

**RESOLUTION NO. 2017-**

A regular meeting of the Board of County Commissioners of Broward County, Florida was held at 10:00 a.m. on \_\_\_\_\_, 2017, at the Broward County Governmental Center, Fort Lauderdale, Florida.

Present: \_\_\_\_\_

Absent: \_\_\_\_\_

\* \* \* \* \*

Thereupon, \_\_\_\_\_ introduced the following Resolution, which was read:

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, APPROVING AND AUTHORIZING A SUBORDINATION AGREEMENT OF EXISTING LAND USE RESTRICTION AGREEMENT RELATING TO THE LAND USE RESTRICTION AGREEMENT DATED AS OF JUNE 1, 2001 EXECUTED IN CONNECTION WITH THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA'S \$11,000,000 MULTIFAMILY HOUSING REVENUE BONDS (PEMBROKE VILLAS PROJECT), SERIES 2001A AND ITS \$625,000 TAXABLE MULTIFAMILY HOUSING REVENUE BONDS (PEMBROKE VILLAS PROJECT), SERIES 2001B; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Housing Finance Authority of Broward County, Florida (the "HFA") issued and sold its \$11,000,000 Multifamily Housing Revenue Bonds (Pembroke Villas Project), Series 2001A and its \$625,000 Taxable Multifamily Housing Revenue Bonds (Pembroke Villas Project), Series 2001B (collectively, the "Bonds") for the purpose of assisting Pembroke Villas Apartments, Ltd., a Florida limited partnership (the "Borrower") to acquire, construct and equip a multifamily residential rental apartment project located in Broward County, Florida, and known as Pembroke Villas (the "Project"); and

WHEREAS, the Bonds were issued pursuant to a Trust Indenture, dated as of June 1, 2001 (the "Indenture"), by and between the HFA and The Bank of New York, predecessor in

interest to The Bank of New York Mellon Trust Company, N.A. (the "Trustee"); and

WHEREAS, the proceeds made available from the issuance of the Bonds were loaned to the Borrower (the "Loan"), pursuant to the Loan Agreement, dated as of June 1, 2001 (the "Loan Agreement"), by and between the Borrower and the HFA for the purpose of financing the Project; and

WHEREAS, in connection with the Bonds, the HFA, the Borrower and the Trustee entered into a Land Use Restriction Agreement, dated as of June 1, 2001, as amended by that certain First Amendment to Land Use Restriction Agreement, dated as of January 17, 2017 (collectively, the "Land Use Restriction Agreement"); and

WHEREAS, on January 17, 2017, pursuant to the terms of the Indenture and the Loan Agreement, the Loan was paid in full and the Bonds were redeemed and, as of the date of this Resolution, are no longer outstanding; and

WHEREAS, pursuant to its terms, and notwithstanding the redemption of the Bonds in full, the Land Use Restriction Agreement will continue to remain in effect during the Qualified Project Period (as defined in the Land Use Restriction Agreement); and

WHEREAS, the Borrower is in the process of refinancing the Project with the proceeds of a new loan from First Housing Development Corporation of Florida (the "Lender"), such loan to be insured by the United States Department of Housing and Urban Development ("HUD") through the Section 223(f) program; and

WHEREAS, the Lender has requested that the Land Use Restriction Agreement be subordinated to the mortgage (or deed of trust) and other loan documents made by the Borrower to and in favor of the Lender and/or HUD; and

WHEREAS, the Borrower has requested, and the Housing Finance Authority is willing, to consent to the subordination of certain rights of the Housing Finance Authority under the Land Use Restriction Agreement to the Lender and/or HUD; and

WHEREAS, to document the requested subordination, the HFA and the Borrower will enter into a Subordination Agreement of Existing Land Use Restriction Agreement (the "Subordination Agreement"); and

WHEREAS, on September 20, 2017, the HFA adopted a Resolution authorizing the execution and delivery of the Subordination Agreement; and

WHEREAS, Broward County Ordinance No. 79-41, as amended, requires that the HFA obtain approval of the Board of County Commissioners of Broward County, Florida prior to entering into any contracts.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:**

