

THIS INSTRUMENT PREPARED
BY AND RETURN TO:
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ABOVE SPACE RESERVED FOR
RECORDING PURPOSES ONLY

SUBORDINATION AGREEMENT

(Pendana at West Lakes f/k/a The Villages at West Lakes / SAIL / RFA 2015-103 / 2015-232CS)

This Subordination Agreement (the "Agreement"), dated as of February ___, 2017, is being entered into by and among 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 ("Senior Lender"), whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, CITY OF ORLANDO, a Florida municipal corporation, whose address is 400 South Orange Avenue, Orlando, Florida 33802 ("Junior Lender"; Senior Lender and Junior Lender are referred to herein as "Lenders"), LIFT ORLANDO COMMUNITY LAND, LLC, a Florida limited liability company, whose address is 215 E. Central Blvd., Orlando, Florida 32801 ("Fee Borrower") and WEST LAKES PHASE I, LP, a Florida limited partnership, whose address is 1718 Peachtree St. NW South Tower, Suite 684, Atlanta, Georgia 30309 ("Leasehold Borrower").

RECITALS:

A. Fee Borrower is indebted or obligated to Junior Lender for loans in an aggregate amount of \$1,250,000.00, and has granted to Junior Lender security interests in the property described on Exhibit "A" attached hereto and by reference made a part hereof (the "Property"), pursuant to certain Mortgage and Security Agreement by Fee Borrower to and in favor of Junior Lender, in the original principal amount of \$1,250,000.00, dated November 3, 2015, and recorded November 6, 2015, in Official Records Book 11009, Page 5702, Public Records of Orange County, Florida (the "Junior Mortgage"), and that certain Community Development Block Grant Program Agreement (the "CDBG Loan Agreement"), and any and all other loan documents in favor of Junior Lender respecting the Property (hereinafter, collectively, as the same may be amended, modified, split, consolidated, extended, restated, or replaced, the "Junior Lender Agreements") in order to secure Fee Borrower's obligations described in the Junior Lender Agreements (hereinafter, as such obligations may be amended, modified, supplemented, split, consolidated, extended, restated, replaced, or increased, and including, without limitation, any and all made advances in accordance with the Junior Lender Agreements, and all premiums, repayment fees, additional fees, expenses, and interest arising under the Junior Lender Agreements, the "Junior Indebtedness"); and

B. Leasehold Borrower has a leasehold estate in the Property ("Leasehold Estate") created and established by that certain Ground Lease, dated May 4, 2015, by and between Fee Borrower, as Ground Lessor, and Leasehold Borrower, as Ground Lessee, as amended and restated under a certain Amended and Restated Ground Lease dated April 28, 2016, as further amended under a certain First Amendment to Amended and Restated Ground Lease dated as of February ___, 2017 (as amended as of the date hereof, and as the same may be further amended or modified from time to time, the "Ground Lease"); and

C. Leasehold Borrower is about to be indebted or obligated to Senior Lender for a loan made under Florida Housing Finance Corporation Request for Applications 2015-103, in effect as of March 26, 2015, and the State Apartment Incentive Loan (SAIL) Program, Section 420.5087, Fla. Stat., and governed by the rules of Florida Housing Finance Corporation, as codified at Chapter 67-48, Fla. Admin. Code, in effect as of October 8, 2014 and at Chapter 67-53, Fla. Admin. Code, in effect as of August 20, 2009, in the original principal amount of TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00), and has granted or is about to grant to Senior Lender a security interest in Leasehold Borrower's Leasehold Estate pursuant to a certain Leasehold Mortgage and Security Agreement in favor of Senior Lender (the "Senior Mortgage"), which has been or will contemporaneously be recorded in the Public Records of Orange County, Florida, and any and all other loan documents in favor of Senior Lender respecting the Property (hereinafter, collectively, as the same may be amended, modified, split, consolidated, extended, restated, or replaced, the "Senior Lender Agreements") in order to secure the performance of Leasehold Borrower's obligations described in the Senior Lender Agreements (hereinafter, as such obligations may be amended, modified, supplemented, split, consolidated, extended, restated, replaced, or increased, and including, without limitation, any and all made advances in accordance with the Senior Lender Agreements, and all premiums, repayment fees, additional fees, expenses, and interest arising under the Senior Lender Agreements, the "Senior Indebtedness"); and

D. The Leasehold Estate, together with all other property, rights, interests, titles, and collateral related thereto and rents, issues, profits, and other proceeds thereof, securing the Senior Indebtedness, shall be referred to collectively as the "Collateral"; and

