

**MEMORANDUM**

**TO:** MAYOR & CITY COMMISSION  
**FROM:** CITY ATTORNEY'S OFFICE  
**DATE:** August 15, 2022  
**RE:** **Swan Landing Multi-Family Project HOME Program and City Funding Agreement with Blue Griffin Terrace, LLC for a Proposed Affordable Housing Community Located on Griffin Road**

Attached for your consideration is a funding agreement in the amount of \$460,000 between the City of Lakeland and Blue Griffin Terrace, LLC (Blue Griffin) to provide funding to support the construction of Swan Landing, a proposed eighty-eight (88) unit affordable housing community located on Griffin Road, south of the intersection of Highland Fairways Boulevard, in the City of Lakeland.

On September 15, 2020, the City of Lakeland released RFA 2021 to provide a Local Government Contribution to leverage the City's affordable housing funds and assist a developer in securing the award of housing credit financing for the development of affordable housing. In response, the City received applications from three (3) developers; Green Mills Group, Blue Griffin Terrace, LLC, and Twin Lakes III, Ltd. Upon review of the applications, it was determined that all three developers have vast experience in the development of affordable housing. On October 8, 2020, recommendations were presented to the Affordable Housing Review Committee with representatives from the Community and Economic Development Department, Lakeland Electric, Water Utilities, Building Inspection, and members from the Affordable Housing Advisory Committee. After a thorough review, the Affordable Housing Review Committee recommended award of the funds outlined in the table below, which recommendation was adopted by the City Commission in officially committing the funding in October 2020.

RFA-2021					
Funding Source		CRA	City	HOME	Total
Funding Available		\$ 350,000.00	\$ 250,000.00	\$ 210,000.00	\$ 810,000.00
	Requested	Awarded			
Swan Landing	\$ 460,000.00	\$ -	\$ 250,000.00	\$ 210,000.00	\$ 460,000.00
Griffin Lofts	\$ 460,000.00	\$ -	\$ -	\$ -	\$ -
Twin Lakes III	\$ 460,000.00	\$ -	\$ -	\$ -	\$ -
<b>Total Award</b>					<b>\$ 460,000.00</b>

Under the proposed Agreement, the City of Lakeland will provide a maximum of \$460,000 of funding, \$250,000 from the General Fund, with the other \$210,000 being

passed through from the United States Department of Housing and Urban Development (HUD) HOME Investment Partnership Program (HOME). The funding will be subject to Blue Griffin Terrace, LLC receiving an award of housing credit financing from Florida Housing Finance Corporation RFA 2020-201. The City's funding requires two units to be reserved for household incomes of 80% AMI or less, and one unit reserved for household incomes of 50% AMI or less. The City's funding is secured via a 20-year promissory note and mortgage as well as a recorded land use restrictive agreement.

It is recommended that the appropriate City officials be authorized to execute the attached agreement and associated documents with Blue Griffin Terrace, LLC.

It is also requested that the City Commission authorize an appropriation in the amount of \$250,000 from the unappropriated surplus of the General Fund.

Attachment

## **Swan Landing Multi-Family Project HOME Program and City Funding Agreement**

**AN AGREEMENT BETWEEN THE CITY OF LAKE LAND, FLORIDA AND BLUE GRIFFIN TERRACE, LLC, A FLORIDA LIMITED LIABILITY COMPANY, TO FUND CONSTRUCTION COSTS ASSOCIATED WITH THE DEVELOPMENT OF SWAN LANDING, AN EIGHTY-EIGHT (88) UNIT AFFORDABLE RENTAL HOUSING DEVELOPMENT.**

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**THIS AGREEMENT**, hereinafter referred to as the “Agreement”, entered into as of \_\_\_\_\_ 2022, by and between The City of Lakeland, Florida, (“City”), the address of which is 228 S. Massachusetts Ave., Lakeland, Florida 33801, and Blue Griffin Terrace, LLC, a Florida limited liability company, (“Project Developer”), the address of which is 5300 W. Cypress Street, Suite 200, Tampa, Florida 33607.

**WHEREAS**, the City has made application and entered into a contract with the United States Department of Housing and Urban Development, hereinafter referred to as “HUD”, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, hereinafter referred to as the “Act”, and 24 CFR Part 92, hereinafter referred to as the “Regulations”; and

**WHEREAS**, pursuant to the City’s contract with HUD, the City is undertaking certain activities to develop and sustain viable communities, to provide decent housing and a suitable living environment and to expand economic opportunities principally for persons and households of very low and low income, as fully described in the HOME Investment Partnership Program, hereinafter referred to as “HOME”; and

**WHEREAS**, the City Commission has appropriated money from the general fund for the same purposes as the funding provided by HUD through the HOME program.

**WHEREAS**, in pursuit of its goals and pursuant to the HOME program funding, the City desires to enter into an agreement with the Project Developer consistent with the provisions of the HOME program to provide construction and acquisition funding for an affordable housing rental community, commonly known as Swan Landing, hereinafter referred to as the “Project”, whereby 2 of the total 88 units in the Project will be HOME-assisted units, in which one unit will be set aside as a HOME assisted unit for households whose household income is at or below 80% AMI, and one unit will be set aside as a HOME assisted unit for households whose household income is at or below 50% AMI, as defined by HUD. All HOME assisted units will be Floating Units as defined by HUD; and

**WHEREAS**, the City will provide \$250,000 from the General Fund, and will pass through \$210,000 in funding from HUD through the HOME program.

**WHEREAS**, the construction of an affordable housing rental community is an eligible activity for which HOME funds may be used as it supports the City’s mission to provide affordable housing opportunities.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

The recital clauses stated above and the following attached documents are hereby incorporated into this Agreement:

Exhibit A	Scope of Services
Exhibit B	Request for Payment
Exhibit C	Legal Description
Exhibit D	Insurance Requirements
Exhibit E	Monthly Reporting
Exhibit F	Occupancy and Rent Reporting Form
Exhibit G	Equal Opportunity Applicable Regulations
Exhibit H	Declaration of Covenants and Restrictions
Schedule 1	Mortgage
Schedule 2	Promissory Note

The parties are bound by the attached documents as if the text of these documents were written verbatim into this Agreement. The Agreement and the attached documents are intended to supplement and complement each other and shall, where possible, be so interpreted.

**ARTICLE I. SCOPE OF SERVICE AND USE OF HOME FUNDS**

Project Developer shall carry out, or cause to be carried out, the scope of work, budget, and schedule described in **Exhibit “A”**, attached hereto and made part hereof.

**A.** All property acquisition and construction activities shall be completed in compliance with all applicable City of Lakeland Ordinances, Codes, Policies, and Regulations, and in a satisfactory and proper manner as determined by the City. Such services shall be performed, except as otherwise stated herein, by persons or instrumentalities solely under the domain and control of the Project Developer.

**B.** Project Developer shall comply with such other terms and conditions, including record keeping and reports for program monitoring and evaluation purposes, as may be established by the City or by HUD for the purposes of carrying out the program in an effective and efficient manner.

**C.** Project Developer shall comply with all applicable HOME project requirements in 24 CFR Part 92, Subpart F.

**D.** Project Developer agrees that all housing constructed or rehabilitated with HOME funds shall meet all applicable state and local construction codes, rehabilitation standards and zoning ordinances at the time of project completion. All housing

constructed pursuant to this Agreement shall meet the property standards in 24 CFR §92.251, upon project completion, and shall maintain with §92.251 for the duration of the affordability period. Newly constructed housing shall be National Green Building Standard. All new construction projects shall meet the requirements of 24 CFR § 92.251(a). All new construction shall meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and covered multifamily dwellings, as defined at 24 CFR § 100.201, shall also meet the design and construction requirements at 24 CFR § 100.205, which implements the Fair Housing Act (42 U.S.C. §§ 3601-3619). Project Developer shall correct all code violations through the use of said HOME funds and shall cooperate with the City in the disbursement of funds for the payment of contracted labor and construction costs.

**E.** Project Developer has the primary responsibility to market all units. The Project Developer's affirmative marketing shall not discriminate on the basis of race, color, national origin, sex, religion, familial status marital status, gender identity, sexual orientation or disability. The Project Developer agrees, in soliciting residents, to do the following:

1. Use the Equal Housing Opportunity logo in all advertising;
2. Display a Fair Housing poster in the rental office;
3. Adopt procedures to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
4. Maintain files of Project Developer's affirmative marketing activities for five (5) years and provide access thereto to City staff;
5. Exercise affirmative marketing of all units; and
6. Verify all information concerning the resident, which may be obtained from any source by the Project Developer or its assignees or designees.

The City will annually assess the success of affirmative marketing actions and require corrective actions be taken where affirmative marketing requirements are not met.

**F.** Project Developer shall maintain such records and accounts necessary to assure a proper accounting and monitoring of all HOME funds provided pursuant to this Agreement, including: program records, project records, financial records, program administration records, equal opportunity and fair housing records, affirmative marketing and MBE/WBE records, records demonstrating compliance with the income determination requirements of 24 CFR § 92.203, recordkeeping requirements of 24 CFR § 92.508, environmental review requirements of 24 CFR § 92.352 and 24 CFR Part 58, records demonstrating compliance with the requirements of 24 CFR § 92.353 regarding displacement, relocation and real property acquisitions, records demonstrating compliance with the labor requirements of 24 CFR § 92.354, records demonstrating compliance with the lead-based paint requirements of 24 CFR § 92.355, records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR

§ 92.356, debarment and suspension certifications required by 24 CFR Parts 24 and 91, and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of all HOME Funds.

## **ARTICLE II. PERIOD OF AGREEMENT AND EFFECTIVE DATE**

This Agreement shall remain in full force and effect until [ , 2042] or expiration of the Mortgage executed in connection with this Agreement, whichever is later. The funding for this Project, however, must be expended by [ , ].

## **ARTICLE III. CONSIDERATION AND PAYMENT**

For its performance under this Agreement, the Project Developer will receive [HOME funds from the City from Program Years 2018 and 2019] in a total amount not to exceed **Two Hundred and Ten Thousand Dollars (\$210,000.00)**, hereinafter referred to as “HOME Funds”, for services provided during the term of this Agreement. Payment for services shall be limited to the scope described in **Exhibit “A”**.

In addition to the HOME funds above, the City will provide Two Hundred and Fifty Thousand Dollars (\$250,000), from the City’s General Fund, hereinafter referred to as “City Funds” for the services provided during the term of this Agreement. Payment of these funds are subject to the same scope as described in Exhibit “A”.

Project Developer shall execute and record in the Public Records of Polk County, Florida, the Mortgage in **Schedule 1**, the Promissory Note in **Schedule 2** and the Declaration of Covenants and Restrictions in **Exhibit “H”** encumbering the property, as more specifically described in **Exhibit "C"**, with a lien in favor of the City for construction and acquisition costs of the Project, to provide a total of two (2) HOME assisted rental units, as more particularly noted in **Exhibit “A”** of this Agreement.

No HOME Funds shall be paid to Project Developer under this Agreement until such time as the Property is zoned for the uses and density described in Exhibit “A”.

## **ARTICLE IV. CANCELLATION OF AGREEMENT**

Except as otherwise provided herein, this Agreement may be cancelled by either party for convenience in accordance with the provisions in Appendix II to 2 CFR Part 200 and 2 CFR § 200.339-.340. Either party will be required to provide thirty (30) days advance written notice to the other at its address as herein specified.

## **ARTICLE V. DEFAULT AND TERMINATION FOR NON-PERFORMANCE**

A default shall consist of any use of HOME or City Funds for a purpose other than as authorized by this Agreement, noncompliance with any provision of any Article herein, any material breach of the Agreement, failure to comply with the audit requirements as provided in Article XVI herein, or failure to expend HOME or City Funds in a timely or proper manner.

Upon the occurrence of any such default, the City shall serve due notice, in accordance with Article XXXI, to the Project Developer, at which time the Project Developer shall have a reasonable opportunity to respond and cure. For purposes of this Agreement, a reasonable opportunity to respond and cure any default shall be ten (10) days (in the case of monetary defaults) or thirty (30) days (in the case of non-monetary defaults) from the date the City delivers by personal service or mails written notice of such default to the Project Developer, hereinafter referred to as the “Cure Period”. If the default is not cured to the satisfaction of the City, the City shall have the right, in its sole discretion, to take the following action(s):

- (a) Upon a written request from Project Developer setting forth a reasonable basis to support the need for an additional Cure Period, the City may grant an additional Cure Period by written acknowledgment thereof; or,
- (b) Terminate this Agreement by written notice thereof; or,
- (c) Take such other action as provided for in 2 CFR § 200.338, including but not limited to: temporarily withholding cash payments pending correction of the deficiency by the Project Developer; disallowing all or part of the cost of the activity or action not in compliance; wholly or partly suspending or terminating the current award for the Project Developer’s Project; withholding further awards for the Project; or taking other remedies that may be legally available. The enforcement remedies identified in this Article, including suspension and termination, do not preclude the Project Developer from being subject to “Debarment and Suspension” under 2 CFR part 180 or other applicable federal regulations.

Costs resulting from obligations incurred by the Project Developer during a suspension or after termination of an award are not allowable unless the City expressly authorizes them in the notice of suspension or termination or subsequently. Other Project Developer costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if:

- (a) The costs result from obligations which were properly incurred by the Project Developer before the effective date of suspension or termination, and are not in anticipation of it, and, in the case of a termination, are non-cancellable; and
- (b) The costs would be allowed if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

Consistent with Article XXXIII herein, no delay or omission by City and/or HUD in exercising any right or remedy available to it under this Agreement shall impair any such right or remedy or constitute a waiver or acquiescence in any Project Developer default.

Upon expiration of the Cure Period, the City may exercise any other remedies available to it at law or in equity.

Any notice of default given to Project Developer hereunder shall also be given to Raymond James Housing Opportunities Fund 75 L.L.C., a Florida limited liability company, the investor member of Project Developer (the “Investor Member”) and Bank of America, N.A., the construction phase first mortgagee (the “Construction Lender”) and the City shall accept any timely cure by the Investor Member as if such cure was made by Project Developer.”

#### **ARTICLE VI. ADDITIONAL RIGHTS AND REMEDIES**

Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the parties under law or in equity which may now or in the future be applicable.

#### **ARTICLE VII. FISCAL NON-FUNDING CLAUSE**

This Agreement is subject to funding availability. In the event sufficient funds to fund this Agreement become reduced or unavailable, the City shall notify the Project Developer of such occurrence, and the City may terminate this Agreement, without penalty or expense to the City, upon no less than twenty-four (24) hours written notice to the Project Developer. The City shall be the final authority as to the availability of funds and how available funds will be allotted. If this Agreement is funded in whole or in part by federal or state dollars which are reduced or become unavailable, the City shall notify the Project Developer of such occurrence and the City may terminate this Agreement without penalty or expense to the City, upon no less than twenty-four (24) hours written notice to the Project Developer.