SECTION 1. Approval of Subordination Agreement. The form of the Subordination Agreement attached hereto as Exhibit "A" is hereby approved. The Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Subordination Agreement, and the Secretary or Assistant Secretary is authorized to place the HFA's seal thereon and attest thereto, in substantially the form presented at this meeting with such changes, modifications, deletions and insertions as the Chair or Vice Chair, with the advice of Nabors, Giblin & Nickerson, P.A., as Bond Counsel ("Bond Counsel"), and the Office of the County Attorney of Broward County, as County Attorney (the "County Attorney"), may deem necessary and appropriate. Such officers are also authorized to execute and deliver all other documents necessary or desirable to effectuate the subordination of the Land Use Restriction Agreement and the matters contemplated in the Subordination Agreement as they, with the advice of the County Attorney and Bond Counsel, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the HFA.

SECTION 2. Further Actions and Ratification of Prior Actions. The officers, agents and employees of the HFA are hereby authorized to do all acts and things and to execute such instruments and documents required of them in accordance with the provisions of the

Subordination Agreement, and to take such other actions as shall be necessary to accomplish the intent thereof. All actions heretofore undertaken by the officers, agents and employees of the HFA with respect to the provisions of the Subordination Agreement are hereby ratified and approved.

SECTION 3. Resolution Effective. This Resolution shall take effect immediately upon its adoption.

[SIGNATURE PAGE TO FOLLOW]

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was adopted by the following vote:

Ayes \_\_\_\_\_

Noes \_\_\_\_\_

ADOPTED by the Board of County Commissioners of Broward County, Florida  
on this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Barbara Sharief, Mayor

\_\_\_\_\_  
County Administrator and Ex-Officio  
Clerk of the Board of County Commissioners

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF BROWARD        )

I, \_\_\_\_\_, County Administrator, in and for Broward County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of a Resolution 2017-\_\_\_\_\_ as the same appears of record in the minutes of said Board of County Commissioners held on the \_\_\_ day of \_\_\_\_\_, 2017.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2017.

**COUNTY ADMINISTRATOR**

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

**EXHIBIT A**

**FORM OF SUBORDINATION AGREEMENT**

**[ATTACHED]**

Prepared By and Return To:  
Jeffrey Drew Butt, Esq.  
Squire Patton Boggs (US) LLP  
One Tampa City Center  
201 N. Franklin Street, Suite 2100  
Tampa, Florida 33602  
Telephone: (813) 202-1300

DRAFT

**SUBORDINATION AGREEMENT OF EXISTING LAND USE RESTRICTION AGREEMENT**  
**(PEMBROKE VILLAS PROJECT - Multifamily Bonds)**

THIS SUBORDINATION AGREEMENT OF EXISTING LAND USE RESTRICTION AGREEMENT (this “Agreement”) is made, as of **October** \_\_, 2017, by and between the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**, a public body corporate and politic created and existing pursuant to the laws of the State of Florida (the “**Authority**”), and **PEMBROKE VILLAS APARTMENTS, LTD.**, a Florida limited partnership (the “**Borrower**”).

**RECITALS:**

A. Borrower is the owner of certain real property located in the County of **Broward**, State of Florida, as more particularly described in Exhibit A attached hereto and made a part hereof, on which is constructed that certain rental apartment project known as **PEMBROKE VILLAS APARTMENTS** (the “**Project**”).

B. The Project is encumbered by that certain **Land Use Restriction Agreement (the “Land Use Restriction Agreement”)** dated as of **June 1, 2001**, by and among the Borrower, as owner of the Project, the Authority and the Trustee (as hereinafter defined) and recorded in Book **31769**, Page **763**, as affected by that certain **First Amendment to Land Use Restriction Agreement** dated as of **January 17, 2017** and recorded under Instrument No. **114160962** (the “**First Amendment**”), both of the Public Records of **Broward County, Florida**, (the **Land Use Restriction Agreement and the First Amendment**, are hereinafter collectively the “**LURA**” and/or the “**Restrictive Covenants**”). The LURA was entered into among Borrower, the Authority and The Bank of York Mellon Trust Company, N.A. (successor in interest to The Bank of New York), a national banking association (the “**Trustee**”), in conjunction with the issuance of the Authority’s (i) Multifamily Housing Revenue Bonds (Pembroke Villas Project), Series 2001A (the “**Series 2001A Bonds**”), in the aggregate principal amount of \$11,000,000 and its Taxable Multifamily Housing Revenue Bonds (Pembroke Villas Project), Series 2001B in the aggregate principal amount of \$625,000 (the “**Series 2001B Bonds**”, and together with the Series 2001A Bonds, the “**Bonds**”).

