

THIS INSTRUMENT PREPARED  
BY AND RETURN TO:  
Jan Albanese Carpenter, Esq.  
Latham, Luna, Eden & Beaudine, LLP  
P.O. Box 3353  
Orlando, Florida 32802

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

## **SUBORDINATION AGREEMENT**

**(The City of Orlando, Florida HOME subordination to FHFC, SAIL, ELI and NHTF)**

**Fairlawn Village / SAIL / ELI / NHTF / RFA 2018-116 / 2019-166BSN)**

**THIS SUBORDINATION AGREEMENT** (this “Agreement”) is made and entered into as of \_\_\_\_\_, 2020, by (i) 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, in its capacities as second mortgage lender of SAIL funds, third mortgage lender of ELI funds, and as fourth mortgage lender of NHTF funds (collectively, the “Senior Mortgagee”) (which term as used in every instance shall include Senior Mortgagee’s successors and assigns); (ii) THE CITY OF ORLANDO, FLORIDA, a municipal corporation (the “Subordinate Mortgagee”); and (iii) BLUE CASL ORLANDO, LLC, a Florida limited liability company (the “Borrower”).

## **RECITALS**

A. Florida Housing has agreed to finance a portion of the costs of the Improvements pursuant to a first mortgage loan to the Borrower in the original principal amount of \$12,000,000 (the “First Mortgage Loan”) secured by a Mortgage, Security Agreement and Assignment of Rents and Fixture Filing (the “First Mortgage”), as assigned to The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (the “First Mortgagee”), relating to the issuance by Florida Housing of its \$12,000,000 Florida Housing Finance Corporation Multifamily Mortgage Revenue Bonds, 2020 Series J (Fairlawn Village) (the “Bonds”) and which loan is evidenced and secured by the First Mortgage and other mortgage loan documents (the “First Mortgage Loan Documents”).

B. Florida Housing (the “Second Mortgagee”) has also agreed to finance a portion of the costs of the Improvements pursuant to a second mortgage loan to the Borrower of State Apartment Incentive Loan (“SAIL”) Program funds under the RFA in the original principal

amount of \$6,250,000 (the "Second Mortgage Loan"), secured by a second mortgage and other loan documents (collectively, the "Second Mortgage").

C. Florida Housing (the "Third Mortgagee") has also agreed to finance a portion of the costs of the Improvements pursuant to a third mortgage loan to the Borrower of Extremely Low Income ("ELI") Program funds under the RFA in the original principal amount of \$600,000 (the "Third Mortgage Loan"), secured by a third mortgage and other loan documents (collectively, the "Third Mortgage").

D. Florida Housing (the "Fourth Mortgagee") has also agreed to finance a portion of the costs of the Improvements pursuant to a fourth mortgage loan to the Borrower of National Housing Trust Fund ("NHTF") Program funds under the RFA in the original principal amount of \$1,308,000 (the "Fourth Mortgage Loan"), secured by a fourth mortgage and other loan documents (collectively, the "Fourth Mortgage").

The First Mortgage, the Second Mortgage, the Third Mortgage and the Fourth Mortgage are hereinafter collectively referred to as the "Senior Mortgage;" the First Mortgagee, the Second Mortgagee, the Third Mortgagee and the Fourth Mortgagee are hereinafter collectively referred to as the "Senior Mortgagee;" and, the First Mortgage Loan, the Second Mortgage Loan, the Third Mortgage Loan and the Fourth Mortgage Loan are hereinafter collectively referred to as the "Senior Mortgage Loan."

In the event any of the First Mortgage, the Second Mortgage, the Third Mortgage and/or the Fourth Mortgage are satisfied and the corresponding loan documents terminated of record, this Subordination Agreement shall remain effective to subordinate the Subordinate Mortgage to the remaining senior mortgage loans and the collective term "Senior Mortgage," "Senior Mortgagee" and "Senior Mortgage Loan" shall thereafter refer to the remaining mortgagee(s), loan(s) and loan document(s).

E. The Subordinate Mortgagee has also agreed to finance a portion of the costs of the Improvements pursuant to a fifth mortgage loan to the Borrower of HOME Program funds in the original principal amount of \$2,000,000 (the "Subordinate Mortgage Loan"), secured by a fifth mortgage and other loan documents (collectively, the "Fifth Mortgage").

F. To induce the Senior Mortgagee to make the Senior Mortgage Loan, the Subordinate Mortgagee is willing to subordinate the Subordinate Mortgage to the Senior Mortgage.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, from one to the other paid, the receipt and sufficiency whereof is hereby acknowledged, and to induce Senior Mortgagee to make the Senior Loan, the parties do hereby agree:

**1. Recitals.** The Recitals are true and correct and are made a part hereof.

## **2. Subordination.**

(a) The Subordinate Mortgage is now and forever hereafter made subordinate and inferior to the Senior Mortgage and to all debt evidenced or secured thereby including principal, interest, costs and expenses, and to any and all extensions, modifications, amendments, enlargements or renewals thereof or future advances made thereunder. Further, the terms of the Subordinate Mortgage and all rights and remedies of the Subordinate Mortgagee available to the Subordinate Mortgagee pursuant to the Subordinate Mortgage, including but not limited to the right to claim or receive any insurance or condemnation awards or proceeds, are hereby expressly subordinate to the terms of the Senior Mortgage and the rights and remedies of Senior Mortgagee under the Senior Mortgage.

