsement).

6. The Board finds that 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, so long as they remain qualified under the LURA requirements. The HOME loan was paid off and the mortgage satisfied in August of 2014.

7. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

8. Section 120.542(2), Fla. Stat., provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income elderly persons, and that it would suffer a substantial hardship if the waiver is not granted. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-

income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

10. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

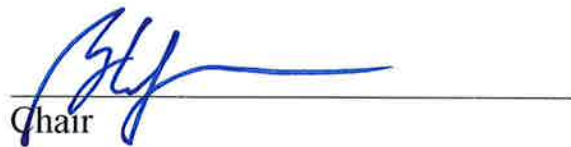
Petitioner’s request for a waiver of Rules 9I-40.020(12) and (27), F.A.C. (1994) is hereby **GRANTED** so that Petitioner’s LURA may be amended to designate the property as an “elderly development” and to remove the “frail elderly” designation and requirements. Additionally, Petitioner’s request that the Extended Low-Income Housing Agreement be extended for an additional 13 years is hereby **GRANTED**.

DONE and ORDERED this 22nd day of September 2017.

Florida Housing Finance Corporation

By: \_\_\_\_\_

Chair



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail this 22nd day of September, 2017 to the following:

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

  
Corporation Clerk

### NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**