

THIS INSTRUMENT PREPARED
BY AND RETURN TO:
Latham, Luna, Eden & Beaudine, LLP
111 North Magnolia Avenue, Suite 1400
Orlando, Florida 32801
Attention: Jan Carpenter, Esq.

SUBORDINATION AGREEMENT

(City of Orlando, HOME subordination to FHFC Multifamily Bonds)

(Fairlawn Village/Multifamily Bonds)

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 capacity as mortgage lender of Multifamily Bond funds (the “**Senior Mortgagee**”) (which term as used in every instance shall include Senior Mortgagee’s successors and assigns, including THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee); (ii) CITY OF ORLANDO, FLORIDA, a municipal corporation as lender of a HOME loan (the “**Subordinate Mortgagee**”); and (iii) BLUE CASL ORLANDO, LLC, a Florida limited liability company (the “**Borrower**”).

RECITALS

A. The Borrower has executed and delivered to the Subordinate Mortgagee a Promissory Note dated as of the date hereof (the “**Subordinate Note**”) in the original principal amount of \$2,000,000, evidencing a HOME Loan (the “**Subordinate Loan**”), secured by that certain Mortgage and Security Agreement and Assignment of Leases Rents and Profits dated the date hereof to be recorded in the public records of Orange County, Florida (the “**HOME Mortgage**”).

B. The aforesaid HOME Mortgage encumbers the real property described in Exhibit “A” attached hereto and made a part hereof, the improvements thereon, and certain personal property relating thereto (collectively, the “**Property**”). Hereinafter the aforesaid Subordinate Note, the HOME Mortgage in favor of the Subordinate Mortgagee, and all other loan documents executed in connection with the Subordinate Loan are collectively referred to as the “**Subordinate Mortgage**”.

C. Borrower has executed and delivered to the Senior Mortgagee a Promissory Note dated the date hereof in the original principal amount of \$12,000,000 (the “**Senior Note**”) evidencing a mortgage loan related to the issuance of Florida Housing Finance Corporation’s Multifamily Bonds (the “**Senior Loan**”), secured by a Mortgage, Security Agreement and Assignment of Rents and Fixture Filing dated the date hereof, to be recorded in the Public Records of Orange County, Florida entered into between Borrower and Senior Mortgagee in connection with the Senior Loan, and all other loan documents executed in connection with the Senior Loan are collectively referred to as the “**Senior Mortgage**”.

D. To induce the Senior Mortgagee to make the Senior 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 Note, 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 Note 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 Note, 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.

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 Lender (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
City Centre Building, Suite 5000
227 North Bronough Street
Tallahassee, Florida 32301-1329
Attention: Executive Director

The Bank of New York Mellon Trust Company, N.A.
10161 Centurion Parkway
Jacksonville, Florida 32256
Attention: Heidi Bowers, Vice President
Email: heidi.bowers@bnymellon.com

with a copy to:

Bryant Miller Olive P.A.
101 N. Monroe Street, Suite 900
Tallahassee, Florida 32301
Attention: Jason M. Breth, Esq.
Email: jbreth@bmlaw.com

Latham, Luna, Eden & Beaudine, LLP
111 North Magnolia Avenue, Suite 1400
Orlando, Florida 32801
Attention: Jan Carpenter, Esq.
Email: jcarpenter@lathamluna.com

and

Akerman LLP
50 N. Laura Street
Suite 3100
Jacksonville, Florida 32202
Attention: Peter Dame, Esq.
Email: peter.dame@akerman.com

Subordinate Mortgagee:

City of Orlando, Florida
Housing and Community Development Department
400 S. Orange Avenue, 7th Floor
Orlando, Florida 32801
Attention: Oren Henry, Housing and Community
Development Director

with a copy to:

City of Orlando, Florida
Housing and Community Development Department
400 S. Orange Avenue, 7th Floor
Orlando, Florida 32801
Attention: Lisa Pearson, Chief Assistant City Attorney
Email: lisa.pearson@cityoforlando.net

Borrower:

Blue CASL Orlando, LLC
c/o Blue Sky Communities
5300 West Cypress Street, Suite 200
Tampa, Florida 33607
Attention: Shawn Wilson
Email: swilson@blueskycommunities.com

with a copy to:

Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Randal Alligood, Esq.
Email: randy.alligood@nelsonmullins.com

CASL Orlando, LLC
1401 16th Street
Sarasota, Florida 34236
Attention: Julian S. Eller

and

DiVito, Higham & Vest, P.A.
4514 Cental Avenue
St. Petersburg, Florida 33711
Attention: Joseph A. DiVito
Email: jad@divitohigham.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. Email or telephonic notice shall not be effective to provide notice under this Section 6.