E. As a prerequisite to Senior Lender making a loan to Leasehold Borrower, Senior Lender requires that Junior Lender and Fee Borrower acknowledge and agree that all of the rights, interests, and remedies of Senior Lender with respect to the Collateral shall be and remain at all times expressly prior and superior to all of the rights, interests, and remedies of Junior Lender in respect thereof (including, without limitation, Junior Lender's lien on, and security interest in, the Collateral); and

F. Lenders wish to set forth their agreement as to the priorities of their respective claims, rights, and security interests in the Collateral, the application of any rents, profits, issues, or proceeds of the Collateral, and the payment of their respective claims.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, it is hereby agreed as follows:

1. Definitions; Consent to Ground Lease Amendment.

- a. Definitions. The capitalized terms used herein shall have the same meanings ascribed to them in the introductory paragraph of this Agreement or in the Recitals to this Agreement.
- b. Consent to Ground Lease Amendment. Junior Lender hereby consents to the amendment of the Ground Lease in accordance with the terms of the Ground Lease. Junior Lender hereby acknowledges, agrees and confirms that the Ground Lease is not subject or subordinate to the Junior Lender Agreements.

2. Modifications to Agreements.

(a) Without any notice to or the consent of Junior Lender, Senior Lender may amend, modify, extend, supplement, split, consolidate, restate, or replace all or any of the Senior Lender Agreements in any respect or increase (pursuant to the Senior Lender Agreements) or reduce, split, release, or compromise the Senior Indebtedness, or waive any terms of, exercise any rights under, or otherwise deal with any of the Senior Lender Agreements or exercise any rights in respect of the Collateral allowed at law or in equity or pursuant to any of the Senior Lender Agreements, and the same shall in no way alter the subordination of the Junior Lender Agreements (and the liens, rights, interests, and provisions thereof) to the Senior Lender Agreements.

(b) Without any notice to or the prior consent of Senior Lender, Junior Lender may amend, modify, extend, supplement, split, consolidate, restate, or replace all or any of the Junior Lender Agreements in any respect or increase or reduce, split, release or compromise the Junior Indebtedness, or waive any items of, exercise any rights under or otherwise deal with any of the Junior Lender Agreements; provided, however, that no such amendment, modification, extension, supplement, split, consolidation, restatement, or replacement of the Junior Lender Agreements or increase, reduction, split, release or compromise of the Junior Indebtedness shall in any way alter the subordination of the Junior Lender Agreements, and all liens, claims, rights or remedies of Junior Lender under or pursuant to the Junior Mortgage or any other Junior Loan Agreements to the lien of the Senior Mortgage and all of the liens, claims, rights, priorities and remedies of Senior Lender under or pursuant to the Senior Lender Agreements.

3. Subordination and Relative Priorities. Notwithstanding the relative priority of the security interests that Senior Lender and Junior Lender might otherwise be determined to have in the Collateral in the absence of this Agreement, Senior Lender and Junior Lender covenant and agree as follows:

(a) Junior Lender hereby unconditionally and irrevocably covenants and agrees, for itself, and its successors, and assigns, that all of the liens, claims, rights, remedies, security interests, or other interests that Junior Lender directly or indirectly may have had, may have or hereafter may acquire in or with respect to the Collateral is and hereafter shall at all times be entirely subject, subordinate, junior and inferior in any and all rights of priority to (i) all of the liens, rights, remedies, security interests, and other interests in the Collateral which Senior Lender directly or indirectly may have or hereinafter may acquire pursuant to the Senior

Mortgage and/or any or all of the other Senior Lender Agreements, (ii) each and every provision of the Senior Mortgage and the other Senior Lender Agreements, and (iii) any and all advances made by Senior Lender under or pursuant to the Senior Lender Agreements in accordance therewith. The right of priority of the security interests of Senior Lender and the Senior Lender Agreements in the Collateral granted hereunder shall not be altered or affected by any changes in interest rates, extension(s), or other modifications, forbearance and/or the exercise of any rights and remedies under the Senior Lender Agreements.

(b) Junior Lender shall not acquire by subrogation, contract, or otherwise any lien upon any other estate, right, or interest in the Collateral (including, without limitation, any which may arise with respect to real estate taxes, assessments or other governmental charges) which is or may be prior in right to the liens created by the Senior Mortgage and the other Senior Lender Agreements or the rights and interests of Senior Lender thereunder. If Junior Lender shall acquire any such lien, then it hereby subordinates such lien to the liens, rights, remedies, security interests, or other interests which Senior Lender directly or indirectly may have or may hereinafter acquire in the Collateral, in accordance with Paragraph 3(a) hereof, and Junior Lender hereby assigns such lien to Senior Lender.