#### **ARTICLE VIII. ASSIGNMENT**

Project Developer shall not assign this Agreement or any part hereof without the prior written consent of the City.

#### **ARTICLE IX. COMPLIANCE WITH APPLICABLE LAWS**

The Project Developer shall comply with all applicable laws, orders, and codes of the federal, state and local governments as they pertain to this Agreement, including, but not limited to, the requirements of 2 CFR Part 200. Project Developer shall also assist the City in complying with all applicable terms and conditions under the HOME Investment Partnership Program 24 CFR Part 92, incorporated herein and made a part of this Agreement by reference, and Title I of the Housing and Community Development Act of 1974 (PL 93-383). The Project Developer also agrees to comply with the uniform administrative requirements contained in 24 CFR § 92.505.

The Project Developer and its contractors and subcontractors need not comply with Davis-Bacon Act (40 U.S.C. §§ 3141-3148) because there are less than 12 HOME Assisted Units associated with this funding Agreement. If applicable, Project Developer will comply with Section 3 of the Housing and Urban Development Act of 1968, incorporated herein by reference and as amended.

The Project Developer shall not be required to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3), and any amendments or modifications thereof as such law is not applicable to the Project.

The Project Developer need not comply with the requirements of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) because there are less than 12 HOME Assisted Units associated with this funding Agreement.

The Project Developer need not comply with the labor requirements in 24 CFR § 92.354 because there are less than 12 HOME Assisted Units associated with this funding Agreement.

The Project Developer shall comply with all applicable standards of the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387).

Upon Project completion and initial occupancy, the Project Developer shall provide Quarterly Reports with information on the Project detailing the number of households served by income category, age, family size, race, and data regarding any special needs populations. Said report shall include information regarding any support services available to the residents of affordable housing provided by local programs. Formats for reporting shall be as set forth in **Exhibits “E” and “F”**, attached hereto and incorporated herein by reference.

## **ARTICLE X. EQUAL OPPORTUNITY CLAUSE**

The Project Developer agrees to comply with the requirements of all applicable state, federal, and local laws, rules, regulations, ordinances and Executive Orders prohibiting and/or relating to discrimination, including but not limited to 24 CFR §92.350, Executive Order 11246, as amended and supplemented, and 41 CFR § 60–1.4 and City of Lakeland Code Chapter 50, all of which are hereby incorporated by reference.

When expending HOME Funds, the Project Developer shall, within the eligible population, comply with the following requirements, if applicable, for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, sexual orientation, marital status, gender identity and expression and handicap:

- A. Equal Opportunity.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and implementing regulations in 24 CFR Part 1 together with Section 109 of the Act (24 CFR Part 6) which prohibit discrimination in any program or activity funded in whole or in part with funds made available under this Agreement.
- B. Minority and Women's Business Enterprises.** The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, if applicable, the Project Developer must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

- C. **Nondiscrimination in Housing.** The Project Developer certifies that in accordance with the provisions of Chapter 760, Part II, Florida Statutes, as amended, it is unlawful to discriminate on the basis of race, creed, religion, color, age, sex, marital status, familial status, national origin, or handicap in the award application process for eligible housing.
- D. **Equal Access to HUD-Assisted Housing.** 24 CFR 5.105(a)(2), which provides that all housing assisted by HUD shall be made available without regard to actual or perceived sexual orientation, gender identity or marital status.
- E. **City of Lakeland Human Relations Ordinance.** Chapter 50 in City of Lakeland Code.

## **ARTICLE XI. CONFLICT OF INTEREST**

The Project Developer guarantees that no member, of, or Delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

The Project Developer agrees that no member of the governing body of the locality in which the Project Developer is situated, no other public official of such locality or localities, and no person, unless expressly permitted by the State, who is an employee, agent, consultant, officer, or elected or appointed official of the Project Developer, and who exercises or has exercised any functions or responsibilities with respect to the HOME Program, the Community Development Block Grant Program, hereinafter referred to as “CDBG”, or State Housing Initiatives Partnership Program, hereinafter referred to as “SHIP”, assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the HOME, CDBG or SHIP assisted activity, or have any interest in any contract, subcontract, or agreement with respect thereto, or with respect to the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one (1) year thereafter.

The Project Developer agrees that the conflict of interest provisions in 24 CFR § 92.356 shall apply.

The Project Developer represents that it presently has no interest, and shall not acquire such interest, financial or otherwise, direct or indirect, nor engage in any business transaction or professional activity or incur any obligation of any nature which would conflict in any manner with the performance of the scope of service required hereunder.

Without receiving prior written authorization by the City, except with respect to the developer, the management company, the general contractor and the equity syndicator, the Project Developer shall not: (i) retain any individual or company with whom the Project Developer or any individual member thereof has a financial or other conflict of interest; nor (ii) in fulfillment of this Agreement, do business with a for-profit entity in which the Project Developer or any individual member has a financial or other interest therein.

The Project Developer warrants to the City that no gifts or gratuities have been or will be given to any City employee or agent, directly or indirectly, to obtain this Agreement.

The Project Developer shall comply with the applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

## **ARTICLE XII. PROGRAM PUBLICITY**

Project Developer shall recognize the City of Lakeland for its contribution in promotional material and at any events or workshops for which funds from this Agreement are allocated. Any news release or other type of publicity pertaining to the scope of work performed pursuant to this Agreement must recognize the City as a Developer, funded by HUD. In written materials, the reference to the City of Lakeland must appear in the same size letters and font type as the name of any other funding sources. The Project Developer shall in no way use any statements, whether written or oral, made by the City's employees to market, sell, promote or highlight the Project Developer and/or the Project Developer's product(s) and/or service(s) unless authorized to do so, in writing, by the City Manager or his/her designee. In addition, the Project Developer shall not use subjective or perceived interpretations, even if factual, regarding the City's opinion of the Project Developer's performance, product(s) and/or service(s) in any document, article, publication or press release designed to market, promote or highlight the Project Developer and/or the Project Developer's product(s) and/or service(s). This does not prevent the Project Developer from including the City on its client lists and/or listing or using the City as a reference.

## **ARTICLE XIII. POLITICAL ENDORSEMENT PROHIBITION**

The Project Developer shall not engage in political activities that promote or oppose specific candidates.

## **ARTICLE XIV. PUBLIC ENTITY CRIMES**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provide in Section 287.017, Florida Statutes, as amended, for Category Two for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.

Additionally, pursuant to City policy, a conviction of a public entity crime may cause the rejection of a bid, offer, or proposal. The City may make inquiries regarding alleged convictions of public entity crimes. The unreasonable failure of a bidder, offeror or proposer to promptly supply information in connection with an inquiry may be grounds for rejection of a bid, offer, proposal or reply.

Funds provided under this Agreement shall not be used directly or indirectly to employ, award projects or otherwise engage the services of any contractor debarred or suspended under Federal law.

## **ARTICLE XV. MAINTENANCE OF RECORDS**

Project Developer shall maintain all records and accounts, including property, personnel and financial records, contractual agreements, construction reports, Davis-Bacon records (if applicable), subcontracts, proof of required insurance, and any other records related to or resulting from the activities performed under this Agreement to assure a proper accounting and monitoring of all HOME Funds. In the event the City determines that such records are not being adequately maintained by Project Developer, the City may cancel this Agreement in accordance with Articles IV and V herein.

With respect to all matters covered by this Agreement, records will be made available for examination, audit, inspection or copying purposes at any time during normal business hours and as often as the City, HUD, representatives of the Comptroller General of the United States or other federal agency may require. Project Developer will permit same to be examined and excerpts or transcriptions made or duplicated from such records, and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this Agreement.

The City's right of inspection and audit shall obtain likewise with reference to any audits made by any other agency, whether local, state or federal. Project Developer shall retain all records and supporting documentation applicable to this Agreement for 5 fiscal years after funds expended and accounted for and/or satisfaction of loans, whichever is later, for inspection. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or the end of the required period, whichever is later. The retention period starts from the date of Project Completion. The term Project Completion means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of the HOME Program (including property standards under 24 CFR § 92.251); the final drawdown has been disbursed for the Project; and the project completion information has been entered in the disbursement and information system established by HUD.

This Article shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE XVI. AUDIT REQUIREMENTS**

Pursuant to 24 CFR §85.26, the Project Developer is subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. §§ 7501-7507) and 2 CFR Part 200, Subpart F, hereinafter collectively referred to as the "Federal Audit Requirements", which may require the Project Developer to obtain an audit as set forth therein. In the event, that during the period of this Agreement, Project Developer expends more than \$750,000.00 in

federal funds in an operating year from this and other federal grants, the Project Developer shall, at its own cost and expense, cause to be carried out an independent audit. The audit shall be completed, and a copy furnished to the City, within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period, unless a longer period is agreed to in advance by the City. For purposes of this Agreement, an operating and/or audit year is the equivalent to the Project Developer's fiscal year. The determination of when HOME Funds are expended is based on when the activity related to the expenditure occurs.

The audit shall be conducted in compliance with 2 CFR Part 200, Subpart F, and 24 CFR Part 45, which are made a part of this Agreement by reference thereto. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not expended in accordance with the conditions of this Agreement, Project Developer shall be held liable for reimbursement to the City of all funds not expended in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the City has notified Project Developer of such non-compliance. Said reimbursement shall not preclude the City from taking any other action as provided in Article IV and V herein.

If expenditure does not exceed \$750,000.00 during an operating year, Project Developer shall submit to the City within one hundred eighty (180) days after the end of the Project Developer's fiscal year, and otherwise upon request by the City, audited financial statements, which must comply with Generally Accepted Accounting Principles (GAAP) as adopted by the U.S. Securities and Exchange Commission (SEC), covering the entire term of this Agreement. If the Project Developer fails to provide its audited financial statements within the one hundred eighty (180) day time period referenced above, then, the Project Developer shall be in default hereunder. Notwithstanding the foregoing, the City may grant the Project Developer an extension of the one hundred eighty (180) day time period to provide its audited financials, but such extension shall be solely at the City's discretion.

## **ARTICLE XVII. EVALUATION**

The Project Developer agrees that the City shall be responsible for monitoring and evaluating all aspects of the services provided under this Agreement. The City shall have access to and be able to make copies and transcriptions of such records as may be necessary in the determination of the City, HUD or the State of Florida to accomplish this obligation, subject to state and federal confidentiality requirements.

In order to properly monitor and evaluate the Project Developer's performance under this Agreement, the City shall make on-site inspections during reasonable business hours as often as it deems necessary, after providing written notice to Project Developer. The City will invoice and collect an annual monitoring fee in the amount of five hundred dollars (\$500) for the term of the agreement starting one year from the date of the certificate of occupancy. Further, the Project Developer shall submit an activity report with each Request for Payment (Exhibit "B"), which details the progress made to date toward the completion of the activities authorized under **Exhibit "A"**. If the Project Developer fails to reasonably assist the City in its monitoring and evaluation efforts, including allowing the City to conduct the on-site inspections and have access to the Project Developer's records, and/or fails to submit the activity reports,

as required, the City may seek relief as specified in Article V herein.

#### **ARTICLE XVIII. DRUG FREE WORKPLACE**

The Project Developer shall assure the City that it will administer, in good faith, a policy designed to ensure that its employees, agents, contractors, and sub-contractors are free from the illegal use, possession, or distribution of drugs or alcohol.

#### **ARTICLE XIX. ENVIRONMENTAL REVIEW**

The Project Developer further agrees that it shall supply the City with all available, relevant information necessary for the City to perform any required environmental review pursuant to HUD regulations at 24 CFR Part 58, as amended, for each property to be acquired, rehabilitated, converted, leased, repaired or constructed with federal funds; it shall carry out mitigating measures required by the City as identified in the environmental assessment report conducted by the City or select alternate eligible property; and it shall not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such program activities with respect to any such property, until it has received notice from the City that the environmental review is complete. Additionally no assistance to the Project Developer will be provided by the City until all identified mitigation has been completed.

#### **ARTICLE XX. NEGATION OF AGENT OR EMPLOYEE STATUS**

The Project Developer and its assistants, representatives, agents, employees, independent contractors, partners, affiliates, holding companies, subsidiaries, and subagents shall perform this Agreement independently. Nothing herein shall be construed to make the Project Developer, and any of the aforementioned, a representative, agent, subagent, or employee of the City.

The Project Developer certifies its understanding that the City is not required to withhold any federal income tax, social security tax, state and local tax, to secure worker's compensation insurance or employer's liability insurance of any kind, or to take any other action with respect to this insurance or taxes of the Project Developer or its agents, employees, or independent contractors.

In no event shall any provision of this Agreement make the City or any political subdivision of the State of Florida liable to any person or entity that contracts with or provides goods or services to the Project Developer in connection with the services the Project Developer has agreed to perform hereunder or otherwise, or for any debts or claims of any nature accruing to any person or entity against the Project Developer. There is no contractual relationship, either express or implied, between the City or any political subdivision of the State of Florida and any person or entity supplying any work, labor, services, goods or materials to the Project Developer as a result of the provisions of the services provided by the Project Developer hereunder or otherwise.

**ARTICLE XXI. INDEPENDENT CONTRACTORS/THIRD PARTY BENEFICIARIES**

All work authorized under this Agreement that requires a contracting license pursuant to either Part I or Part II, Chapter 489, Florida Statutes, as amended, shall be performed by properly licensed contractors who shall obtain all necessary permits and inspections. The subcontracting of the funded work by the Project Developer to properly licensed contractors shall not in any way affect the provisions of this Agreement. All contracts between the Project Developer and properly licensed contractors for funded work to be performed under this Agreement shall be in writing, subject to approval by the City and submitted to the City prior to issuance of any building permit applications.

This Agreement is for the benefit of the City and the Project Developer. No third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Agreement. The Project Developer acknowledges and agrees that it is acting as an independent contractor in performing its obligations hereunder and not as an agent, officer or employee of the City.

**ARTICLE XXII. INDEMNIFICATION**

The Project Developer shall indemnify, hold harmless, and defend the City and its respective agents and employees hereinafter collectively referred to as the “Indemnified Parties”, from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees, that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation by the Project Developer, its agents, subcontractors, assigns, heirs, and employees during performance under this Agreement, excluding any negligent, wrongful, or intentional act or omission, act of any fraud or defalcation of the Indemnified Parties, its officers, members, officials, employees and agents. The extent of this indemnification shall not be limited in any way as to the amount or types of damages or compensation payable to any of the Indemnified Parties on account of any insurance limits contained in any insurance policy procured or provided in connection with this Agreement. In any and all claims against any of the Indemnified Parties by any employee of the Project Developer, any subcontractor, heir, assign, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Project Developer or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The provisions of this Article shall survive the termination of this Agreement.

In connection with any indemnifiable claim hereunder arising out of a claim by a third party against the City, Project Developer shall be entitled to an opportunity to defend such claim in good faith and with diligence.

