

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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**Meeting Date:**      **May 17, 2022**                       **Consent**                       **Regular**  
    **Ordinance**                       **Public Hearing**

**Department:**              **Housing & Economic Development**

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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** a Subordination Agreement – Regulatory Agreement Only – Governmental Entity (No Subordinate Debt) with various lenders and SREIT San Marco Villas L.L.C. under the State Housing Initiatives Program (SHIP) for San Marco II.

**Summary:** On June 3, 2003, the County entered into a Loan Agreement (R2003-0831) with Trust Lake Park Two, Ltd to provide \$232,663 in SHIP funding towards the construction of 112 affordable apartments known as San Marco II located at the northwest corner of Congress Avenue and Watertower Road, Lake Park, Florida, 33403. The SHIP affordability period was 30 years expiring on June 3, 2033. On December 21, 2021, the SHIP Loan was paid off by Trust Lake Park Two, Ltd with the affordability period remaining in place until June 3, 2033, as a Declaration of Restrictions for Rental Properties (the “Regulatory Agreement”). San Marco II is now part of a \$755,000,000 refinancing package being undertaken by the Borrower. As a condition of the Loan, the Lender requires that the lien on the property be superior to the Regulatory Agreement. Lender will not make the Loan unless the Governmental Entity (County) and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement. District 7 (HJF)

**Background and Justification:** The approval of the above by the Board of County Commissioners would constitute the approval required for the refinancing of the project.

**Attachment(s):**  
1 Subordination Agreement – Regulatory Agreement Only – Governmental Entity (No Subordinate Debt)

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**Recommended By:** Jonathan Brown                      4/21/2022  
   **Department Director**                      **Date**

**Approved By:** Dona K. Miller                      5/2/2022  
   **Assistant County Administrator**                      **Date**

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Does this Item include the use of Federal funds? Yes \_\_\_\_\_ No \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact: N/A**

**C. Departmental Fiscal Review:** Donna Corcoran for:  
 Shairette Major, Division Director II

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

Debra M. Lawrence 4/28/22  
 OFMB 4-28-22  
 (Signature) 4-28-22

Ar. S. Lawrence 4/29/22  
 Contract Development and Control

**B. Legal Sufficiency:**

(Signature) 4/29/22  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

THIS INSTRUMENT PREPARED BY,  
RECORDED AND RETURN TO:

Terry M. Lovell, Esq.  
Bilzin Sumberg Baena Price & Axelrod LLP  
1450 Brickell Avenue, 23rd Floor  
Miami, Florida 33131

(Reserved)

**SUBORDINATION AGREEMENT — REGULATORY AGREEMENT ONLY**

**GOVERNMENTAL ENTITY**

**(NO SUBORDINATE DEBT)**

**SUBORDINATION AGREEMENT — REGULATORY AGREEMENT ONLY**

**GOVERNMENTAL ENTITY**

**(NO SUBORDINATE DEBT)**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (“**Agreement**”) is effective as of [\_\_\_\_], 2022, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (“**Governmental Entity**”), **SREIT SAN MARCO VILLAS, L.L.C.**, a Delaware limited liability company (“**Borrower**”) for the benefit of **CITI REAL ESTATE FUNDING INC.**, a New York corporation, having an address at 388-390 Greenwich Street, New York, New York 10013 (“**Citi**”), **BANK OF AMERICA, N.A.**, a national banking association, having an address at 620 South Tryon Street, NC1-030-21-01, Charlotte, North Carolina 28255 (“**BofA**”), **BARCLAYS CAPITAL REAL ESTATE INC.**, having an address at 745 Seventh Avenue, New York, New York 10019 (“**Barclays**”), **WELLS FARGO BANK, N.A.**, having an office at 401 South Tryon Street, 8th Floor, Charlotte, North Carolina 28202 (“**WFB**”; WFB together with Citi, BofA, Barclays, and each of their respective successors and/or assigns, collectively, “**Lender**”).