(c) The priorities of the security interests established above are and shall remain applicable irrespective of the time or order of attachment or perfection thereof, the method of perfection, the time or order of the filing or recordation of any instruments, or the giving of or failure to give notice of the acquisition or expected acquisition of purchase money or other mortgage or security interests.

(d) The agreements made herein are for the purposes of establishing the relative priorities of the liens, claims, interests, rights, and remedies of Senior Lender and Junior Lender with respect to the Collateral, and all rents, issues, profits, and proceeds thereof and therefrom and shall not inure to the benefit of any other person or entity, except the respective successors and assigns of Senior Lender and Junior Lender.

(e) Unless and until the entire Senior Indebtedness shall be paid in full and the Senior Mortgage and all other recorded Senior Lender Agreements have been satisfied in full and released or terminated of record, Senior Lender shall be entitled to receive for application in payment thereof, before any of the same shall be paid to, received or retained by Junior Lender on account of the Junior Indebtedness, all rents, issues, profits, and proceeds of and from the foreclosure or liquidation of the Leasehold Estate.

4. Additional Covenants.

(a) As long as the Senior Indebtedness shall remain outstanding, Junior Lender shall execute, acknowledge, verify, deliver, and file at any time or from time to time, any and all further subordinations, agreements, proofs of claim, consents, assignments, or other instruments in recordable form as Senior Lender may request or require to confirm or carry out the purpose and intent of the covenants contained herein and to establish, confirm and preserve the subordination of security interests provided for herein.

(b) The obligations and agreements of Junior Lender hereunder shall remain in full force and effect, irrespective of the genuineness, validity, regularity or enforceability of

any of the Senior Lender Agreements or any other instrument evidencing or securing the Senior Indebtedness.

(c) In the event Senior Lender shall commence any legal proceeding to enforce its security interest in the Leasehold Estate, Junior Lender, upon written request of Senior Lender, shall immediately release its security interest, if any, in the Leasehold Estate.

5. Consent to Bankruptcy Relief. Junior Lender agrees that in the event a bankruptcy petition is filed under any chapter of the United States Bankruptcy Code (the "Bankruptcy Code") by or against Borrower, Senior Lender shall be entitled to the following relief:

(a) Senior Lender is and shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. Sec. 362(d) to pursue all of its rights and remedies under the Senior Lender Agreements and this Agreement and relevant state law.

(b) Junior Lender shall consent to relief from the automatic stay to permit Senior Lender to pursue all of its rights and remedies under the Senior Lender Agreements and this Agreement and relevant state law.

(c) Senior Lender shall receive all of the payments to which it is entitled under the Senior Lender Agreements, this Agreement and relevant state law and any adequate protection payments to which Senior Lender is and shall be entitled under 11 U.S.C. Sec. 363 and Senior Lender shall receive all such payments and payment of its claim in full (including interest, costs and attorneys' fees) before Junior Lender receives any payments on account of its claim.

(d) Junior Lender's claim as to any of the Collateral shall be subordinate to Senior Lender's claim in any bankruptcy distribution and Senior Lender shall be entitled to payment in full of its claim (including interest, costs and attorneys' fees) before Junior Lender receives any distribution on account of its claim.

(e) In the event the claims of Junior Lender and Senior Lender are assigned the same class in any plan of reorganization under Chapter 11 of the Bankruptcy Code, Junior Lender hereby assigns to Senior Lender its right to vote on the plan and to make the election under Section 1111(b) of the Bankruptcy Code.

(f) Junior Lender hereby waives any right it may have to object to the claim of Senior Lender in any bankruptcy proceeding.

(g) Upon written request of Senior Lender, Junior Lender shall immediately release any security interest in the Collateral.

In the event any part of this Paragraph 5 is found by a court of competent jurisdiction to be in violation of any applicable law, and if such court should declare such provision to be unlawful, void, illegal or unenforceable in any respect, the remainder of this Paragraph 5 shall be construed as if such provision were not contained therein and shall remain in full force and effect.