## **ARTICLE XXIII. INSURANCE**

The Project Developer shall procure and maintain throughout the term of this Agreement on behalf of itself and the City, insurance against loss by fire, flood (when required) and other hazards, casualties and contingencies in such amounts and manner as specified on, and as required by **Exhibit “D”** attached hereto and incorporated by reference herein, and as stated below, and as set forth in the Mortgage (Schedule 1) securing the City’s lien on the property. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. The Project Developer will pay promptly when due any and all premiums on insurance.

The Project Developer shall ensure that the City is named as additional insured parties as to the actions of the Project Developer, its employees, agents, assigns, and general contractors, architects and engineers hired directly by the Project Developer, performing or providing materials and/or services to the Project Developer during the performance of this Agreement, on (i) all auto liability policies and general liability policies required to be obtained by the Project Developer pursuant to this Agreement, if applicable, and (ii) all other insurance policies required by this Agreement where such an endorsement is available in the industry. All such insurance policies shall also contain a Severability of Interests provision. Every insurance policy must provide thirty (30) days prior written notice to the City of any cancellation, intent not to renew, or reduction in the policy coverage. The Project Developer shall provide Proof of Insurance upon request by the City.

## **ARTICLE XXIV. RECAPTURE OF HOME FUNDS**

Pursuant to 24 CFR § 92.252, 24 CFR § 92.503, and 24 CFR 92.504(c)(3)(ii) and the conditions set forth in this Agreement, it is the intent of the parties that the City shall recapture HOME and City Funds provided under this Agreement upon the sale of the newly constructed or rehabilitated properties prior to the expiration or termination of the Declaration of Covenants and Restrictions, attached hereto as **Exhibit “H”**.

## **ARTICLE XXV. REVERSION OF ASSETS**

Within thirty (30) days following the expiration or termination of this Agreement, the Project Developer shall transfer to the City any HOME Funds, if any, on hand at the time of expiration or termination if the HOME Funds have not been expended on eligible costs pursuant to this Agreement.

## **ARTICLE XXVI. ACCESS TO RECORDS**

If applicable, the Project Developer shall comply with the requirements of Chapter 119, Florida Statutes, with respect to any documents, papers, and records made or received by the Project Developer in connection with this Agreement.

## **ARTICLE XXVII. SURVIVABILITY/SEVERABILITY**

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

In the event any section, sentence, clause or provision of this Agreement is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

#### **ARTICLE XXVIII. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

#### **ARTICLE XXIX. GOVERNING LAWS**

Each party covenants and agrees that any and all legal actions arising out of or connected with this Agreement shall be instituted in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, or in the United States District Court for the Middle District of Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This Agreement is entered into within, and with reference to the internal laws of, the State of Florida, and shall be governed, construed and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

#### **ARTICLE XXX. AUTHORIZATION**

Each party represents to the other that such party has authority under all applicable laws to enter into an agreement containing such covenants and provisions, that all of the procedural requirements imposed by law upon each party for the approval and authorization of this Agreement have been properly completed, and that the persons who have executed this Agreement are duly authorized and empowered to do so.

#### **ARTICLE XXXI. NOTICE AND GENERAL CONDITIONS**

All notices which may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time.

**The City of Lakeland**  
Attn: City Manager  
228 S. Massachusetts Ave.  
Lakeland, Florida 33801

**Project Developer**  
Shawn Wilson, Manager  
Blue Griffin Terrace, LLC  
5300 W. Cypress Street, Suite 200

Tampa, Florida 33607

A copy of any notice to the Project Developer shall also be provided to the following parties:

Nelson Mullins Riley & Scarborough LLP  
390 N. Orange Ave Suite 1400  
Orlando FL, 32801  
Attn: Randal M. Alligood, Esq.

Raymond James Housing Opportunities Fund 75 L.L.C.  
c/o Raymond James Affordable Housing Investments, Inc  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf, President

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan Bernard

Bank of America, N.A.  
401 East Las Olas Boulevard, 18th Floor  
Fort Lauderdale, FL 33301  
Attention: Dylan Jones

Bank of America, N.A.  
DC1-842-06-04  
1800 K Street, NW, 6th Floor  
Washington, DC 20006  
Attention: Loan Administration Manager

Holland & Knight LLP  
31 West 52nd Street  
New York, New York 10019  
Attention: Kathleen M. Furey, Esq.

## **ARTICLE XXXII. TERMS**

Capitalized terms contained herein shall have the definition assigned. Capitalized terms contained herein that do not have the definition assigned shall have the meaning assigned in the applicable federal statute or regulation.

### **ARTICLE XXXIII. ESTOPPEL/WAIVER**

A waiver of any performance or default by either party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of any of the terms, covenants, and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

### **ARTICLE XXXIV. MERGER AND MODIFICATIONS**

This Agreement together with the Exhibits embodies the entire Agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. The parties acknowledge that they have not relied on any representations or statements of any nature whatsoever, whether written or oral, except as specifically represented in this Agreement. This Agreement may only be amended or extended by a written instrument executed by the City and the Project Developer expressly for that purpose.

**IN WITNESS HERETO**, the parties herein have caused this Agreement to be executed at the place and on the day specified hereinabove.

*[Signature Page to Follow]*

\_\_\_\_\_  
H. WILLIAM MUTZ, MAYOR

ATTEST: \_\_\_\_\_  
KELLY S. KOOS, CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: \_\_\_\_\_  
PALMER C. DAVIS  
CITY ATTORNEY

\*\*\*\*\*

**Signed, sealed and delivered in the presence of:**

\_\_\_\_\_  
Witness signature BLUE GRIFFIN TERRACE, LLC, a Florida limited liability company

\_\_\_\_\_  
Name printed or typed By: Blue Griffin Terrace M, LLC, a Florida limited liability company

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

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of physical presence \_\_\_ or online notarization \_\_, this \_\_\_ day of \_\_\_\_\_, 2022, by Shawn Wilson, as Manager of Blue Griffin Terrace M, LLC, the Manager of Blue Griffin Terrace, LLC, a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Witness my hand and official seal the date aforesaid,

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Notary: Print or Type Name

My Commission Expires

**EXHIBIT “A”**  
**SCOPE OF SERVICES**  
**Swan Landing Multi-Family Project**

**Section I. SERVICES TO BE RENDERED BY PROJECT DEVELOPER**

The Project Sponsor has acquired approximately 11.73 acres of undeveloped land located at 2030 Swan Landing Drive, and will develop an eighty-eight (88) unit garden style apartment complex on the site. Construction will be for 2 residential -buildings of three story wood frame construction. As described in more detail below, two of the units shall be HOME assisted units.

The Project will be located at 2030 Swan Landing Drive, Lakeland, Florida 33810 in Polk County, more specifically described in **Exhibit “C.”**

The construction of the new rental units under this Agreement shall be in accordance with the Florida Building Code, including provisions relating to hurricane shelters, wind loads and other details needed for emergency shelters for special needs populations, and any other applicable building and land use regulations.

Unit amenities to be provided shall include mini-blinds, central heat and air-conditioning, dishwasher, ample cabinets, carpet or tile flooring, energy efficient windows, and washer/dryer hookups. Appliances in each unit will meet Energy Star Standards. Thirty-nine (39) one-bedroom/one-bathroom; Forty-five (45) two-bedroom/two-bathroom units; and Four (4) three-bedroom/two bathroom units will be offered. The design will incorporate energy saving and green building features. To the extent required by law and/or this Agreement, the buildings will be fully ADA compliant and compliant with the Fair Housing Act. The Project management shall provide a variety of optional social, educational, health and recreational services at no charge to the residents. These services will include, at a minimum, Employment Assistance programs, Financial Management programs and Adult Literacy programs.

In compliance with Section 504 of the Rehabilitation Act of 1973, at least 5% of the total 88 units must be designed and constructed to be accessible for persons with mobility disabilities, and an additional 2% of the total 88 units must be accessible for persons with hearing or visual disabilities.

Two of the eighty-eight units will be floating HOME–assisted units. One of the floating HOME-assisted units will be High-HOME units for households at eighty percent (80%) or less of the AMI and one of the floating HOME-assisted units will be Low-HOME units for households at fifty percent (50%) or less of the AMI. The Project Developer shall provide the specific address (street address and apartment number) of each floating HOME unit no later than the time of the initial occupancy of that unit as a HOME floating unit. The Project Developer shall provide the City with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements. Subject to more restrictive requirements from Florida Housing Finance Corporation, fourteen (14) of the total units will be made available to households with income of thirty percent (30%) or less of the AMI; fifty-seven (57) of the total units will be made available to households with income of sixty percent (60%) or less of the AMI; and the remainder of the units will be made available to households with income of eighty percent (80%) or less of the AMI.

The mix of units shall be as follows:

39 One Bedroom Units (667sq. ft.)

- 45 Two Bedroom Units (973 sq. ft)
- 4 Three Bedroom Units (1,186 sq. ft)

The maximum allowable HOME rents must be reduced if the tenant pays for utilities. The utility allowance schedule prepared by the local public housing authority (The Housing Authority of the City of Lakeland) or utility allowances prepared specific to the Project, upon approval of the City, should be used in the maximum rent determination for the HOME units. **The Project Developer may also comply with the gross rent and utility allowance requirements of the LIHTC Program as administered by the Florida Housing Finance Corporation. The Project Developer must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance with 24 CFR § 92.252.**

The floating HOME assisted units may change within the Project to maintain conformity with the requirements of 24 CFR §92.252 during the period of affordability so that the total number of housing units meeting the requirements of this section remain the same, and each substituted unit is comparable in terms of size, features and number of bedrooms to the originally designated HOME units.

The Project Developer will determine the eligibility of each household prior to occupancy by determining the household's annual income through source documentation which shall be verified for compliance with applicable income limits. The Project Developer will certify eligibility for the unit and recertify the tenant's income and eligibility annually in accordance with 24 CFR Part 92. The Project Developer will provide housing to eligible households on a first-come, first-served basis in a manner which will ensure there will be no discrimination on the basis of race, creed, color, age, sex, familial or marital status, gender identity or expression, sexual orientation, handicap, religion, or national origin.

Tenants must have a written lease that complies with 24 CFR § 92.253. Pursuant to 24 CFR § 92.252(f), any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents. The Project Developer shall comply with the requirements of VAWA and implementing regulations including 24 CFR 92.359.

If the HOME-assisted units are not occupied by eligible tenants within six months following the date of project completion, the Project Developer shall submit marketing information and a marketing plan to the City pursuant to 24 CFR § 92.252.

The Anticipated Project Permanent Sources and Uses are as follows (not including Bank of America construction loan to be repaid from Permanent Sources):

<b>SOURCES</b>	<b>BUDGET</b>
Neighborhood Lending Partners	\$ [2,860,000]
Polk County HOME & SHIP	\$ [1,000,000.00]
Lakeland HOME	\$ 210,000.00
City of Lakeland Affordable Housing Funds	\$ 250,000.00
RJ Tax Credit Funds	\$ [20,347,965.00]
Deferred Developer Fee	\$ [1,106,653.00]
<b>Total Sources</b>	<b>\$ [25,774,618.00]</b>
<b>USES</b>	
Acquisition Costs	\$ [1,845,000.00]
Hard Costs	\$ [16,795,174.00]
Financing Costs	\$ [1,092,050.00]

Soft Costs	\$ [2,437,498.00]
Developer Fee	\$ [3,235,060.00]
Operating Deficit Reserve	\$ [369,836.00]
<b>Total Uses</b>	<b>\$ [25,774,618.00]</b>

The HOME Funds and City Funds defined under this Agreement will be immediately repaid in full by the Project Developer in the event it is determined that the multi-family Project is out of compliance with the requirements of 24 CFR Part 92, after written notice has been provided to Project Developer and Project Developer has failed to correct such non-compliance within ten (10) days (in the case of a monetary default) or thirty (30) days (in the case of a non-monetary default) of receipt of the written notice.

## **Section II. PAYMENT SCHEDULE**

The City will reimburse the Project Developer for all allowable acquisition and construction expenses, as determined by the City, and as set forth herein.

For acquisition costs, a letter of request on Project Developer’s official letterhead accompanied by the estimated settlement statement with the name of buyer and seller, property location, and all settlement costs must be submitted to AHS[City of Lakeland Affordable Housing Services?], along with a Request for Payment form in substantially the same format as **Exhibit “B”**, a minimum of ten (10) days prior to closing. A copy of the property appraisal and title insurance to the Property noted in the legal description of this Agreement must be provided to the AHS[City of Lakeland Affordable Housing Services?] prior to closing. The City may advance funds for the land acquisition prior to closing in a manner acceptable to the City and title company handling the property closing transaction. In the event that funds are not needed in advance for acquisition, eligible acquisition costs may be reimbursed as outlined below.

Requests for payment must be submitted to the [[City of Lakeland [Affordable Housing Services]]] in substantially the same format as **Exhibit “B”**, and be accompanied by a request on the Project Developer’s official letterhead. Requests for payment may be submitted no more frequently than once per month. All requests for payment must comply with the requirements in Article III of this Agreement, specify the line-item for which payment is being requested and must be accompanied by copies of invoices, paid bills, copies of endorsed checks, staff timesheets and other means of proving work was completed or property acquired and paid for by or due from Project Developer. All requests for payment must be made no later than fifteen (15) days after the funding expenditure deadline defined in Article II of this Agreement.

For construction costs payable under this Agreement, each request for disbursement shall also be accompanied by a certification from the Project Contractor and approved by the Project Developer that the request is for expenses that have been incurred.

The Project Developer may not request reimbursement of HOME or City Funds under this Agreement unless the funds are for repayment of eligible HOME costs and the amount of each reimbursement request shall be limited to the amount expended.

In no event shall the total amount of consideration paid under the Agreement exceed Four Hundred Sixty Thousand Dollars (\$460,000.00). This amount shall be expended by June 30, 2023. If the Project Developer fails to submit proper documentation for draws and reimbursements under the terms of this Agreement then the remaining portion will be forfeited by the Project Developer and the funds will remain with the City.

Project Developer shall maintain all such records, accounts, property records, and personnel records as are deemed necessary by the City to assure proper accounting of project funds and compliance with the provisions of this Agreement. The Project Developer shall make copies of its financial statements and such other records as necessary available to enable the City to determine the financial condition and continued financial viability of the project. Project Developer shall also maintain financial and program records as follows:

1. Items purchased and paid for through standard Project Developer procedure - An invoice and copy of the endorsed check issued for payment.
2. Contractual Agreements - Contract, billings, and copies of warranties.
3. Any materials drawn from stockpile - Records indicating the amount of material and cost based on the purchase price.
4. Capital expenditures in excess of ten thousand (\$10,000) - Description, model, serial number, date of acquisition, and cost of acquisition, if applicable to Agreement and approved budget.
5. Proper documentation and verification of income and assets of persons served.