(b) The indebtedness of Borrower, and any other obligor pursuant to the Subordinate Mortgage, and any and all other indebtedness and other obligations of Borrower to Subordinate Mortgagee, and the Subordinate Mortgage and all other liens, encumbrances and security interests given to secure the payment of the Subordinate Mortgage and any other obligations of payment or performance of Borrower to Subordinate Mortgagee, whether now existing or hereafter created or acquired, shall be and hereby are subordinated in lien, priority and payment of principal and interest and all other charges and fees, including, without limitation, taxes and insurance premiums paid by Senior Mortgagee and interest accruing after any default or petition in bankruptcy, to the indebtedness of Borrower pursuant to the Senior Mortgage, and all liens, encumbrances and security interests given to secure the payment thereof, whether now existing or hereafter created or acquired, including, without limitation, the Senior Mortgage and to any and all other loans, advances, extensions of credit, or other accommodations to or for the account of Borrower as Senior Mortgagee may elect to make from time to time, and any and all other indebtedness of Borrower to Senior Mortgagee, whether now existing or hereafter created or acquired, and any and all liens, encumbrances, and security interests given to secure the repayment or payment thereof, whether now existing or hereafter created or acquired, and to such renewals and extensions thereof as Senior Mortgagee may elect to make from time to time.

(c) Notwithstanding anything in this Agreement, the federal HOME affordability set-asides set forth in the DECLARATION OF RESTRICTIVE COVENANT CONTAINING RENT AND INCOME RESTRICTIONS dated July \_\_, 2020, executed by the Borrower for the benefit of Subordinate Mortgagee (as such set-asides are prescribed by the HOME program regulations at 24 CFR part 92) shall not be made subordinate by virtue of this Subordination Agreement and shall stand as a separate covenants upon the Property enforceable by specific performance by Subordinate Lender.

**3. Conditions Precedent to Remedial Action.** If a default occurs under the Subordinate Mortgage (a “Subordinate Loan Default”) and is continuing, the Subordinate Mortgagee agrees that, without the Senior Mortgagee’s prior written consent, it will not commence foreclosure proceedings with respect to the Property under the Subordinate Mortgage or exercise any other rights or remedies it may have under the Subordinate Mortgage, including, but not limited to accelerating the Subordinate Loan (and enforcing any “due on sale” provision included in the Subordinate Mortgage), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Mortgagee at least thirty (30) days’ prior written notice. The Senior Mortgagee shall have

the right, but not the obligation, to cure any Subordinate Loan Default within the same time period for curing a default which is given to the Borrower under the Subordinate Loan Documents, except that the Senior Mortgagee's time period for cure shall begin on the date on which it receives notice of the Subordinate Loan Default. All amounts advanced or expended by the Senior Mortgagee to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Mortgagee pursuant to, and shall be secured by the lien of, the Senior Mortgage.

**4. Insurance, Condemnation.** In the event of partial or total destruction of the Property which results in the payment of insurance proceeds, or in the event of a condemnation or similar proceeding which results in the payment of an award, the proceeds or award shall be applied in accordance with the relevant provisions of the Senior Mortgage.

**5. Modifications to Subordinate Mortgage.** Borrower agrees that it will not modify the Subordinate Mortgage without the prior written consent of the Senior Mortgagee. Borrower and Subordinate Mortgagee agree that no future advances may be made under the Subordinate Loan without the prior written consent of Senior Mortgagee.

**6. Notices.** Each notice, request, demand, consent, approval or other communication (hereinafter in this section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Mortgagee or the Subordinate Mortgagee is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) 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 shall be deemed to have been received two (2) days after mailing in the United States), addressed to the respective parties as follows:

Senior Mortgagee: Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329  
Attention: Executive Director  
Telephone: (850) 488-4197

with a copy to: Latham, Luna, Eden & Beaudine, LLP  
111 North Magnolia Ave., Suite 1400  
Orlando, Florida 32801  
Attention: Jan Albanese Carpenter, Esq.  
Telephone: (407) 481-5800  
Email: [Jcarpenter@lathamluna.com](mailto:Jcarpenter@lathamluna.com)

Subordinate  
Mortgagee: City of Orlando  
Housing and Community Development Department  
400 South Orange Avenue, 7<sup>th</sup> Floor  
Orlando, Florida 32801  
Attention: Oren Henry, Director

with a copy to: City of Orlando  
400 South Orange Avenue  
Attention: Lisa Pearson, Esq.  
Telephone: (407) 246-2295  
Email: [Lisa.Pearson@cityoforlando.net](mailto:Lisa.Pearson@cityoforlando.net)