**RECITALS**

- A. Simultaneously herewith Borrower is refinancing a loan secured by certain improved real property located in the County of Palm Beach, State of Florida, as more particularly described on Exhibit A attached hereto (“**Property**”).
- B. Borrower has entered into that certain Declaration of Restrictions for Rental Properties in favor of Governmental Entity dated as of December 21, 2021, and recorded December 29, 2021, in Official Records Book 33174, Page 578, in the Public Records of Palm Beach County, Florida (“**Regulatory Agreement**”) pursuant to which the Property was subjected to certain restrictions by Governmental Entity in connection with the prior development of the Property.
- C. Lender is making a loan to Borrower in the original principal amount of \$755,000,000 (the “**Loan**”) pursuant to a Loan Agreement among Lender and Borrower (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by Promissory Note A-1, Promissory Note A-2, Promissory Note A-3, and Promissory Note A-4 made by Borrower to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured, in part, by the Property pursuant to that certain Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing that will be recorded among the Official Records (as supplemented or amended from time to time, the “**Mortgage**”) (the Loan Agreement, the Note and the Mortgage, together with all other documents executed

with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”).

- D. The Mortgage is being recorded in the Public Records of Palm Beach County, Florida contemporaneously herewith.
- E. As a condition to making the Loan, Lender requires that the Loan Documents be a lien on the Property superior to the lien of the Regulatory Agreement and that the rights of Lender under the Loan Documents be superior to the rights of Governmental Entity and Borrower under the Regulatory Agreement. Lender will not make the Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.
- F. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. **Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.
- 2. **Subordination.** The Governmental Entity hereby covenants and agrees that the Regulatory Agreement is and will at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief.
- 3. **Financing, Encumbrance and Transfer Approval.** Governmental Entity hereby approves the financing evidenced by the Note and secured by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require Governmental Entity’s consent.
- 4. **Reserved.**

5. **Lender Notice of Default.** In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity will be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.
6. **Governmental Entity Notice of Default.** Governmental Entity must give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, will have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents and warrants that, to the best of its knowledge, there is no current default under the Regulatory Agreement.
7. **Governmental Entity's Rights.** Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may not be modified, amended, changed or altered without the prior written consent of Lender so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.
8. **Foreclosure by Lender.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, (a) no consent will be required from Governmental Entity, and (b) the Regulatory Agreement will automatically terminate.
9. **Refinancing.** Governmental Entity agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Loan Documents and Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.
10. **Miscellaneous Provisions.**

- (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
- (b) If there is any conflict or inconsistency between the terms of the Regulatory Agreement and the terms of this Agreement, then the terms of this Agreement will control.
- (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the Governmental Entity any permitted successor or assign of the Governmental Entity under or pursuant to the terms of the Regulatory Agreement and, with regard to Lender, any subsequent holder of the Note. Except for Lender, no other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to Governmental Entity:

Palm Beach County  
100 Australian Avenue  
West Palm Beach, Florida 33406  
Attention: Jonathan B. Brown, Director of Department of Housing &  
Economic Development

If to Lender:

Citi Real Estate Funding Inc.

388-390 Greenwich Street  
New York, New York 10013  
Attention: Ana Rosu Marmann  
Email: ana.rosu@citi.com

and:

Bank of America, N.A.  
620 South Tryon Street  
Mail Code: NC1 030 21 01  
Charlotte, North Carolina 28255  
Attention: Steven Wasser  
Email: steve.l.wasser@bankofamerica.com

and:

Barclays Capital Real Estate Inc.  
745 Seventh Avenue  
New York, New York 10019  
Attention: Adam Scotto  
Email: adam.scotto@barclays.com

and:

Wells Fargo Bank, National Association  
MAC D1086-120  
550 South Tryon Street, 14th Floor  
Charlotte, North Carolina 28202  
Attention: Commercial Mortgage Servicing  
Email: Jeff.cirillo@wellsfargo.com

with a copy to:

Jeffrey L. Cirillo  
Wells Fargo Bank, N.A.  
Real Estate Capital Markets  
150 E. 42nd St, 38th floor  
New York, NY 10017  
Email: Jeff.cirillo@wellsfargo.com

with a copy to:

Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, Pennsylvania 19104



Attention: David W. Forti, Esq.  
Email: david.forti@dechert.com

If to Borrower:

c/o Starwood Asset Management  
400 Galleria Parkway, Suite 1450  
Atlanta, Georgia 30339  
Attention: James Kane

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (f) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Property is located.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement may be assigned at any time by Lender to any subsequent holder of the Note.

- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Governmental Entity of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

WITNESS:

GOVERNMENTAL ENTITY:

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

**PALM BEACH COUNTY,**  
a political subdivision of the State of Florida

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

By: \_\_\_\_\_  
Name: Robert S. Weinroth  
Title: Mayor, Palm Beach County

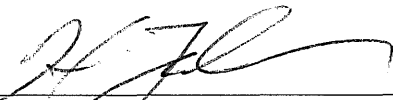
STATE OF FLORIDA  
CITY/COUNTY OF PALM BEACH, ss:

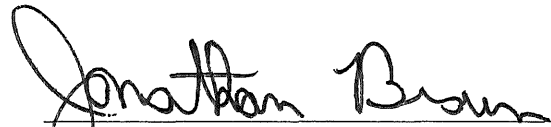
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, by means of  physical presence or  online notarization, personally appeared Robert S. Weinroth, to me known to be the person described in and who executed the foregoing instrument as the Mayor of Palm Beach County, a political subdivision of the State of Florida, and acknowledged to me that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained in the name of such limited liability company by [himself/herself] as Authorized Signatory.

Witness my hand and official seal in the county and state aforesaid, this \_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

  
\_\_\_\_\_  
Howard J. Falcon III  
Chief Assistant County Attorney

  
\_\_\_\_\_  
Jonathan B. Brown, Director  
Dept. of Housing & Economic Development

WITNESS:

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

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

**BORROWER:**

**SREIT SAN MARCO VILLAS, L.L.C.,**  
a Delaware limited liability company

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

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, ss:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, by means of  physical presence or  online notarization, personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument as the \_\_\_\_\_ of SREIT San Marco Villas, L.L.C., a Delaware limited liability company, and acknowledged to me that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained in the name of such limited liability company by [himself/herself] as Authorized Signatory.

Witness my hand and official seal in the county and state aforesaid, this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

WITNESS:

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

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

LENDER:

**CITI REAL ESTATE FUNDING INC., a**  
New York corporation

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

Name: Michael Piccirillo

Title: Vice President

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, ss:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, by means of  physical presence or  online notarization, personally appeared Michael Piccirillo, to me known to be the person described in and who executed the foregoing instrument as Vice President of CITI REAL ESTATE FUNDING INC., and acknowledged to me that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained in the name of such bank by himself as Vice President.

Witness my hand and official seal in the county and state aforesaid, this \_\_\_\_ day of March, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

WITNESS:

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

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

LENDER:

**BANK OF AMERICA, N.A.**, a national  
banking association

By: \_\_\_\_\_  
Name: Steven Wasser  
Title: Managing Director

STATE OF NORTH CAROLINA

CITY/COUNTY OF \_\_\_\_\_, ss:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, by means of  physical presence or  online notarization, personally appeared STEVEN WASSER, to me known to be the person described in and who executed the foregoing instrument as MANAGING DIRECTOR of BANK OF AMERICA, N.A., and acknowledged to me that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained in the name of such bank by himself/herself as MANAGING DIRECTOR.

Witness my hand and official seal in the county and state aforesaid, this \_\_\_\_ day of March, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

WITNESS:

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

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

LENDER:

**BARCLAYS CAPITAL REAL ESTATE  
INC., a Delaware corporation**

By: \_\_\_\_\_  
Name: Adam Scotto  
Title: Authorized Signatory

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, ss:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, by means of  physical presence or  online notarization, personally appeared Adam Scotto, to me known to be the person described in and who executed the foregoing instrument as an Authorized Signatory of BARCLAYS CAPITAL REAL ESTATE INC., and acknowledged to me that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained in the name of such bank by himself as Authorized Signatory.

Witness my hand and official seal in the county and state aforesaid, this \_\_\_\_ day of March, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

WITNESS:

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

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

LENDER:

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association

By: \_\_\_\_\_  
Name: John G. Nicol  
Title: Managing Director

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, ss:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, by means of  physical presence or  online notarization, personally appeared John G. Nicol, to me known to be the person described in and who executed the foregoing instrument as Managing Director of WELLS FARGO BANK, NATIONAL ASSOCIATION, and acknowledged to me that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained in the name of such bank by himself as Managing Director.

Witness my hand and official seal in the county and state aforesaid, this \_\_\_\_ day of March, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

Tract I of Westlake, according to the plat thereof, as recorded in Plat Book 95, Pages 174 through 176, of the Public Records of Palm Beach County, Florida.

9300754.4