Flexibility of costs between project budget categories shall not be allowed and funds made available for expenditure under one project budget category shall not be used to pay costs incurred under any other project category budget except upon prior written consent of the City in the form of a Budget Realignment Memo signed by the City Manager or by his/her designee. Flexibility of line item costs will be allowed provided there is no increase in total project cost as set forth in Article I, Scope of Services of this agreement and provided that any request for change is submitted in writing and approved by written consent of the Affordable Housing Services Director or by his/her designee. Notwithstanding the foregoing, as long as the funds provided hereunder are used for eligible costs, line items may be reallocated to other line items as long as permitted by any senior mortgagee and the budget remains in balance.

The federal funds supporting this project trigger federal labor relation compliance obligations which will include, if applicable, enforcing Davis-Bacon prevailing wage requirements for all construction activity onsite, including construction activity not funded by these federal funds. Other federal requirements include, if applicable, Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act, MBE participation and Section 3 compliance. All related documentation to show compliance with these items is required when requested by the City.

### **Section III. PROCEDURE**

#### **1. Schedule of Values**

At least ten (10) days prior to submitting the first Application for Payment for construction costs, the Project Developer shall submit to the City a final schedule of values and construction schedule for all activities of the Scope of Work detailed in **Exhibit "A"**. The schedule shall be satisfactory in form and substance to the City and shall subdivide the work into component parts in sufficient detail to serve as the basis for measuring the work in place and calculating amounts for progress payments during construction. Unsupported or unreasonable allocation of costs to any one activity shall be justification for rejection of the schedule. **No payment will be made until the schedule of values has been**

**submitted and approved by the City.** The Application for Payment shall delineate all activities on the schedule, the value of each, previous percentage completed approved, current percentage completed requested, and value of percentage requested. The construction schedule shall be provided on a monthly basis detailing the projection of the work completed to date.

2. Application for Payment (AFP)

The first AFP may be made on the date of execution and delivery of the Note and other applicable loan documents and then monthly thereafter, but not more than once a month. Each progress payment shall be accompanied by an AIA Form G-702 certification from the Project Contractor for expenses having been incurred on this Project. Copies of paid invoices, endorsed checks, construction vouchers, or other means of establishing work has been completed must be submitted by the Project Developer. The AFP, when submitted, shall be filled out accurately and signed by the Project Developer, covering the work completed as of the date the AFP and supported by such data as required by the City. The Project Developer shall certify in writing that all subcontractors and suppliers have been paid for acceptable work and materials from previous progress payments received (less any retainage) or from other project sources prior to receipt of any progress payments. If payment is requested on the basis of materials and/or equipment not incorporated in the work, but delivered and suitably stored at the construction site or another location agreed to in writing, the AFP shall also be accompanied by such supporting data as will establish the City's title to the material and equipment and protect its interest in. This shall be at the sole discretion of the City. Disbursements of federal program or City funds shall not be made until the City approves the request for payment and inspects the work completed. If all conditions are met, and the work performed and materials supplied are satisfactory to the City and after concurrence by the Project Developer, the Project Developer shall receive payment.

3. Inspection and Approval

Beginning with the Project Developer's second request for payment, the Project Developer shall submit a Contractor's Statement of Satisfaction which shall be applicable to the general contractor and certify that all monies due have been paid. This notice must be signed and witnessed by a Notary. In addition, the City may elect to perform on-site inspections to verify progress.

4. Retainage

All progress payments will be subject up to a ten percent (10%) retainage. When fifty percent (50%) of the work has been completed (not including stored materials), the Project Developer may reduce the percentage of retainage to 0% being withheld for the remaining work such that retainage at 100% completion will be equal to 5%. The retainage may be increased for deficiencies included but not limited to schedule delays, delinquent submittals, subcontractor non-payment (regardless of fault), or defective work. All remaining retainage shall be requested in the final payment only after final acceptance of work including an on-site inspection by the City. However, the City does have authority to release retainage.

5. Substantial Completion

When the Project Developer believes the construction activities are substantially complete, it shall certify as such in writing notifying the City and the City will make an inspection of the construction to determine the status of completion. If the City considers the construction substantially complete, it will provide written notice in concurrence. If the City does not consider the construction substantially complete, the City will provide written notification to the Project Developer listing the specific reasons. However, substantial completion cannot occur until all conditions necessary for safe and proper use, occupancy, maintenance and operations are in place.

6. Final Completion

Upon written notice from the Project Developer that the construction is complete, the City shall schedule a final inspection with the Project Developer and any other personnel requested by the City. The City shall notify the Project Developer in writing of any work this inspection reveals to be defective, or otherwise not in accordance with Agreement or applicable codes and standards of the City. If such notice is received, the Project Developer shall take immediate action as deemed necessary to remedy such defects and bring the construction into full compliance with the Agreement. Final completion of the work shall be achieved by the Project Developer only when the City determines that all work required under the Agreement has been satisfactorily completed and issues a Certificate of Final Completion.

#### 7. Application for Final Payment (AFFP)

The application for final payment shall be accompanied by: 1) the Project Developer's affidavit of payment of any debts and claims from the subcontractors, general contractor or other entities associated with the construction, 2) a Certificate for Final Completion, including the final inspection report, 3) a certificate of occupancy for each building, and 4) a copy of the general contractor's statements of satisfaction. If, on the basis of observation including final inspection, review of the Application for Final Payment (AFFP) and all other required documents, the City is satisfied that the construction has been completed and the Project Developer has fulfilled its obligations under the Agreement, final payment will be made. Otherwise the City will return the AFFP to the Project Developer indicating in writing the reason(s) for refusing to approve final payment, in which case the Project Developer will make necessary corrections and resubmit the AFFP for approval.

### **Section IV. PROJECT SCHEDULE**

It is anticipated that the construction work defined for the Project will begin in [September] of 2022, and the construction will be completed in December 31 2023. The lease-up period is planned to commence in [December 31, 2023]. In accordance with 24 CFR 92.252, the HOME assisted units must be occupied by eligible households within six (6) months of project completion. The funding expenditure deadline for this Agreement is June 30, 2023. Correspondence from the Project Developer must be provided to the City as soon as possible requesting and noting the circumstances that cause any delay to the Project.

### **Section V. PERFORMANCE MEASURES**

The overall goal of this Project is to provide affordable, decent and safe housing for the very low and low income residents of the City of Lakeland. The outcome objective is to increase the number of affordable housing rental units in the City of Lakeland. The Project Developer shall meet the affordable housing objectives for the HOME Assisted Units for a period of 20 years from Project completion (i.e., receipt of final CO).

### **Section VI. PROGRAM REPORTS**

The Project Developer shall provide the following reports to the City throughout various stages of the Project as follows:

Construction - The Project Developer shall submit to the City within ten (10) days from the end of each month, a Monthly Progress Report in substantially the same format as set forth in **Exhibit "E"**, attached hereto and made a part hereof.

Lease-up - The Project Developer shall provide initial occupancy information for each tenant occupying a HOME unit in substantially the same format as set forth in **Exhibit "F"**, attached hereto and made a part hereof.

Annually - The Project Developer shall submit to the City annual reports including, but not limited to, updated insurance information, financial audits pursuant to Article XVI of this Agreement, and the Occupancy and Rent Reporting Form in substantially the same format as set forth in **Exhibit “F”**.

## **Section VII. EMERGENCY DUTY/INCIDENT MANAGEMENT**

Pursuant to a Federal, State or local government Declared State of Emergency, the City may order any action necessary to abate a threat or danger that it determines may be an imminent and substantial endangerment to human health, public safety, the general welfare of individuals or the environment because of an actual or impending disaster.

In the event of a disaster or major incident, the Project Developer may be required to assist the City in response and recovery efforts to include sharing of information, partnering with the City for use of the Project Developer’s resources and coordination of any actions deemed necessary to augment the City’s response and/or recovery efforts, the Project Developer agrees to assist in disaster response and recovery efforts to the best of their ability and may be called upon to provide assistance at the Disaster Recovery Center, located at the City of Lakeland office or other designated location.

The Project Developer further agrees that, under this agreement, suspension of its usual and customary activities as well as the activities defined under the scope of this agreement may be required. It also may be necessary for the City to reallocate federal funds designated to the Project Developer for the purposes of emergency situation management operations. Program funds will be reallocated to the Project Developer in the amount de-obligated under the suspension after the emergency management is declared completed.

**End Exhibit “A”**

**EXHIBIT "B"**  
**REQUEST FOR PAYMENT**  
**Swan Landing Multi-Family Project**

**PROJECT DEVELOPER:** BLUE GRIFFIN TERRACE, LLC. **BOCC DOC NO:** \_\_\_\_\_  
**PROJECT NAME:** Swan Landing  
**FOR THE MONTH OF:** \_\_\_\_\_ **REQUEST NO:** \_\_\_\_\_

**FINANCIAL STATUS REPORT:**

BUDGET CATEGORIES	TOTAL APPROVED BUDGET	EXPENDITURES			REMAINING BALANCE
		Previous Payments:	AMOUNT OF THIS REQUEST:	Payments made to Date:	
<b>Hard and Soft Construction Cost</b>	\$ _____				
<b>Land Acquisition</b>					
<b>TOTAL</b>	<b>\$460,000.00</b>				

I certify that the goods and/or services covered by this request have been provided to Polk County in accordance with the terms and conditions of the contracts and are documented by the attachment(s).

\_\_\_\_\_  
 AUTHORIZED SIGNATURE DATE

Please attach documentation substantiating expenditures.

**FOR CITY USE ONLY**

**FUNDING SOURCE** \_\_\_\_\_ **PO NO:** \_\_\_\_\_  
**GRANT YEAR** \_\_\_\_\_ **RECEIPT NO:** \_\_\_\_\_

**APPROVED TOTAL \$** \_\_\_\_\_

**FISCAL** \_\_\_\_\_ **PROGRAMMATIC** \_\_\_\_\_  
 Authorized Signature Authorized Signature

I verify that the goods and services have been received by the City and documentation is attached and subject to final audit.

\_\_\_\_\_  
 Finance Manager Date  
 [Affordable Housing Services]

**EXHIBIT "C"**  
**LEGAL DESCRIPTION**  
**Swan Landing Multi-Family Project**

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

A parcel of land lying within Section 2, Township 28 South, Range 23 East, Polk County, Florida, being more particularly described as follows:

For a POINT OF REFERENCE commence at the Southwest corner of the Northwest 1/4 of said Section 2; thence N.89°56'14"E., a distance of 663.77 feet along the South boundary of the Northwest 1/4 of said Section 2 to the East line of the West 1/2 of the Southwest 1/4 of the Northwest 1/4 of said Section 2; thence N.00°12'29"W., a distance of 257.47 feet along said East line for a POINT OF BEGINNING; thence continue along said East line, N.00°12'23"W., a distance of 995.24 feet to the South right-of-way line of Griffin Road; thence S.89°25'54"W., a distance of 504.64 feet along said South right-of-way line to a non-tangent point of curvature; thence Southwesterly 39.51 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 65°37'03", and a chord bearing and distance of S.32°48'31"W., 37.39 feet; thence S.00°00'00"E., a distance of 44.14 feet to a point of curvature; thence Southerly 35.41 feet along the arc of a curve to the right, said curve having a radius of 45.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'35"W., 34.52 feet; thence S.44°35'11"W., a distance of 84.86 feet to a point of curvature; thence Southerly 26.85 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'36"W., 26.17 feet; thence S.00°00'00"E., a distance of 138.68 feet to a point of curvature; thence Southeasterly 27.10 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 45°00'00", and a chord bearing and distance of S.22°30'00"E., 26.41 feet; thence S.45°00'00"E., a distance of 163.01 feet to a point of curvature; thence Southeasterly 67.81 feet along the arc of a curve to the right, said curve having a radius of 115.50 feet, a central angle of 33°38'26", and a chord bearing and distance of S.28°10'47"E., 66.84 feet; thence S.19°00'15"E., a distance of 64.30 feet; thence S.11°21'34"E., a distance of 38.22 feet; thence S.13°09'36"W., a distance of 29.42 feet; thence S.00°09'04"W., a distance of 57.30 feet; thence S.50°32'42"W., a distance of 44.43 feet; thence S.51°01'26"W., a distance of 37.97 feet; thence S.60°23'32"W., a distance of 54.98 feet; thence N.87°26'58"W., a distance of 49.62 feet; thence N.16°46'15"E., a distance of 5.43 feet; thence N.73°40'56"E., a distance of 34.16 feet; thence N.45°45'25"E., a distance of 27.46 feet; thence N.09°56'51"W., a distance of 40.48 feet; thence S.81°35'24"W., a distance of 15.58 feet; thence S.41°55'23"W., a distance of 78.40 feet to a point of curvature; thence Southerly 3.30 feet along the arc of a curve to the left, said curve having a radius of 4.50 feet, a central angle of 42°04'32", and a chord bearing and distance of S.20°53'07"W., 3.23 feet; thence S.00°09'09"E., a distance of 198.33 feet to a point of curvature; thence Southeasterly 30.39 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 50°27'54", and a chord bearing and distance of S.25°23'06"E., 29.41 feet; thence S.55°18'50"E., a distance of 13.50 feet; thence N.83°25'04"E., a distance of 42.52 feet; thence N.67°10'31"E., a distance of 59.38 feet; thence S.87°35'00"E., a distance of 68.14 feet; thence N.46°08'46"E., a distance of 20.75 feet; thence N.04°04'34"W., a distance of 32.71 feet; thence N.42°04'07"E.,

a distance of 38.84 feet; thence S.85°16'23"E., a distance of 47.58 feet; thence N.82°32'11"E., a distance of 49.32 feet; thence S.85°49'01"E., a distance of 47.71 feet; thence S.11°57'02"E., a distance of 36.55 feet; thence N.75°18'55"E., a distance of 29.85 feet; thence N.42°20'44"E., a distance of 29.94 feet; thence N.44°37'32"E., a distance of 49.67 feet; thence S.57°47'19"E., a distance of 33.89 feet; thence S.47°03'53"E., a distance of 31.58 feet; thence N.57°58'38"E., a distance of 23.82 feet; thence S.61°00'43"E., a distance of 47.64 feet; thence S.19°25'17"E., a distance of 42.05 feet; thence S.55°57'47"E., a distance of 29.69 feet to the POINT OF BEGINNING.

~~ End Exhibit "C"

**EXHIBIT “D”**  
**INSURANCE REQUIREMENTS**  
**Swan Landing**

The following insurance requirements and limits of liability are required:

A. Worker’s Compensation (as required by Florida statute) & Employers’ Liability Insurance [Not applicable to Swan Landing Project]:

Employer’s Liability	\$100,000.00	Limit each accident
	\$500,000.00	Limit Disease Aggregate
	\$100,000.00	Limit Disease each employee

B. Commercial General Liability Insurance:

General Aggregate	\$1,000,000.00
Products and Completed Operations	\$1,000,000.00
Personal and Advertising Injury	N/A
Each Occurrence	\$1,000,000.00
Fire Damage (any one fire)	\$100,000.00

C. Business Automobile Liability Insurance “ANY AUTO” coverage is required [Not applicable to Swan Landing Project]:

Bodily Injury & Property Damage Liability: \$1,000,000.00 - Combined Single Limit  
Each Accident

D. Builder’s Risk is required.

E. Professional Liability: \$N/A per claim.

\* General Liability and Auto Liability Insurance must include “The City of Lakeland, a political subdivision of the State of Florida” as an Additional Insured.