C. The First Amendment released the Trustee from its duties under the LURA inasmuch as the Bonds had been redeemed in full and the mortgage thereunder satisfied, and in addition to releasing the Trustee from its duties, the First Amendment provides that, including but not limited to, (i) the Borrower is required to continuously comply with the terms of the LURA until the expiration of the Qualified Project Period on October 15, 2018; and (ii) upon the expiration of the Qualified Project Period on October 15, 2018, the LURA will terminate and the Borrower and the Authority shall execute and record a Termination of Restrictive Covenants, in the form attached to the First Amendment as Exhibit “B”.



D. The Borrower on this day is entering into a certain first lien mortgage loan (the "Loan") made by Lender (as defined below), which loan is evidenced and/or secured by that certain Note (Multistate) dated as of **October** \_\_\_\_, 2017, in the original principal amount of **TWENTY MILLION TWO HUNDRED TWENTY-SIX THOUSAND NINE HUNDRED** and 00/100 Dollars (**\$20,226,900.00**) (the "Note"), that certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement of even date therewith and recorded prior hereto in the Public Records of **Broward** County, Florida (the "Mortgage"), and certain other Mortgage Loan Documents (as defined below), which Loan is insured by HUD (as defined below).

E. HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants and enforcement of the Security Instrument.

F. The Authority has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.
2. In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Agreement, the provision contained in this Agreement shall govern and be controlling in all respects as set forth more fully herein.

3. The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means First Housing Development Corporation of Florida, a Florida corporation, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

4. Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Authority's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

5. In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein), shall automatically terminate.

6. Borrower and the Authority acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

7. Except for the Authority's reporting requirement, in enforcing the Restrictive Covenants the Authority will not file any claim against the Project, the Mortgage Loan Proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- a. Available surplus cash, if the Borrower is a for-profit entity;
- b. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- c. Available residual receipts authorized by HUD, if the Borrower is a nonprofit entity; or
- d. A HUD-approved collateral assignment of any HAP contract, if any.

8. For so long as the Mortgage Loan is outstanding, Borrower and Authority shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

9. Subject to the HUD Regulatory Agreement, the Authority may require the Borrower to indemnify and hold the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the Authority relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Authority harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

10. No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds or prohibiting the Borrower from taking any action that might jeopardize the tax exemption except in strict accord with Program Obligations.

11. Each of the parties hereto agree that upon request of the other party it will execute such further written agreements, and take such further actions, to evidence and affirm any and all of their obligations and/or agreements under this Agreement as may be reasonably requested by the other party, and further agree to enter into such further subordination instruments as may be mutually acceptable to them upon the request of a title insurance company in the event of any modification, amendment or restatement of any of the Mortgage Loan Documents.

12. Each of the parties hereto represent and warrant to the other parties that it has full power, authority and authorization to execute this Agreement and to agree to its terms without the necessity of any consents, authorizations or approvals, or if such consents, authorizations or approvals are required they have been obtained prior to the execution hereof.

13. The Restrictive Covenants are hereby modified to include the terms of this Agreement. Except to the extent modified hereby, the Restrictive Covenants shall remain in full force and effect.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns and shall also inure to the benefit of the Lender and HUD and their successors and assigns.

15. This Agreement may not be modified except by an instrument in writing executed by each of the parties hereto.

16. Notwithstanding anything herein contained, if any one or more of the provisions of this Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceability had never been contained herein.

17. This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Project is located.

18. This Agreement may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

**COUNTER SIGNATURE PAGE**  
**SUBORDINATION AGREEMENT OF EXISTING LAND USE RESTRICTION AGREEMENT**  
**(PEMBROKE VILLAS PROJECT - Multifamily Bonds)**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, and made effective as of the date first written above.