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.

[Signature Pages Follow]

Doc #2295709.5

**COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT**

(City of Orlando, HOME subordination to FHFC Multifamily Bonds)

(Fairlawn Village / Multifamily Bonds)

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

SENIOR MORTGAGEE:

ATTEST:

FLORIDA HOUSING FINANCE CORPORATION

By: _____

By: _____

Print: _____

Name: Marissa G. Button

Title: Director of Multifamily Programs

Address: 227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

[SEAL]

STATE OF FLORIDA)

COUNTY OF LEON) ss:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ of _____, 2020 by Marissa G. Button as Director of Multifamily Programs, of 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 Finance Corporation. Said person is personally known to me or has produced a valid driver's license as identification.

[Notary Seal]

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

[Signature Page to Subordination Agreement (Bonds v. City)]

**COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT**

(City of Orlando, HOME subordination to FHFC Multifamily Bonds)

(Fairlawn Village / Multifamily Bonds)

SENIOR MORTGAGEE:

WITNESSES:

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By: _____

Print: _____

Name: _____

Title: _____

Address: 10161 Centurion Parkway
Jacksonville, Florida 32256

[SEAL]

STATE OF _____)
COUNTY OF _____) ss:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ of _____, 2020 by _____, as _____ of The Bank of New York Mellon Trust Company, N.A., a national banking association organized under the laws of the United States, on behalf of said banking association. Said person is personally known to me or has produced a valid driver's license as identification.

[Notary Seal]

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

[Signature Page to Subordination Agreement (Bonds v. City)]

**COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT**

(City of Orlando, HOME subordination to FHFC Multifamily Bonds)

(Fairlawn Village / Multifamily Bonds)

SUBORDINATE MORTGAGEE:

ATTEST:

CITY OF ORLANDO, FLORIDA
a municipal corporation

By: _____
Stephanie Herdocia, City Clerk

By: _____
Name:

Print: _____

Title: _____

Address: 400 South Orange Avenue
Orlando, Florida 32801

STATE OF _____)
COUNTY OF _____) ss:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ of _____, 2020 by _____, as _____ of the CITY OF ORLANDO, FLORIDA, a municipal corporation. Said person is personally known to me or has produced a valid driver's license as identification.

[Notary Seal]

(Name typed, printed or stamped)
(Title or rank)
(Serial number, if any)

[Signature Page to Subordination Agreement (Bonds v. City)]

**COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT**

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(Fairlawn Village / Multifamily Bonds)

BORROWER:

WITNESSES:

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

By: _____
Shawn Wilson, Manager

Print: _____

Address: c/o Blue Sky Communities
5300 West Cypress Street, Suite 200
Tampa, Florida 33607

[SEAL]

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH) ss:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ of _____, 2020 by Shawn Wilson, as manager of Blue Orlando, LLC, a Florida limited liability company, as manager of Blue CASL Orlando, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced a valid driver's license as identification.

[Notary Seal]

(Name typed, printed or stamped)
(Title or rank)
(Serial number, if any)

[Signature Page to Subordination Agreement (Bonds v. City)]

EXHIBIT A

LEGAL DESCRIPTION
(Fairlawn Village)

The land referred to herein below is situated in the County of Orange, State of Florida, and described as follows:

Parcel 1:

Lot 1, Clement's Addition, according to the plat thereof, as recorded in Plat Book 7, Page 57, of the Public Records of Orange County, Florida.

Parcel 2:

Block A, Clement's Second Addition, according to the map or plat thereof, as recorded in Plat Book 4, Page 79, of the Public Records of Orange County, Florida.