\*\*All insurance policies must include standard fire and extended coverage in amounts not less than necessary to comply with the coinsurance clause. All such insurance shall be carried by companies approved by the City, and all policies shall be in such form and shall have attached hereto loss payable clauses in favor of “The City of Lakeland, a political subdivision of the State of Florida” and any other parties as shall be satisfactory to the City. The City shall be listed as an additional insured on all such insurance policies.

FLOOD INSURANCE. *(Required whenever the property is located in an area of special flood hazards in which flood insurance is available under the National Flood Insurance Act.)*

REQUIRED                                       NOT REQUIRED

Flood insurance shall be provided for the subject property during the term of the mortgage loan. The insurance shall be in an amount at least equal to the outstanding principal balance of all mortgage(s), or the maximum amount of insurance available with respect to the project under the National Flood Insurance Act, whichever is lesser.

End Exhibit "D"

**EXHIBIT "E"**  
**MONTHLY REPORTING**  
**Swan Landing Multi-Family Project**

**Page 1**

**I. Month** \_\_\_\_\_

*Reports are due to [Affordable Housing Services] by the 15th day of the month following the reporting month. The report is submitted even with no activity on the project and briefly describes the circumstances of no activity.*

	<b>TOTAL FUNDS</b>	<b>FUNDS EXPENDED THIS MONTH</b>	<b>REMAINING BALANCE OF FUNDS</b>	<b>PERCENTAGE OF FUNDS EXPENDED%</b>
<b>HOME</b> Allocation	\$210,000			
Total General Funds	\$250,000			
Total Funds	\$460,000			

Describe briefly the project accomplishments this month:

Please note briefly project status/delays: (Attach additional page, if necessary)

**II.**

Do you need technical assistance?      Yes          No   

If yes, please specify:

***I certify the information contained in this report is accurate and the program is operating according to the terms, guidelines and requirements set forth in the Recipient Agreement.***

SIGNATURE of person preparing report: \_\_\_\_\_

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

**EXHIBIT "F"**  
**HOME PROGRAM INITIAL OCCUPANCY AND RENT REPORTING FORM**  
**Swan Landing Multi-Family Project**

Year: \_\_\_\_\_

Of the total HOME Units, the number:

Affordable units: \_\_\_\_\_

Years of affordability guaranteed: \_\_\_\_\_

Units Qualified as Energy Star: \_\_\_\_\_

Section 504 accessible: \_\_\_\_\_

Low Home units \_\_\_\_\_

High Home units \_\_\_\_\_

Units for Persons Transitioning  
Out of Homelessness \_\_\_\_\_

Households previously living in subsidized housing: \_\_\_\_\_

Of the number of Affordable Units, the number:

Occupied by elderly (62 and over) \_\_\_\_\_

Units specifically designated for persons with HIV/AIDS: \_\_\_\_\_  
of those, the # specifically for chronically homeless \_\_\_\_\_

Units specifically designated for homeless: \_\_\_\_\_  
of those, the # specifically for chronically homeless \_\_\_\_\_



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**EXHIBIT “G”**  
**Swan Landing Multi-Family Project**  
**EQUAL EMPLOYMENT OPPORTUNITY - APPLICABLE STATUTES, ORDERS**  
**AND REGULATIONS\***

**CITY OF LAKELAND, FL**

---- City of Lakeland Code of Ordinances Chapter 50.

**STATE ( AS AND IF APPLICABLE)**

- Florida Constitution, Preamble and Article 1, § 2 protect citizens from being deprived of inalienable rights because of race, religion, national origin, or physical disability.
- Florida Statutes § 112.042, requires nondiscrimination in employment by counties and municipalities, on the basis of race, color, national origin, sex, handicap, or religion.
- Florida Statutes § 112.043, prohibits age discrimination in employment.
- Florida Statutes § 413.08, provides for rights of an individual with a disability and prohibits discrimination against persons with disabilities in employment and housing accommodations.
- Florida Statutes § 448.07, prohibits wage rate discrimination on the basis of sex.
- Florida Civil Rights Act of 1992, Florida Statutes §§760.01 – 760.11, as amended.
- Florida Statutes §509.092, prohibits refusing access to public lodging on the basis of race, creed, color, sex, physical disability or national origin.
- Florida Statutes §725.07, prohibits discrimination on the basis of sex, marital status or race in loaning money, granting credit or providing equal pay for equal services performed.
- Florida Fair Housing Act, Florida Statutes §§760.20 – 760.37.
- Florida Statutes §760.40, provides for the confidentiality of genetic testing.
- Florida Statutes §760.50, prohibits discrimination on the basis of AIDS, AIDS-related complex, and HIV.
- Florida Statutes §760.51, provides for remedies and civil penalties for violations of civil rights.
- Florida Statutes §760.60, prohibits discriminatory practices of certain clubs.
- Florida Statutes §760.80, provides for minority representation on boards, commissions, council, and committees.

**FEDERAL (AS AND IF APPLICABLE)**

- Section 1 of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV, § 1.
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.
- Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., as amended by the Equal Employment Opportunity Acts of 1972 and 1975, the Civil Rights Act of 1991, P. L. 102-166, 105 Stat. 1071, and the Lilly Ledbetter Fair Pay Act of 2009, P. L. 111-2, 123 Stat. 5.
- Civil Rights Act of 1866 and the Enforcement Act of 1870, 14 Stat. 27 and 16 Stat. 140, 42 U.S.C. § 1981.
- Title VIII of the Civil Rights Act of 1968, Fair Housing Act, P. L. 90-284, 82 Stat. 73, 42 U.S.C. 3601 et seq.
- Civil Rights Restoration Act of 1987, P. L. 100-259, 102 Stat. 28.
- Civil Rights Act of 1991, P. L. 102-166, 105 Stat. 1071.
- Equal Opportunity Regulations, 41 CFR § 60-1.4, as amended.
- Standards for a Merit System of Personnel Administration, 5 CFR § 900.601 et seq.
- Executive Order 11246, Equal Employment Opportunity, and its implementing regulations, including 41 CFR § 60-2 (Revised Order 4).
- Rehabilitation Act of 1973, P. L. 93-112, 87 Stat. 355, as amended.
- Interagency Agreement promulgated on March 23, 1973.
- Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws.
- Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq., P. L. 90-202, as amended.
- Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., P. L. 94-135, 89 Stat. 728, as amended.
- Older Americans Amendments of 1975, 42 U.S.C. § 3001 et seq., P. L. 94-135, 89 Stat 713.
- Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as amended by the ADA Amendments Act of 2008, P. L. 110-325, 122 Stat. 3553.
- Vietnam Era Veterans’ Readjustment Assistance Act of 1974, 38 U.S.C. § 4212, as amended.
- Section 14001 of Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- State and Local Assistance Act of 1972, as amended.
- Office of Management and Budget Circular A-102, Grants and Cooperative Agreements with State and Local Governments, as amended.
- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 40 C.F.R. §§ 5.100 -5.605.
- Executive Order 13673, Fair Pay and Safe Workplaces.

\* **“The above are not intended to be a complete list of all applicable local, state, or federal statutes, orders, rules or regulations, as they may be amended from time-to-time, or added to (newly promulgated) from time-to-time, during the term of this contract.”**

If applicable, and required by 41 CFR 60-1.4 or other federal law or regulation, during the performance of this contract, the Project Developer (referred to in this Exhibit as “contractor”), agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted

by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

End of Exhibit "G"

**EXHIBIT “H”  
DECLARATION OF COVENANTS AND RESTRICTIONS  
Swan Landing**

After Recording Return to:

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(SPACE ABOVE THIS LINE FOR RECORDER’S USE)

**DECLARATION  
OF COVENANTS AND RESTRICTIONS**

(a/k/a Land Use Restrictive Agreement or “LURA”)

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS**, hereinafter referred to as the “LURA”, is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between The City of Lakeland, Florida, hereinafter referred to as the “City”, and Blue Griffin Terrace, LLC, a Florida limited liability company, hereinafter referred to as the “Owner”.

**R E C I T A L S**

**WHEREAS**, the Owner is the owner in fee simple of that certain real property located in Polk County, Florida, legally described in **Exhibit “A”** attached hereto and incorporated herein by reference, and referred to as the “Property”; and

**WHEREAS**, on \_\_\_\_\_, the City and the Owner entered into that certain HOME Investment Partnership Program Funding Agreement, hereinafter referred to as the HOME Agreement, through which the Owner will receive federal program funds from the HOME Investment Partnership Program and City funds through the City’s Affordable Housing Program, hereinafter referred to as “HOME”, for acquisition of and construction on the Property of an 88-unit affordable rental housing community known as Swan Landing; and

**WHEREAS**, as set forth in the HOME Agreement, two (2) of the eighty-eight (88) rental units in Swan Landing will be set aside as HOME units. One (1) HOME-assisted unit will be HIGH HOME units reserved for Low Income Households at or below 80% of AMI and One (1) HOME-assisted unit will be LOW HOME units reserved for Very Low Income Households at or below 50% of AMI; and

**WHEREAS**, as a condition of receipt of the HOME funds and pursuant to City of Lakeland Policy, the Owner agrees to the restricted use of this Property as set forth in the HOME Agreement and in this LURA; and

**WHEREAS**, pursuant to the HOME Agreement, the use restriction is further described in the Mortgage and Promissory Note executed between the Owner and the City; and

**WHEREAS**, the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", has requested that land use restrictions be set forth in a separate recorded agreement, and the City and the Owner desire to enter into this LURA in order to be deemed in compliance with HUD regulations; and

**WHEREAS**, this LURA shall be properly filed and recorded by the City within the Official Public Records of Polk County, Florida and shall constitute a restriction upon the use of the Property subject to and in accordance with the terms contained herein.

**NOW THEREFORE**, in consideration of the City providing funding to the Owner, and acknowledging that compliance with this LURA is necessary pursuant to HUD regulations, the parties hereto agree as follows:

1. Recitals. The foregoing Recitals are true and correct and by this reference are incorporated as if fully set forth herein.

2. Property. The Property subject to this LURA is further described in **Exhibit "A"**, attached hereto and incorporated herein by reference.

3. Definitions. The following terms as used in this LURA shall have the meanings given below unless expressly provided to the contrary:

The term "Low Income Household" shall mean those persons whose household income does not exceed eighty percent (80%) of the median household income, adjusted by family size, for Polk County Metropolitan Statistical Area, as defined annually by the United States Department of Housing and Urban Development.

The term "Very Low Income Household" shall mean those persons whose households income does not exceed fifty percent (50%) of the median household income, by family, for Polk County Metropolitan Statistical Area, as defined annually by the United States Department of Housing and Urban Development.

4. Duration of Covenants. The covenants set forth in this LURA shall remain in effect for a period of **twenty (20)** years from the date that a certificate of occupancy has been issued for the Project as described in the HOME Agreement. Upon the expiration of the 20-year period, the covenants herein shall be deemed satisfactorily complied with unless documents properly and timely recorded with the Polk County Clerk of Court indicate otherwise. Notwithstanding the foregoing, this LURA shall automatically terminate and be of no force and effect in the event of involuntary noncompliance with this LURA caused by fire or other casualty, seizure, requisition, change in a federal law or an action by a federal agency that prevents the City from enforcing the provisions hereof, or foreclosure or a deed in lieu of foreclosure by the City or its assignee. Upon a termination of this LURA pursuant to the preceding sentence, the City and the Owner will execute a recordable document further evidencing such termination. In the case of foreclosure or deed in lieu of foreclosure, such termination will cease to be effective if at any time during the balance of the term hereof, the Owner or any affiliated entity obtains an ownership interest in the Property for federal tax purposes.

5. Use and Occupancy. For the duration of this LURA, the Owner shall not devote the Property to any use other than as approved in the HOME Agreement.

6. Covenants Run with the Land. All conditions, covenants, and restrictions contained in this LURA shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City, its successors and assigns, against Owner, its successors and assigns, to or of the Property or any portion thereof, and any party in possession or occupancy of said Property or portion thereof, subject to the provisions of Section 4, above. Each and every contract, deed, or other instrument hereafter executed covering or conveying the land or the Project or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the land or the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the land or the Project.

7. Violation of Agreement. If a material violation of any of the provisions hereof occurs and is not cured within a reasonable period of time, after written notice from the City and opportunity to cure as provided in the HOME Agreement, the party to this Agreement that is affected by the violation may institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation and to compel specific performance. The provisions hereof are imposed upon and made applicable to the land and shall run with the land and shall be enforceable against the owner of the Property or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of any party entitled to enforce the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation hereof at any later time or times.

8. Modification of Agreement. The City and its successors and assigns, and Owner and the successors and assigns of Owner in and to all or any part of the fee simple title to the Property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions, or restrictions contained in this LURA without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having any interest less than a fee in the Property. Any amendment or modification to this LURA must be in writing and signed by the City and Owner, or their successors and assigns.

9. Venue and Governing Law. Each party covenants and agrees that any and all legal actions arising out of or connected with this LURA shall be instituted in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, or in the United States District Court for the Middle District of Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This LURA is entered into within, and with reference to the internal laws of, the State of Florida, and shall be governed, construed and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

10. Termination: The covenants set forth herein shall automatically terminate and be of no further force and effect upon satisfactory completion of the requisite 20-year period prescribed herein. Upon passing of the 20-year period, the covenants herein shall be deemed satisfactorily complied with unless documents properly and timely recorded with the Polk County Clerk of Court indicate otherwise.

11. Filing. Upon execution and delivery by the parties hereto, the City shall cause this LURA and all amendments and supplements hereto to be recorded and filed in the Official Public Records of Polk County, Florida, and shall pay all fees and charges incurred in connection therewith.

12. Severability. If any provision hereof shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

13. Entire Agreement. This LURA together with the Exhibits embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby.

**THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY**

**IN WITNESS WHEREOF**, the City and Owner have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date first written above.