Borrower: Blue CASL Orlando, LLC  
5300 West Cypress Street, Suite 200  
Tampa, Florida 33607  
Attention: Shawn Wilson  
Telephone: (813) 384-4825  
Email: [Swilson@bluskycommunities.com](mailto:Swilson@bluskycommunities.com)

with a copy to: Nelson Mullins Broad and Cassel  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Attention: Randal M. Alligood, Esq.  
Telephone: (407) 425-8377  
Email: [randy.alligood@nelsonmullins.com](mailto:randy.alligood@nelsonmullins.com)

and: CASL Orlando, LLC  
1401 16<sup>th</sup> Street  
Sarasota, Florida 34236  
Attention: Julian S. Eller

and: DiVito, Highman & Vest, P.A.  
4514 Central Avenue  
St. Petersburg, Florida 33711  
Attention: Joseph A. DiVito  
Email: [Jad@Divitohighman.com](mailto:Jad@Divitohighman.com)

Either party may, by notice given pursuant to this Section, 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 shall only be effective upon receipt.

**7. No Waiver.** The giving of consent by Senior Mortgagee to the giving of the Subordinate Mortgage is not and shall not be deemed a waiver of the Senior Mortgagee's rights to prohibit any other junior mortgage of the Property. No delay on the part of Senior Mortgagee or

Subordinate Mortgagee in the exercise of any right or remedy hereunder or under the Senior Mortgage or Subordinate Mortgage, respectively, shall operate as a waiver of any right hereunder.

**8. Counterparts.** The parties hereto agree that this Subordination Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**9. Costs of Enforcement.** Should suit be brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred both at trial and on appeal.

**10. Paragraph Headings.** The headings of the various paragraphs of this Subordination Agreement have been inserted only for the purposes of convenience, and are not part of this Subordination Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Subordination Agreement.

**11. Choice of Law.** This Agreement shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Florida, excluding the principles thereof governing conflicts of law. If any provision shall be held prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating any other provision of this Agreement.

**12. Binding Effect.** This Agreement shall be binding upon the Borrower and the Subordinate Mortgagee and their respective successors and assigns and shall inure to the benefit of the Senior Mortgagee, its successors and assigns.

[COUNTER SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE TO  
SUBORDINATION AGREEMENT**

**(The City of Orlando, Florida HOME subordination to FHFC, SAIL, ELI and NHTF)**

**Fairlawn Village / SAIL / ELI / NHTF / RFA 2018-116 / 2019-166BSN)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESSES:

**FLORIDA HOUSING FINANCE  
CORPORATION**

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

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

Marisa G. Button  
Director of Multifamily Programs

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

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me by \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_ day of \_\_\_\_\_, 2020, by MARISA G. BUTTON, as Director of Multifamily Programs for 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, on behalf of Florida Housing. Said person is personally known to me or has produced a valid driver's license as identification.

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

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

My Commission No.:\_\_\_\_\_

**COUNTERPART SIGNATURE PAGE TO  
SUBORDINATION AGREEMENT**

**(The City of Orlando, Florida HOME subordination to FHFC, SAIL, ELI and NHTF)**

**Fairlawn Village / SAIL / ELI / NHTF / RFA 2018-116 / 2019-166BSN)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

ATTEST:

CITY OF ORLANDO, FLORIDA,  
a municipal corporation

By: \_\_\_\_\_  
Stephanie Herdocia, City Clerk

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as Mayor / Mayor Pro Tem and Stephanie Herdocia, City Clerk, who are personally known to me who did (did not) take an oath.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public; State of Florida

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

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

My Commission No.: \_\_\_\_\_

Approved as to form and legality for the use  
and reliance of the City of Orlando, Florida only

\_\_\_\_\_, 2020

By: \_\_\_\_\_  
Chief Assistant City Attorney



**COUNTERPART SIGNATURE PAGE TO  
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**(The City of Orlando, Florida HOME subordination to FHFC, SAIL, ELI and NHTF)**

**Fairlawn Village / SAIL / ELI / NHTF / RFA 2018-116 / 2019-166BSN)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESSES:

BLUE CASL ORLANDO, LLC  
a Florida limited liability company

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

By: Blue Orlando LLC,  
a Florida limited liability company,  
its manager

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

By:\_\_\_\_\_  
Shawn Wilson, Manager

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me by \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_ day of \_\_\_\_\_, 2020, by Shawn Wilson, as Manager of BLUE ORLANDO LLC, a Florida limited liability company, manager for BLUE CASL ORLANDO, LLC, a Florida limited liability company, on behalf of the limited liability companies. Said person is personally known to me or has produced a valid driver's license as identification.

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**(Fairlawn Village)**