6. Notices. Senior Lender shall give Junior Lender copies of any default notices that it gives Leasehold Borrower under the Senior Lender Agreements, which notices shall be in writing, shall be given in the manner set forth in the Senior Lender Agreements and shall be sent to the address set forth in the introductory paragraph of this Agreement. Any failure by Senior Lender to give such notices shall not affect in any way any of Senior Lender's rights under the Senior Lender Agreements or otherwise in respect of the Senior Indebtedness. Junior Lender shall give Senior Lender copies of any default notices that it gives Fee Borrower under the Junior Lender Agreements, which notices shall be in writing, shall be given in the manner set forth in the Junior Lender Agreements and shall be sent to the address set forth in the introductory paragraph of this Agreement. Any failure by Junior Lender to give such notices shall not affect in any way any of Junior Lender's rights under the Junior Lender Agreements or otherwise in respect of the Junior Indebtedness.

7. Consent. Subject to the provisions of this Agreement, Junior Lender hereby consents to the Senior Lender Agreements and the lien created thereby encumbering the Collateral.

8. Restrictions on Assignment. Junior Lender shall not sell, assign or transfer any interest in any security interest in the Collateral, unless it shall first have given notice thereof to Senior Lender, delivered a copy of this Agreement to the transferee and delivered to Senior Lender an agreement fully executed by such transferee in recordable form agreeing to assume, perform, and be bound by the terms of this Agreement.

9. Governing Law, Jurisdiction.

(a) This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

(b) The parties submit to the jurisdiction of the state and federal courts of the State of Florida for any litigation or proceeding brought with respect to this Agreement and agree that the venue of any such action or proceeding may be laid in Leon County, Florida, and waive any claim that the same is an inconvenient forum.

10. Counterparts. This Agreement may be signed in multiple counterparts with the same effect as if all signatories had executed the same instrument.

11. Miscellaneous. This Agreement may not be modified, amended, changed or terminated orally, but only by an agreement in writing signed by Junior Lender and Senior Lender. The use of any gender shall include all other genders. The singular shall include the plural and vice versa. Each person executing this Agreement in a representative capacity acknowledges, warrants and represents that he is an official representative of the firm or corporation in whose name he is executing this Agreement and that he possesses full and complete authority to bind said firm or corporation to the full and faithful performance of all conditions, terms, provisions, covenants, warranties and representations as contained in this Agreement. The headings of the Sections of this Agreement are for convenience and reference only and shall not be considered a part hereof nor shall they be deemed to limit or otherwise affect any other terms or provisions hereof. This Agreement embodies the entire agreement and

understanding between Senior Lender and Junior Lender and supercedes all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. This Agreement shall terminate upon the Senior Loan Indebtedness being paid in full.

12. Waiver of Jury Trial. To the maximum extent permitted by law, Junior Lender and Senior Lender hereby knowingly, voluntarily and intentionally waive the right to a trial by jury in respect of any litigation based hereon, arising out of, under or in connection with this Agreement, the Senior Lender Agreements or the Junior Lender Agreements, or any course of conduct, course of dealing, statement (whether verbal or written) or any action of either party or any exercise by any party of their respective rights under this Agreement, the Senior Lender Agreements or the Junior Lender Agreements (including, without limitation, any action to rescind or cancel this Agreement, and any claim or defense asserting that this Agreement was fraudulently induced or is otherwise void or voidable). This waiver is a material inducement for Senior Lender to enter into this Agreement.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT**

**(Pendana at West Lakes f/k/a The Villages at West Lakes / SAIL /
RFA 2015-103 / 2015-232CS)**

IN WITNESS WHEREOF, Senior Lender, Junior Lender, Fee Borrower and Leasehold Borrower have caused this Agreement to be duly executed as of the day and year first above written.

JUNIOR LENDER:

CITY OF ORLANDO, Florida, a municipal corporation, organized and existing under the laws of the State of Florida

ATTEST:

By: _____
_____, City Clerk

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
) ss:
COUNTY OF ORANGE)

THE FOREGOING AGREEMENT was acknowledged before me this _____ day of _____, 2017, by _____ and _____, well known to me to be the Mayor/Mayor Pro Tem and the City Clerk, respectively, of the City of Orlando, and who acknowledged before me that they executed the foregoing instrument on behalf of the City of Orlando as its true act and deed, that they were duly authorized so to do, and that they did take an oath.

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

EXHIBIT A

LEGAL DESCRIPTION

LOT 1, BLOCK C, TAMORANGE, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 19, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, TOGETHER WITH THE NON-EXCLUSIVE RIGHT OF INGRESS AND EGRESS OVER THAT CERTAIN TWENTY (20) FOOT WIDE PRIVATE ALLEY ABUTTING SAID LOT 1 ON THE EAST SIDE THEREOF.