\_\_\_\_\_  
H. WILLIAM MUTZ, MAYOR

ATTEST: \_\_\_\_\_  
KELLY S. KOOS, CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: \_\_\_\_\_  
PALMER C. DAVIS  
CITY ATTORNEY

\*\*\*\*\*

**Signed, sealed and delivered in the presence of:**

\_\_\_\_\_  
liability company  
Witness signature

BLUE GRIFFIN TERRACE, LLC, a Florida limited

\_\_\_\_\_  
Name printed or typed

By: Blue Griffin Terrace M, LLC, a Florida  
limited liability company

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

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of physical presence \_\_ or online notarization \_\_, this \_\_ day of \_\_\_\_\_, 2022, by Shawn Wilson, a Manager of Blue Griffin Terrace, M LLC, the Manager of Blue Griffin Terrace, LLC, a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Witness my hand and official seal the date aforesaid,

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Notary: Print or Type Name

My Commission Expires

**LURA Exhibit "A"**  
**Legal Description**

**Folio #:** 23-28-02-000000-034030

**Address:** 2030 Swan Landing Drive, Lakeland, Florida 33810

**Legal Description:**

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

A parcel of land lying within Section 2, Township 28 South, Range 23 East, Polk County, Florida, being more particularly described as follows:

For a POINT OF REFERENCE commence at the Southwest corner of the Northwest 1/4 of said Section 2; thence N.89°56'14"E., a distance of 663.77 feet along the South boundary of the Northwest 1/4 of said Section 2 to the East line of the West 1/2 of the Southwest 1/4 of the Northwest 1/4 of said Section 2; thence N.00°12'29"W., a distance of 257.47 feet along said East line for a POINT OF BEGINNING; thence continue along said East line, N.00°12'23"W., a distance of 995.24 feet to the South right-of-way line of Griffin Road; thence S.89°25'54"W., a distance of 504.64 feet along said South right-of-way line to a non-tangent point of curvature; thence Southwesterly 39.51 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 65°37'03", and a chord bearing and distance of S.32°48'31"W., 37.39 feet; thence S.00°00'00"E., a distance of 44.14 feet to a point of curvature; thence Southerly 35.41 feet along the arc of a curve to the right, said curve having a radius of 45.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'35"W., 34.52 feet; thence S.44°35'11"W., a distance of 84.86 feet to a point of curvature; thence Southerly 26.85 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'36"W., 26.17 feet; thence S.00°00'00"E., a distance of 138.68 feet to a point of curvature; thence Southeasterly 27.10 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 45°00'00", and a chord bearing and distance of S.22°30'00"E., 26.41 feet; thence S.45°00'00"E., a distance of 163.01 feet to a point of curvature; thence Southeasterly 67.81 feet along the arc of a curve to the right, said curve having a radius of 115.50 feet, a central angle of 33°38'26", and a chord bearing and distance of S.28°10'47"E., 66.84 feet; thence S.19°00'15"E., a distance of 64.30 feet; thence S.11°21'34"E., a distance of 38.22 feet; thence S.13°09'36"W., a distance of 29.42 feet; thence S.00°09'04"W., a distance of 57.30 feet; thence S.50°32'42"W., a distance of 44.43 feet; thence S.51°01'26"W., a distance of 37.97 feet; thence S.60°23'32"W., a distance of 54.98 feet; thence N.87°26'58"W., a distance of 49.62 feet; thence N.16°46'15"E., a distance of 5.43 feet; thence N.73°40'56"E., a distance of 34.16 feet; thence N.45°45'25"E., a distance of 27.46 feet; thence N.09°56'51"W., a distance of 40.48 feet; thence S.81°35'24"W., a distance of 15.58 feet; thence S.41°55'23"W., a distance of 78.40 feet to a point of curvature; thence Southerly 3.30 feet along the arc of a curve to the left, said curve having a radius of 4.50 feet, a central angle of 42°04'32", and a chord bearing and distance of S.20°53'07"W., 3.23 feet; thence S.00°09'09"E., a distance of 198.33 feet to a point of curvature; thence Southeasterly 30.39 feet along the arc of a curve to the left, said curve having

a radius of 34.50 feet, a central angle of 50°27'54", and a chord bearing and distance of S.25°23'06"E., 29.41 feet; thence S.55°18'50"E., a distance of 13.50 feet; thence N.83°25'04"E., a distance of 42.52 feet; thence N.67°10'31"E., a distance of 59.38 feet; thence S.87°35'00"E., a distance of 68.14 feet; thence N.46°08'46"E., a distance of 20.75 feet; thence N.04°04'34"W., a distance of 32.71 feet; thence N.42°04'07"E., a distance of 38.84 feet; thence S.85°16'23"E., a distance of 47.58 feet; thence N.82°32'11"E., a distance of 49.32 feet; thence S.85°49'01"E., a distance of 47.71 feet; thence S.11°57'02"E., a distance of 36.55 feet; thence N.75°18'55"E., a distance of 29.85 feet; thence N.42°20'44"E., a distance of 29.94 feet; thence N.44°37'32"E., a distance of 49.67 feet; thence S.57°47'19"E., a distance of 33.89 feet; thence S.47°03'53"E., a distance of 31.58 feet; thence N.57°58'38"E., a distance of 23.82 feet; thence S.61°00'43"E., a distance of 47.64 feet; thence S.19°25'17"E., a distance of 42.05 feet; thence S.55°57'47"E., a distance of 29.69 feet to the POINT OF BEGINNING.

**End of Exhibit "A"**

**SCHEDULE 1**  
**Swan Landing**  
**MORTGAGE**

Prepared by:

Return to:

□

Attention:

□

**MORTGAGE**

**THIS MORTGAGE**, hereinafter called the "Mortgage", made on this \_\_\_\_ day of \_\_\_\_\_, 2022 between Blue Griffin Terrace, LLC, a Florida limited liability company, hereinafter, and if more than one party jointly and severally, called the "Borrower", whose principal address is 5300 W. Cypress Street, Tampa, Florida 33607 and the Mortgagee, The City of Lakeland, whose principal address is 228 S. Massachusetts Ave., Lakeland, Florida 33801, hereinafter called the "Lender".

**W I T N E S S E T H:**

**THAT** to secure the payment of an indebtedness in the principal amount of Four Hundred Sixty Thousand and NO/100 Dollars (\$460,000.00) which shall be payable in accordance with that certain Note, bearing even date herewith, inclusive of the signature of the Borrower, which is affixed hereto and made a part hereof, hereinafter referred to as the "Note", and all other indebtedness which the Borrower is obligated to pay to the Lender pursuant to the provisions of the Note and this Mortgage, the Borrower hereby grants, conveys and mortgages to the Lender all of its right, title and interest in all of the following:

**ALL THAT** certain lot, piece or parcel of land situated in Polk County and State of Florida, bounded and described in Exhibit "A"

**TOGETHER** with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions hereto, shall be deemed to be and remain a part of the property covered by this Mortgage and all of the foregoing, together with said property are herein referred to as the "Property"; and

**TOGETHER** with any and all awards now or hereafter made for the taking of the Property mortgaged hereby, or any part thereof (including any easement) by the exercise of the power of eminent domain, including any award for change of grade of any street or other roadway, which awards are hereby assigned to Lender and are deemed a part of the property mortgaged hereby; and Lender is hereby authorized to collect and receive the same toward the payment of indebtedness secured by this Mortgage, notwithstanding the fact that the amount thereon may not then be due and payable; and

**TOGETHER** with all rights, title and interest of Borrower in and to the land lying in the streets, roads, or alleys adjoining to the above-described land. All the above described land, buildings, other structures, fixtures, articles of personal property, awards and other rights and interests of Borrower being hereinafter collectively referred to as the "Mortgaged Property".

**TO HAVE AND TO HOLD** the Mortgaged Property and every part thereof unto Lender, its successors and assigns forever for the purposes and uses herein set forth.

AND Borrower further covenants and agrees with Lender, as follows:

**1. PAYMENT OF PRINCIPAL AND INTEREST.**

Borrower shall promptly pay the principal of the indebtedness evidenced by the Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times and in the manner provided in the Note and in the Mortgage. The terms of the loan shall be zero percent (0%) interest over a twenty (20) year period, to be paid annually in arrears out of available Net Cash Flow (as defined in the Borrower's Amended and Restated Operating Agreement dated as of [August 1, 2022] (the "Operating Agreement") and if such Operating Agreement is terminated or the definition of Net Cash Flow amended, then out of Project cash flow after payment of Project Expenses (as defined below) and senior debt service, hereinafter referred to as "Net Cash Flow", with interest only payments for the term of the Note on June 30 of each year for the prior calendar year, starting with payments being due on June 30, 2024 for the 2023 calendar year. The principal and all accrued unpaid interest shall be due at the completion of the twentieth year from the execution of the Note. If there is sufficient Net Cash Flow to make a partial payment, Borrower will make a partial payment of accrued interest, if any. Any amount that is not payable as a result of this Paragraph shall accrue, but shall be deferred until maturity (without compounding), or shall be payable in full upon refinance or disposition of the Property defined in the legal description of this Mortgage.

Project Expenses

Project Expenses shall mean any usual and customary operating and financial costs associated with the Project, such as compliance monitoring fee, deferred developer fee, member loan repayments, incentive management fees, any financial monitoring fee, any replacement reserves, ordinary working capital reserves, any servicing fees and any debt service reserves required by any lienholder superior to the City's lien on the Property defined in the legal description of this Mortgage.

The HOME Agreement and the Declaration of Covenants and Restrictions, also hereinafter referred to as "LURA", are hereby incorporated into this Mortgage by reference and their terms adopted as if fully set forth herein.

**2. FUNDS FOR TAXES, ASSESSMENTS AND LIENS.**

The Borrower shall pay before the same become delinquent, as hereinafter provided, all taxes, assessments, and other governmental charges, fines and impositions, of every kind and nature whatsoever, now or hereafter imposed on the Mortgaged Property, or any part thereof, and will pay when due every amount of indebtedness secured by any lien to which the lien of this Mortgage is expressly subject.

**3. COMPLETION OF IMPROVEMENTS.**

This Mortgage and the attached Note were executed and delivered to secure moneys advanced in full to Borrower by Lender as or on account of a loan evidenced by the Note for the purpose of constructing on the Mortgaged Property eighty-eight (88) multi-family residential apartments for low and very low income households and related amenities, hereinafter collectively referred to as the "Improvements." Borrower shall make or cause to be made all of the Improvements. If the construction or installation of the Improvements shall not be carried out with reasonable diligence, or shall be discontinued at any time for a period of thirty (30) consecutive days for any reason other than strikes, lock-outs, acts of God, fires, floods or other similar catastrophes, such as riots, war or insurrection, federal, state, or local government issued mandates, or other events beyond the control of Borrower, Lender, after due notice to Borrower, is hereby authorized (A) to enter upon the Mortgaged Property and employ any watchman, protect the Improvements from depredation or injury and to preserve and protect such property, (B) to carry out any or all the existing contracts between Borrower and other parties for the purpose of making any of the improvements, (C) to make

and enter into additional contracts and incur obligations for the purposes of completing any portion of the Improvements pursuant to the obligations of Borrower hereunder either in the name of Lender or Borrower, and (D) to pay and discharge all debts, obligations and liabilities incurred by reason of any action taken by Lender as provided in this Paragraph, all of which amounts so paid by Lender, with interest thereon from the date of each such payment at the rate of 12% per annum, shall be payable by Borrower to Lender on demand and shall be secured by this Mortgage.

**4. BUILDING REMOVAL, ADDITIONS AND COMPLIANCE WITH REQUIREMENTS.**

No building, structure, improvement, fixture or personal property mortgaged hereby shall be removed or demolished without the prior written consent of the Lender except for obsolete or worn property replaced by adequate substitutes equal or greater in value than the replaced items when new and inventory of goods in the normal course of business. The Borrower will not make, permit, or suffer any alteration of or addition to any building, structure or improvement which may hereafter be erected or installed upon the Mortgaged Property, or any part thereof, except the Improvements required to be made pursuant to Paragraph 3 hereof, nor will the Borrower use, or permit or suffer the use of, any of the Mortgaged Property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written consent of the Lender. The Borrower will maintain the Mortgaged Property in good condition and state of repair and will not suffer or permit any waste to any part thereof, and will promptly comply with all the requirements of Federal, State and local governments or of any departments, divisions or bureaus thereof, pertaining to such property or any part thereof.

**5. CHARGES AND LIENS.**

The Borrower will not voluntarily create, or permit or suffer to be created or to exist, on or against the Mortgaged Property or any part thereof, any lien superior to the lien of this Mortgage, exclusive of the lien or liens to which this Mortgage is expressly subject, and will keep and maintain the same free from the claims of all parties supplying labor and/or materials which will enter into the construction or installation of the Improvements. The Lender hereby acknowledges the following liens and encumbrances will be superior to the lien of this Mortgage and the Declaration of Covenants and Restrictions executed in connection herewith: a first mortgage construction loan from Bank of America and upon conversion the first mortgage permanent loan from Neighborhood Lending Partners or such other substitute permanent lender selected by Borrower to fund the first mortgage permanent loan and any refinancing thereof (the "Senior Debt") or any such liens and encumbrances provided on the Borrower's title report. The Loan secured hereby and the terms of this Mortgage shall be subordinate in all respects to the Senior Debt and the agreements, documents and instruments executed by Borrower in connection therewith.

**6. NOTICE OF FIRE OR CASUALTY.**

The Borrower will give immediate notice by registered or certified mail to the Lender of any fire, damage or other casualty affecting the Mortgaged Property, or of any conveyance, transfer or change in ownership of such Property, or any part thereof other than customary easements and residential leases.

**7. COVERAGE OF INSURANCE POLICIES.**

a. The Borrower will keep all buildings, other structures and improvements insured against loss by fire and other hazards, casualties and contingencies in such amounts and manner and for such periods as may be reasonably required by Lender. Lender's insurance requirements may change from time to time throughout the term of the indebtedness. All such insurance policies must include standard fire, flood (when applicable) and extended coverage in amounts not less than necessary to comply with the coinsurance clause. Flood insurance is required for the subject property during the term of the mortgage loan whenever the property is located in an area of special flood hazards in which flood insurance is available under the National Flood Insurance Act. When required, flood insurance shall be in an amount at least equal to the outstanding principal balance of all mortgage(s), or the maximum amount of insurance available with

respect to the project under the National Flood Insurance Act, whichever is lesser. All such insurance shall be carried by companies approved by the Lender, and all policies shall be in such form and shall have attached hereto loss payable clauses in favor of the Lender and any other parties as shall be satisfactory to the Lender. All such policies and attachments thereto shall be delivered promptly to the Lender, unless they are required to be delivered to the holder of a lien or a mortgage or similar instrument to which this Mortgage is expressly subject, in which latter event certificates thereof, satisfactory to the Lender, shall be delivered promptly to the Lender. The Borrower will pay promptly when due, as hereinafter provided, any and all premiums on such insurance. The Lender shall be listed as an additional insured on all such insurance policies.

b. In the event of loss or damage to the Mortgaged Property, Borrower will give to the Lender immediate notice thereof by mail, at the address herein above stated and the Lender may make and file proof of loss if not made otherwise promptly by or on behalf of the Borrower. Unless the Borrower and Lender otherwise agree in writing, insurance proceeds shall be applied to restoration or repair, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage with the excess, if any, paid to the Borrower. If the Property is abandoned by the Borrower, for more than thirty (30) days unless due to events described in Paragraph 3, or if the Borrower fails to respond to the Lender within thirty (30) days from the date notice is mailed by the Lender to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the Lender is authorized to collect and apply the insurance proceeds at the Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

c. At least thirty (30) days prior to the expiration of each policy, the Borrower will furnish the Lender with evidence satisfactory to the Lender of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. All policies, including policies for any amounts carried in excess of the required minimum and policies not specifically required by the Lender, will be in a form satisfactory to the Lender, and will be maintained in full force and effect. All policies will contain a provision that the policies will not be cancelled without at least thirty (30) days prior written notice to the Lender. If all or any part of the insurance will expire, or be withdrawn, or become void or unsafe, by reason of the Borrower's breach of any condition, or if for any reason whatsoever the insurance will be unsatisfactory to the Lender, the Borrower will place new insurance on the premises, satisfactory to the Lender.