ATTEST

“AUTHORITY”

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
[SEAL]

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was executed and acknowledged before me this \_\_\_\_ day of October \_\_\_\_, 2017 by \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic duly created and existing pursuant to the laws of the State of Florida, on behalf of said Authority. They are personally known to me or each have provided a valid driver’s license as identification.

\_\_\_\_\_  
Notary Public – State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission Number: \_\_\_\_\_

[SEAL]

**COUNTER SIGNATURE PAGE**  
**SUBORDINATION AGREEMENT OF EXISTING LAND USE RESTRICTION AGREEMENT**  
**(PEMBROKE VILLAS PROJECT - Multifamily Bonds)**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, and made effective as of the date first written above.

**Witnesses:**

**Borrower:**

**PEMBROKE VILLAS APARTMENTS, LTD., a Florida limited partnership**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**By: Pembroke Villas Apartments, Inc., a Florida corporation, its general partner**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**By: \_\_\_\_\_  
Lewis V. Swezy,  
As its President**

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

Before me, this \_\_\_ day of October, 2017, personally appeared Lewis V. Swezy, the President of Pembroke Villas Apartments, Inc., a Florida corporation, the General Partner of Pembroke Villas Apartments, Ltd., a Florida limited partnership, who executed the foregoing on behalf of the partnership by authority duly vested in him so to do. Lewis V. Swezy is personally known to me or presented a valid Florida Driver's License as identification.

\_\_\_\_\_  
Notary Public – State of Florida  
Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[Seal}

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Parcel 1:

The South one-half (S1/2) of the North one half (N1/2) of the Southwest one-quarter (SW1/4) of the Southeast one-quarter (SE 1/4) of the Southwest one-quarter (SW 1/4), less the West 15 feet thereof, in Section 30 Township 51 South, Range 42 East; said lands situate lying and being in Broward County, Florida.

A/K/A

Tract 21-A of HOLLYWOOD RIDGE FARMS, according to the Plat thereof, recorded in miscellaneous Plat Book 2, Page 16, of the Public Records of Broward County, Florida.

-AND-

Parcel 2:

The North one-half (N1/2) of the South one-half (S1/2) of the Southwest one-quarter (SW1/4) of the Southeast one-quarter (SE1/4) of the Southwest one-quarter (SW1/4) of Section 30, Township 51 South, Range 42 East, less the West fifteen feet (W15') thereof for road and right-of way, said lands situate, lying and being in Broward County, Florida.

A/K/A

Lot 20-B, Unrecorded Plat of HOLLYWOOD RIDGE FARMS SUBDIVISION.

-AND-

Parcel 3:

The South ½ of the North ½ of the SE ¼ of the SE ¼ of the SW ¼, excepting therefrom the East 15 feet thereof, and the North ½ of the North ½ of the SE ¼ of the SE ¼ of the SW ¼, excepting therefrom the East 15 feet therefrom, in Section 30, Township 51 South, Range 42 East, Broward County, Florida.

A/K/A

Tracts 21C and 21D, HOLLYWOOD RIDGE FARMS, according to the Plat thereof, recorded in Miscellaneous Plat Book 2, Page 16, of the Public Records of Broward County, Florida.

-AND-

Parcel 4:

Southeast ¼ of the Southeast ¼ of the Southeast ¼ of the Southwest ¼ of Section 30, Township 51 South, Range 42 East, excepting therefrom the East 15 feet and the South 15 feet thereof, and all that external area lying southeasterly of a 75 foot radius arc which is tangent to a line 15 feet West of and parallel to the East boundary of the Southwest Quarter (SW ¼) and tangent to a line 15 feet North of and parallel to the South boundary of the Southwest Quarter (SW ¼) thereof, said lands situate, lying and being in Broward County, Florida,

A/K/A

Lots 20F and 20G, HOLLYWOOD RIDGE FARMS, according to the Plat thereof recorded in Miscellaneous Plat Book 2, Page 16, of the Public Records of Broward County, Florida.