

RESOLUTION NO. 2017-006

A meeting of the Housing Finance Authority of Broward County, Florida was held at 5:30 P.M. on September 20, 2017, at the offices of the Housing Finance Authority of Broward County, Florida, 110 Northeast Third Street, Suite 201, in the City of Fort Lauderdale, Florida.

Present: Ruth T. Cyrus, Colleen LaPlant, Milette Thurston, Daniel D. Reynolds, Jose Lopez, John G. Primeau, Kirk L. Frohme

Absent: Donna Jarrett-Mays

* * * * *

Thereupon, Ruth T. Cyrus introduced the following resolution

which was read:

A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (THE "HOUSING FINANCE AUTHORITY"), 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'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 "Housing Finance Authority"), is empowered under (i) the laws of the State of Florida, including the Florida Housing Finance Authority law, Florida Statutes, Sections 159.601 through 159.623 (the "Act"), and (ii) Ordinance 79-41 enacted by the Board of Commissioners (the "Board") of Broward

County, Florida (the "County") on June 20, 1979, as amended, to issue multifamily housing revenue bonds and refund said bonds;

WHEREAS, the Housing Finance Authority 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 Housing Finance Authority 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 Housing Finance Authority for the purpose of financing the Project; and

WHEREAS, in connection with the Bonds, the Housing Finance Authority, 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 Housing Finance Authority and the Borrower will enter into a Subordination Agreement of Existing Land Use Restriction Agreement (the "Subordination Agreement").

NOW, THEREFORE, BE IT RESOLVED by the Housing Finance Authority of Broward County, Florida, as follows:

SECTION 1. Declaration of Findings. The Housing Finance Authority hereby finds, determines and declares the matters hereinabove set forth.

SECTION 2. Approval of Subordination Agreement. The Housing Finance Authority hereby approves, subject to the approval of the Board, the form and content of the Subordination Agreement presented at this meeting and attached hereto as Exhibit "A". The Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Subordination Agreement, and the Secretary or Assistant Secretary is authorized to place the Housing Finance Authority'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 and the Office of the County Attorney of Broward County, as County Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Housing Finance Authority.

SECTION 3. Further Actions and Ratifications of Prior Actions. The officers, agents and employees of the Housing Finance Authority are hereby authorized and directed to do all acts and things required of them by the provisions of the Subordination Agreement and this Resolution. All actions heretofore undertaken by the officers, agents and employees of the Housing Finance Authority with respect to the provisions of the Subordination Agreement are hereby ratified and approved.

SECTION 4. Resolution Effective. This resolution shall take effect immediately upon its passage.

Upon motion of John G. Primeau, seconded by Kirk L. Frohme, the foregoing

Resolution was adopted by the following vote:

Ayes: 7

Noes: 0

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I, Colleen LaPlant, Secretary of the Housing Finance Authority of Broward County, Florida, do hereby certify that the foregoing is an accurate copy of the resolution of the Housing Finance Authority adopted at a meeting held on September 20, 2017, as set forth in the official minutes of the Housing Finance Authority, relating to the Subordination Agreement of Existing Land Use Restriction Agreement to be executed in connection with the Housing Finance Authority'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 and the execution of certain related documents.

I DO HEREBY FURTHER CERTIFY that said meeting was duly called and held in accordance with Chapter 286, Florida Statutes.

WITNESS my hand and the corporate seal of said Housing Finance Authority, this 20th day of September, 2017.

**HOUSING FINANCE AUTHORITY OF
BROWARD COUNTY, FLORIDA**

By: Colleen LaPlant
Colleen LaPlant, Secretary

[SEAL]

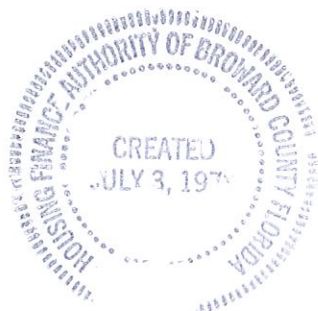


EXHIBIT A

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:

Print Name: _____

Print Name: _____

Borrower:

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

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

**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.

[Seal}

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

EXHIBIT "A"
LEGAL DESCRIPTION