## **8. TAXES.**

In order to protect more fully the security of this Mortgage, the Borrower shall promptly submit to the Lender upon request, or the Lender's designated agent, the Polk County Tax Invoice for the Mortgaged Property. Such invoice shall show either that no taxes are due or be accompanied by a receipt showing taxes have been paid in full.

## **9. LOCAL ORDINANCES.**

The Improvements and all plans and specifications shall comply with all applicable local ordinances, regulations and rules made or promulgated with lawful authority.

## **10. PROTECTION OF LENDER'S SECURITY.**

If the Borrower fails to perform the material covenants and agreements contained in this Mortgage or the HOME Agreement, excluding any lien to which this Mortgage is expressly subject, or if any action or proceeding is commenced which materially affects the Lender's interest in the Property, including, but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the Lender at the Lender's option, upon notice to the Borrower, may make such appearances, disburse such sums, and take such action as is necessary to protect

the Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by the Lender pursuant to this Paragraph with interest thereon, shall become additional indebtedness of the Borrower secured by this Mortgage. Unless the Borrower and the Lender agree to other terms of payments, such amounts shall be payable upon notice from the Lender to the Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such time would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph shall require the Lender to incur any expense or take any action hereunder.

#### **11. LENDER INSPECTIONS.**

Lender, or any of its Agents or Representatives, shall have the right to inspect the Mortgaged Property during reasonable business hours upon providing Borrower reasonable notice. Should the Mortgaged Property, or any part thereof, require repair, care or attention, then, after notice as provided herein (Paragraph 16) to the Borrower (and Borrower's failure to so perform), the Lender may enter or cause entry to be made upon the Mortgaged Property and repair, protect and maintain the property as the Lender may deem reasonably necessary. Any and all money that the Lender must pay to accomplish the proper maintenance on the Mortgaged Property shall become due and payable under the provision of Paragraph 10.

#### **12. EVENT OF DEFAULT.**

An Event of Default will be the occurrence of any one of the following events, and upon that occurrence the Lender may, at the Lender's option (subject to Paragraph 13, below), declare all sums secured by this Mortgage to be immediately due and payable.

a. Failure to pay the amount of any installment of principal and interest, or other charges payable on the Note, which shall have become due, prior to the due date of the next such installment;

b. Nonperformance by the Borrower of any covenant, agreement, term, or condition of this Mortgage, the Note, the LURA or of any other agreement made by the Borrower with the Lender in connection with such indebtedness, after the Borrower has been given due notice in accordance with Paragraph 13 below by Lender to cure such nonperformance and Borrower has failed to cure within the allowed time frame;

c. Failure of the Borrower to perform any covenant, agreement, term or condition in any instrument creating a lien upon the Mortgaged Property subject to applicable grace, cure and notice provisions, or any part thereof, which shall have priority over the lien of this Mortgage;

d. The Lender's discovery of the Borrower's failure in any application of the Borrower to the Lender to disclose any fact reasonably deemed by the Lender to be material, or the making herein, or in any of the agreements entered into by the Borrower with the Lender (including, but not limited to, the Note and this Mortgage) of any material misrepresentation by, on behalf of, or for the benefit of the Borrower;

e. Failure by the Borrower to submit promptly to the Lender or the Lender's designated agent proof of payment of all insurance and taxes, as required herein; or

**f. IF BORROWER DOES NOT REMAIN OWNER, OR IF ALL OR ANY MATERIAL PART OF THE PROPERTY OR A MATERIAL INTEREST THEREIN IS RENTED, LEASED, SOLD, MORTGAGED, LIENED, OR OTHERWISE TRANSFERRED BY**

**BORROWER, EXCEPT IN THE ORDINARY COURSE OF BUSINESS AS A RENTAL APARTMENT COMPLEX OR AS OTHERWISE PERMITTED HEREIN, WITHOUT LENDER'S PRIOR WRITTEN CONSENT, OR IF FIFTY PERCENT (50%) OR MORE OF THE MANAGER'S INTEREST IN BORROWER IS TRANSFERRED TO PERSONS OR ENTITIES OTHER THAN PERSONS OR ENTITIES HOLDING INTERESTS IN BORROWER (DIRECTLY OR INDIRECTLY), AS OF THE DATE HEREOF, WITHOUT LENDER'S PRIOR WRITTEN CONSENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED IN A MANNER INCONSISTENT WITH THE TERMS OF THIS MORTGAGE OR THE PROMISSORY NOTE OR APPLICABLE SURVIVING TERMS OF THAT CERTAIN HOME AGREEMENT, AS MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, THEN IN ANY OF THE FOREGOING EVENTS, LENDER MAY AT LENDER'S OPTION DECLARE ALL THE SUMS SECURED BY THIS MORTGAGE TO BE IMMEDIATELY DUE AND PAYABLE.**

Additionally, if any member's interest in Borrower is transferred to persons or entities other than persons or entities holding interests in Borrower as of the date hereof, then the Borrower must provide Lender with notice of such transfer within thirty (30) days of such transfer.

Notwithstanding the above, the tax credit investor may freely transfer its interest.

Any notice of default given to Project Developer hereunder shall also be given to Raymond James Housing Opportunities Fund 75 L.L.C., a Florida limited liability company, the investor member of Project Developer (the "Investor Member") and Bank of America, N.A., the construction phase first mortgagee (the "Construction Lender") and the City shall accept any timely cure by the Investor Member as if such cure was made by Project Developer."

### **13. OPTION OF MORTGAGEE UPON EVENT OF DEFAULT.**

Upon the occurrence of An Event of Default, the Lender, prior to acceleration, shall mail notice to the Borrower as is provided in Paragraph 16 hereof, specifying:

- a. The breach;
- b. The action required to cure such breach;
- c. A date not less than ten (10) days from the date the notice is mailed to Borrower by which such breach must be cured if the default is a monetary default, and a date not less than thirty (30) days from the date the notice is mailed to Borrower by which such breach must be cured if the default is a non-monetary default; and
- d. That failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceedings, and sale of the Mortgaged Property. The notice shall further inform the Borrower of the right to assert in the foreclosure proceedings the non-existence of a default, or any other defense of the Borrower to acceleration and foreclosure.

If the breach is not cured on or before the date specified in the notice, the Lender, at the Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand, and may foreclose this Mortgage by judicial proceedings. The Lender shall be entitled to collect in such proceedings all expenses of foreclosure, including, but not limited to, reasonable attorney's fees and costs of documentary evidence, abstracts, title reports and court costs.

### **14. APPOINTMENT OF RECEIVER.**

The Lender in any action to foreclose this Mortgage may be entitled to have a receiver appointed by a Court of Law as a matter of right and without regard to the value of the Mortgaged Property or the solvency of the Borrower or other parties liable for the payment of the Note and other indebtedness secured by this Mortgage. Said receiver shall enter upon, take possession of and manage the Mortgaged Property, and will collect rents from the Mortgaged Property, including those past due. All rents collected by the receiver shall be applied first to payments of the costs of management of the Mortgaged Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds, and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

**15. FORBEARANCE BY LENDER NOT A WAIVER.**

Any forbearance by the Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the Lender shall not be a waiver of the Lender's right to accelerate the maturity of indebtedness secured by this Mortgage.

**16. NOTICE.**

Except for any notice required under applicable law to be given in another manner, (a) any notice to the Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to the Borrower at the Property address or at such other address as the Borrower may designate by notice to the Lender as provided herein, and (b) any notice to the Lender shall be given by certified mail, return receipt requested, to the Lender's address below, or to such other address as the Lender may designate by notice to the Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to the Borrower or the Lender when given in the manner designated herein.

LENDER:                   The City of Lakeland  
228 S. Massachusetts Ave.  
Lakeland, Florida 33801  
Attn: City Attorney's Office

BORROWER:             Blue Griffin Terrace, LLC  
Attn: Shawn Wilson  
c/o Blue Sky Communities LLC  
5300 W. Cypress Street, Suite 200  
Tampa, Florida 33607

With a copy to:       Nelson Mullins Riley and Scarborough LLP  
Attn. Randal M. Alligood, Esq.  
390 N. Orange Ave. Suite 1400  
Orlando, FL 32801

and to:                   Raymond James Housing Opportunities Fund 75 L.L.C.  
c/o Raymond James Affordable Housing Investments, Inc.  
880 Carillon Parkway  
St. Petersburg, FL 33716  
Attention: Steven J. Kropf, President

Nixon Peabody, LLP

Exchange Place  
53 State Street  
Boston, MA 02109  
Attention: Nate Bernard, Esq.  
Telephone: (617) 345-1236  
Email: [Nbernard@nixonpeabody.com](mailto:Nbernard@nixonpeabody.com)

As to Construction Lender:

Bank of America, N.A.  
401 East Las Olas Boulevard, 18th Floor  
Fort Lauderdale, FL 33301  
Attention: Dylan Jones

With copies to:

Bank of America, N.A.  
DC1-842-06-04  
1800 K Street, NW, 6th Floor  
Washington, DC 20006  
Attention: Loan Administration Manager

Holland & Knight LLP  
31 West 52nd Street  
New York, New York 10019  
Attention: Kathleen M. Furey, Esq.

**17. ONE PARCEL.**

In case of a foreclosure sale of the Mortgaged Property, it may be sold in one parcel.

**18. BORROWER'S COPY.**

Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation thereof.

**19. LAWFULLY SEIZED.**

The Borrower is lawfully seized of the Mortgaged Property and has good right, full power, and lawful authority to sell and convey the same in the manner above provided, and will warrant and defend the same to the Lender forever against the lawful claims and demands of any and all parties whatsoever.

**20. BORROWER NOT RELEASED.**

Extension of the time for payment, or modification or amortization of the sums secured by this Mortgage granted by the Lender to any successor in interest of the Borrower, shall not operate to release in any manner the liability of the original Borrower and the Borrower's successor in interest. Lender shall not be required to commence proceedings against such successor, or refuse to extend time for payment or otherwise modify or amortize of the sums secured by this Mortgage, by reason of any demand made by the original Borrower and the Borrower's successors in interest.

**21. CAPTIONS.**

The captions of this Mortgage are for convenience only and shall not be construed as defining or limiting the scope or intent of the provisions hereof.

**22. SUCCESSORS AND ASSIGNS.**

This Mortgage and all covenants, agreements, terms, and conditions herein contained shall be binding upon and inure to the benefit of the Borrower and, to the extent permitted by law, every subsequent owner of the Mortgaged Property, and shall be binding upon and inure to the benefit of the Lender and its assigns. If the Borrower, as defined herein, consists of two or more parties, this Mortgage shall constitute a grant and mortgage by all of them jointly and severally and they shall be obligated jointly and severally under all the provisions hereof and under the Note. The word "Lender" shall include any person, corporation, or other party who may from time to time be the holder of this Mortgage. Whenever used herein, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall be applicable to all genders wherever the sense requires.

**23. VENUE.**

Each party covenants and agrees that any and all legal actions arising out of or connected with this Mortgage shall be instituted in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, or in the United States District Court for the Middle District of Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This Mortgage is entered into within, and with reference to the internal laws of, the State of Florida, and shall be governed, construed and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

**24. SURVIVABILITY AND SEVERABILITY.**

a. Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Mortgage shall remain enforceable against such party subsequent to such termination.

b. In the event any section, sentence, clause or provision of this Mortgage is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of this Mortgage shall not be affected by such determination and shall remain in full force and effect.

**25. RELEASE.**

Upon payment of all sums secured by this Mortgage and the Note, the Lender shall release this Mortgage and the Note. The Borrower shall pay all recordation costs.

**26. NONRECOURSE.**

The Borrower and its successors and assigns shall only be liable upon the indebtedness evidenced by the HOME Agreement, and sums or amounts to accrue or to become payable thereunder or under this Mortgage or the note or any of them, to the extent of the nonrecourse security granted under this Mortgage. If a default occurs, any judicial proceedings or enforcement of the remedies under this Mortgage, the Note, the HOME Agreement and the Declaration of Covenants and Restrictions against the Borrower and its successors and assigns shall be limited to the preservation, enforcement and foreclosure of the liens, estates, assignments, titles, rights and security interests now or at any time hereafter acquired in such security and no judgment, attachment, execution or other writ of process shall be sought, issued or levied upon the assets, property or funds of the Borrower or its successors and assigns other than the properties, rights, estates and interests of the Borrower as are identified as security in this Mortgage. In the event of a foreclosure or other disposition as provided for in this Mortgage of such liens, estates, assignments, titles,

rights and security interests, whether by judicial proceedings or the exercise of the power of sale, no judgment for the deficiency of such indebtedness, sums and amounts shall be sought or obtained against the Borrower its members and/or its successors and assigns.

Notwithstanding the foregoing provisions of this Paragraph, nothing herein contained shall limit or restrict the ability of the Lender to seek or obtain a judgment against the Borrower or its successors and assigns for:

1. Indemnification under Article XXII of the HOME Agreement and under equivalent provisions of the other loan documents; provided, however the foregoing is not intended to make the Borrower or its successors and assigns personally liable for the payment of principal and interest due under the loan;

2. Liability for intentional waste, destruction or damage to the Property or any part thereof;

3. All obligations under the Declaration of Covenants and Restrictions; provided, however the foregoing is not intended to make the Borrower or its successors and assigns personally liable for the payment of principal and interest due under the loan;

4. Application of proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Property to the full extent that such proceeds are payable or should be payable to the Lender under the terms of this Mortgage, subject to any subordination agreement executed by the Lender;

5. Application of proceeds or awards resulting from the condemnation or other taking in lieu of condemnation, relating to any portion of the Property other than to the reasonable costs of the restoration of the Property or to the obligations of the Borrower under the loan documents, subject to any subordination agreement executed by the Lender;

6. Failure by the Borrower to cause to be maintained upon the Property the insurance coverage required under this Mortgage; and

7. Any liability, damage, cost or expense incurred by the Lender as a result of any fraud, misrepresentation or bad faith by the Borrower.

## **27. MERGER AND MODIFICATIONS**

This Mortgage will not be modified or amended except by agreement in writing signed by both parties. This Mortgage embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. The parties acknowledge that they have not relied on any representations or statements of any nature whatsoever, whether written or oral, except as specifically represented in this Mortgage. Further, any notice of default given to Borrower hereunder shall also be given to Raymond James Housing Opportunities Fund 75 L.L.C., a Florida limited liability company, the investor member of Borrower (the "Investor Member") the Construction Lender, and the City shall accept any timely cure by the Investor Member as if such cure was made by Borrower.

