

THIS INSTRUMENT PREPARED
BY AND RETURN TO:
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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)

Fern Grove Apartments / SAIL / ELI / NHTF / RFA 2020-205 / 2021-203BSN / 2020-539C

THIS SUBORDINATION AGREEMENT (this “Agreement”) is made and entered into as of September __, 2022, 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) BDG FERN GROVE, LP, a Florida limited partnership (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 \$23,000,000 (the “First Mortgage Loan”) secured by a Mortgage, Security Agreement and Assignment of Rents and Fixture Filing (the “First Mortgage”), as assigned to U.S. Bank Trust Company, NATIONAL ASSOCIATION, a national banking association, as trustee (the “First Mortgage”), relating to the issuance by Florida Housing of its \$23,000,000 Florida Housing Finance Corporation Multifamily Mortgage Revenue Note, 2022 Series _ (Fern Grove Apartments) (the “Governmental Note”) 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 (i) SAIL Program funds under the Florida Housing Finance Corporation Request for Applications 2020-205, in effect as of October 15, 2020 ("RFA"), and the State Apartment Incentive Loan ("SAIL") Program, Section 420.5087, Fla. Stat., and governed by the rules of Florida Housing, as codified at Chapter 67-48, Fla. Admin. Code, in effect as of June 23, 2020, and Chapter 67-53, Fla. Admin.

Code, in effect as of August 20, 2009 (collectively, including the RFA, the "Rule"), and (ii) Construction Housing Inflation Response Program funds approved by Florida Housing's Board of Directors at its April 29, 2022 meeting, ("CHIRP") in the original principal amount of EIGHT MILLION, THREE HUNDRED NINETY-NINE THOUSAND, NINE HUNDRED NINETY-NINE AND NO/100 DOLLARS (\$8,399,999) (consisting of an award of SAIL Program funds in the amount of \$5,400,000 and an award of CHIRP funds in the amount of \$2,999,999) (collectively, 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 \$1,188,106 (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 Loan, the Second Mortgage Loan, the Third Mortgage Loan and/or the Fourth Mortgage Loan 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 \$1,300,000 (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 September __, 2022, 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
201 South Orange Ave., Suite 1400
Orlando, Florida 32801
Attention: Jan Albanese Carpenter, Esq.
Telephone: (407) 481-5800
Email: Jcarpenter@lathamluna.com

Subordinate
Mortgagee: City of Orlando
Housing and Community Development Department
400 South Orange Avenue, 7th 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

Borrower: BDG Fern Grove, LP
BDG Royal Park Apartments, LP
c/o Banyan Development Group, LLC
501 North Magnolia Avenue
Orlando, Florida 32801
Attention: Louis Vogt
Telephone: (407) 447-1780 ext. 2002
Email: lvogt@agpmanager.com

with a copy to: Nelson Mullins Riley & Scarborough, LLP
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Gene Crick, Esq.
Telephone: (407) 839-4274
Email: gene.crick@nelsonmullins.com

Borrower Investor

Limited Partner: TCC BDG Fern Grove LLC
c/o Truist Community Capital, LLC
303 Peachtree Street N.E., Suite 2200
Mail Code: GA-ATL-0243
Atlanta, Georgia 30308
Attention: Asset Management – Fern Grove

with a copy to: Holland & Knight
10 St. James Avenue, 12th Floor
Boston, Massachusetts 02116
Attention: Jarrod Connors, Esq.
Telephone: (617) 845-1426
Email: Jarrod.Connors@hklaw.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.

13. Senior Debt and/or Senior Refinancing. Subordinate Mortgagee further agrees that its agreement to subordinate hereunder shall, subject to favorable credit underwriting and the approval of its Board of Directors, extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Mortgage, the Senior Loan Documents and Senior Mortgagee shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note. In the event the principal amount of any new mortgage debt is greater than the original principal amount of the Senior Loan and such excess is not used to either improve the Property or to compensate Senior Mortgagee for costs, fees and/or expenses incurred in protecting the security of the Senior Loan, Trustee and Mortgagor agree to seek the written consent of Florida Housing which consent shall not be unreasonably withheld, conditioned or delayed.

[COUNTER SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT**

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

Fern Grove Apartments / SAIL / ELI / NHTF / RFA 2020-205 / 2021-203BSN / 2020-539C

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
Managing 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 _____, 2022, by MARISA G. BUTTON, as Managing 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.

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

**COUNTERPART SIGNATURE PAGE TO
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Fern Grove Apartments / SAIL / ELI / NHTF / RFA 2020-205 / 2021-203BSN / 2020-539C

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 _____, 2022, 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 _____, 2022.

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

_____, 2022

By: _____
Chief Assistant City Attorney

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

WITNESSES:

BDG FERN GROVE, LP, a Florida limited partnership

Print: _____

By: BDG Fern Grove GP, LLC,
a Florida limited liability company,
its general partner

Print: _____

By: _____
Louis E. Vogt, Manager

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by ___ physical presence or ___ online notarization this ___ day of _____, 2022, by LOUIS E. VOGT, as Manager of BDG FERN GROVE GP, LLC, a Florida limited liability company, general partner of BDG FERN GROVE, LP, a Florida limited partnership, on behalf of the limited liability company and partnership. 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

(Fern Grove Apartments)