**[Signatures on the following page]**

**IN WITNESS WHEREOF**, this Mortgage has been duly signed and sealed by the Borrower on or as of the day and year first above written.

**Signed, sealed and delivered in the presence of:**

\_\_\_\_\_ BLUE GRIFFIN TERRACE, LLC, a Florida limited  
liability company  
Witness signature

\_\_\_\_\_ By: Blue Griffin Terrace M, LLC, a Florida limited  
liability company  
Name printed or typed

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

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of physical presence \_\_\_ or online notarization \_\_, this \_\_\_ day of \_\_\_\_\_, 2022, by Shawn Wilson, a Manager of Blue Griffin Terrace M, LLC, the Manager of Blue Griffin Terrace, LLC, a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Witness my hand and official seal the date aforesaid,

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Notary: Print or Type Name

My Commission Expires

**MORTGAGE  
Swan Landing  
Exhibit "A"  
Legal Description**

**Folio #:** 23-28-02-000000-034030

**Address:** 2030 Swan Landing Drive, Lakeland, Florida 33810

**Legal Description:**

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

A parcel of land lying within Section 2, Township 28 South, Range 23 East, Polk County, Florida, being more particularly described as follows:

For a POINT OF REFERENCE commence at the Southwest corner of the Northwest 1/4 of said Section 2; thence N.89°56'14"E., a distance of 663.77 feet along the South boundary of the Northwest 1/4 of said Section 2 to the East line of the West 1/2 of the Southwest 1/4 of the Northwest 1/4 of said Section 2; thence N.00°12'29"W., a distance of 257.47 feet along said East line for a POINT OF BEGINNING; thence continue along said East line, N.00°12'23"W., a distance of 995.24 feet to the South right-of-way line of Griffin Road; thence S.89°25'54"W., a distance of 504.64 feet along said South right-of-way line to a non-tangent point of curvature; thence Southwesterly 39.51 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 65°37'03", and a chord bearing and distance of S.32°48'31"W., 37.39 feet; thence S.00°00'00"E., a distance of 44.14 feet to a point of curvature; thence Southerly 35.41 feet along the arc of a curve to the right, said curve having a radius of 45.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'35"W., 34.52 feet; thence S.44°35'11"W., a distance of 84.86 feet to a point of curvature; thence Southerly 26.85 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'36"W., 26.17 feet; thence S.00°00'00"E., a distance of 138.68 feet to a point of curvature; thence Southeasterly 27.10 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 45°00'00", and a chord bearing and distance of S.22°30'00"E., 26.41 feet; thence S.45°00'00"E., a distance of 163.01 feet to a point of curvature; thence Southeasterly 67.81 feet along the arc of a curve to the right, said curve having a radius of 115.50 feet, a central angle of 33°38'26", and a chord bearing and distance of S.28°10'47"E., 66.84 feet; thence S.19°00'15"E., a distance of 64.30 feet; thence S.11°21'34"E., a distance of 38.22 feet; thence S.13°09'36"W., a distance of 29.42 feet; thence S.00°09'04"W., a distance of 57.30 feet; thence S.50°32'42"W., a distance of 44.43 feet; thence S.51°01'26"W., a distance of 37.97 feet; thence S.60°23'32"W., a distance of 54.98 feet; thence N.87°26'58"W., a distance of 49.62 feet; thence N.16°46'15"E., a distance of 5.43 feet; thence N.73°40'56"E., a distance of 34.16 feet; thence N.45°45'25"E., a distance of 27.46 feet; thence N.09°56'51"W., a distance of 40.48 feet; thence S.81°35'24"W., a distance of 15.58 feet; thence S.41°55'23"W., a distance of 78.40 feet to a point of curvature; thence Southerly 3.30 feet along the arc of a curve to the left, said curve having a radius of 4.50 feet, a central angle of 42°04'32", and a chord bearing and distance of S.20°53'07"W., 3.23 feet; thence S.00°09'09"E., a distance of 198.33 feet to a point

of curvature; thence Southeasterly 30.39 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 50°27'54", and a chord bearing and distance of S.25°23'06"E., 29.41 feet; thence S.55°18'50"E., a distance of 13.50 feet; thence N.83°25'04"E., a distance of 42.52 feet; thence N.67°10'31"E., a distance of 59.38 feet; thence S.87°35'00"E., a distance of 68.14 feet; thence N.46°08'46"E., a distance of 20.75 feet; thence N.04°04'34"W., a distance of 32.71 feet; thence N.42°04'07"E., a distance of 38.84 feet; thence S.85°16'23"E., a distance of 47.58 feet; thence N.82°32'11"E., a distance of 49.32 feet; thence S.85°49'01"E., a distance of 47.71 feet; thence S.11°57'02"E., a distance of 36.55 feet; thence N.75°18'55"E., a distance of 29.85 feet; thence N.42°20'44"E., a distance of 29.94 feet; thence N.44°37'32"E., a distance of 49.67 feet; thence S.57°47'19"E., a distance of 33.89 feet; thence S.47°03'53"E., a distance of 31.58 feet; thence N.57°58'38"E., a distance of 23.82 feet; thence S.61°00'43"E., a distance of 47.64 feet; thence S.19°25'17"E., a distance of 42.05 feet; thence S.55°57'47"E., a distance of 29.69 feet to the POINT OF BEGINNING.

**End of Exhibit "A"**

**SCHEDULE 2**  
**PROMISSORY NOTE**  
**Swan Landing**

Folio Number and Property: See Exhibit” A”

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

Amount: \$460,000.00

**FOR VALUE RECEIVED**, the undersigned, hereinafter referred to as “Borrower,” promises to pay to the order of The City of Lakeland, Florida, hereinafter referred to as "Lender", or its successors, the sum of Four Hundred Sixty Thousand and no/100 Dollars (\$460,000.00), hereinafter referred to as the “Loan”.

**LOAN PAYMENT:** Borrower shall promptly pay the principal of the indebtedness evidenced by this Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times and in the manner provided in this Note and in the Mortgage. The terms of the loan shall be zero percent (0%) interest over a twenty (20) year period, to be paid annually in arrears out of available Net Cash Flow (as defined in the Borrower’s Amended and Restated Operating Agreement dated as of [August 1, 2022] (the “Operating Agreement”) and if such Operating Agreement is terminated or the definition of Net Cash Flow amended, then out of Project cash flow after payment of Project Expenses (as defined below) and senior debt service, hereinafter referred to as “Net Cash Flow”, with interest only payments for the term of the Note on June 30 of each year for the prior calendar year, starting with payments being due on June 30, 2024 for the 2023 calendar year. The principal and all accrued unpaid interest shall be due at the completion of the twentieth year from the execution of the Note. If there is sufficient Net Cash Flow to make a partial payment, Borrower will make a partial payment of accrued interest, if any. Any amount that is not payable as a result of this Paragraph shall accrue, but shall be deferred until maturity (without compounding), or shall be payable in full upon refinance or disposition of the Property defined in the legal description of this Note.

**Project Expenses**

Project Expenses shall mean any usual and customary operating and financial costs associated with the project, such as compliance monitoring fee, deferred developer fee, member loan repayments, incentive management fees, any financial monitoring fee, any replacement reserves, ordinary working capital reserves, any servicing fees and any debt service reserves required by any lienholder superior to the City’s lien on the Property defined in the legal description of this Note.

The HOME Agreement and the Declaration of Covenants and Restrictions , hereinafter referred to as “LURA”, are hereby incorporated into this Note by reference and their terms adopted as if fully set forth herein.

**DEFAULT & ACCELERATION:** The Lender shall have the right to declare the amount of the total unpaid balance hereof to be due and forthwith payable in advance of the maturity date of any sum due or installment, as fixed herein, after notice has been given in accordance with the terms and conditions in the Mortgage securing this Note, upon the occurrence of any event or failure to perform in accordance with any of the terms and conditions in said Mortgage, Note, LURA or HOME Agreement.

**IF BORROWER DOES NOT REMAIN OWNER, OR IF ALL OR ANY MATERIAL PART OF THE PROPERTY OR A MATERIAL INTEREST THEREIN IS RENTED, LEASED, SOLD, MORTGAGED, LIENED, OR OTHERWISE TRANSFERRED BY BORROWER, EXCEPT IN THE ORDINARY COURSE OF BUSINESS AS A RENTAL APARTMENT COMPLEX OR AS OTHERWISE PERMITTED HEREIN, WITHOUT LENDER'S PRIOR WRITTEN CONSENT,**

**OR IF FIFTY PERCENT (50%) OR MORE OF THE MANAGER'S INTEREST IN BORROWER IS TRANSFERRED TO PERSONS OR ENTITIES OTHER THAN PERSONS OR ENTITIES HOLDING INTERESTS IN BORROWER (DIRECTLY OR INDIRECTLY), AS OF THE DATE HEREOF, WITHOUT LENDER'S PRIOR WRITTEN CONSENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED IN A MANNER INCONSISTENT WITH THE TERMS OF THE MORTGAGE OR THIS NOTE OR APPLICABLE SURVIVING TERMS OF THAT CERTAIN HOME AGREEMENT, AS MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, THEN IN ANY OF THE FOREGOING EVENTS, LENDER MAY AT LENDER'S OPTION DECLARE ALL THE SUMS SECURED BY THIS NOTE TO BE IMMEDIATELY DUE AND PAYABLE.**

Additionally, if any member's interest in Borrower is transferred to persons or entities other than persons or entities holding interests in Borrower as of the date hereof, then the Borrower must provide Lender with notice of such transfer within thirty (30) days of such transfer.

Notwithstanding the above, the tax credit investor may freely transfer its interest in Borrower

**ESTOPPEL/WAIVER:** Failure of the Lender to declare a default shall not constitute a waiver of such default. Upon default, in accordance with the terms and conditions contained in the Mortgage, this Note will accrue interest at the highest rate permissible under applicable law, or if this Note be reduced to judgment, such judgment should bear interest at the highest rate permissible under applicable law.

**PREPAYMENT:** The Borrower reserves the right to prepay at any time all or part of the principal amount of this Note and any accrued interest without the payment of penalties or premiums. All payments of this Note, prior to default, shall be applied first to reduce the principal amount of this Note and second to the payment of interest.

**COLLECTION COSTS:** If suit is instituted by the Lender to recover this Note, the Borrower agree(s) to pay all reasonable out of pocket costs of such collection including reasonable attorney's fees and court costs.

**PARTIES:** The words "Borrower" and "Lender" in this Note shall be construed to include the respective heirs, personal representatives, successors, and assigns of the Borrower and the Lender.

**CONSTRUCTION AND VENUE:** Each party covenants and agrees that any and all legal actions arising out of or connected with this Note shall be instituted in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, or in the United States District Court for the Middle District of Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This Note is entered into within, and with reference to the internal laws of, the State of Florida, and shall be governed, construed and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

**NONRECOURSE:** The Borrower and its successors and assigns shall only be liable upon the indebtedness evidenced by the HOME Agreement, and sums or amounts to accrue or to become payable thereunder or under the Mortgage, to the extent of the nonrecourse security granted under this Note. If a default occurs, any judicial proceedings or enforcement of the remedies under this Note, the Mortgage, the HOME Agreement and the Declaration of Covenants and Restrictions against the Borrower and its successors and assigns shall be limited to the preservation, enforcement and foreclosure of the liens, estates, assignments, titles, rights and security interests now or at any time hereafter acquired in such security and no judgment, attachment, execution or other writ of process shall be sought, issued or levied upon the assets,

property or funds of the Borrower or its successors and assigns other than the properties, rights, estates and interests of the Borrower as are identified as security in the Mortgage. In the event of a foreclosure or other disposition as provided for in the Mortgage of such liens, estates, assignments, titles, rights and security interests, whether by judicial proceedings or the exercise of the power of sale, no judgment for the deficiency of such indebtedness, sums and amounts shall be sought or obtained against the Borrower its members and/or its successors and assigns.

Notwithstanding the foregoing provisions of this Paragraph, nothing herein contained shall limit or restrict the ability of the Lender to seek or obtain a judgment against the Borrower or its successors and assigns for:

1. Indemnification under Article XXII of the HOME Agreement and under equivalent provisions of the other loan documents; provided, however the foregoing is not intended to make the Borrower or its successors and assigns personally liable for the payment of principal and interest due under the loan;
2. Liability for intentional waste, destruction or damage to the property or any part thereof;
3. All obligations under the Declaration of Covenants and Restrictions ; provided, however the foregoing is not intended to make the Borrower or its successors and assigns personally liable for the payment of principal and interest due under the loan;
4. Application of proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the property to the full extent that such proceeds are payable or should be payable to the Lender under the terms of the Mortgage, subject to any subordination agreement executed by the Lender;
5. Application of proceeds or awards resulting from the condemnation or other taking in lieu of condemnation, relating to any portion of the property other than to the reasonable costs of the restoration of the property or to the obligations of the Borrower under the loan documents, subject to any subordination agreement executed by the Lender;
6. Failure by the Borrower to cause to be maintained upon the property the insurance coverage required under the Mortgage;
7. Costs to restore the property as a result of a casualty if the insurance proceeds are applied to restoration, to the extent the costs of such restoration are not reimbursed by insurance; and
8. Any liability, damage, cost or expense incurred by the Lender as a result of any fraud, misrepresentation or bad faith by the Borrower.

**IN WITNESS WHEREOF**, this Note has been duly executed by the Borrower as of the above date.

**Signed, sealed and delivered in the presence of:**

\_\_\_\_\_  
liability company Witness signature

BLUE GRIFFIN TERRACE, LLC, a Florida limited

\_\_\_\_\_  
Name printed or typed

By: Blue Griffin Terrace M, LLC, a Florida  
limited liability company

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

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of physical presence \_\_\_ or online notarization \_\_, this \_\_\_ day of \_\_\_\_\_, 2022, by Shawn Wilson, as a Manager of Blue Griffin Terrace M, LLC, the Manager of Blue Griffin Terrace, LLC, a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Witness my hand and official seal the date aforesaid,

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Notary: Print or Type Name

My Commission Expires

**PROMISSORY NOTE**  
**Blue Griffin Terrace, LLC**  
**Exhibit "A"**  
**Legal Description**

**Folio #:** 23-28-02-000000-034030

**Address:** 2030 Swan Landing Drive, Lakeland, Florida 33810

**Legal Description:**

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

A parcel of land lying within Section 2, Township 28 South, Range 23 East, Polk County, Florida, being more particularly described as follows:

For a POINT OF REFERENCE commence at the Southwest corner of the Northwest 1/4 of said Section 2; thence N.89°56'14"E., a distance of 663.77 feet along the South boundary of the Northwest 1/4 of said Section 2 to the East line of the West 1/2 of the Southwest 1/4 of the Northwest 1/4 of said Section 2; thence N.00°12'29"W., a distance of 257.47 feet along said East line for a POINT OF BEGINNING; thence continue along said East line, N.00°12'23"W., a distance of 995.24 feet to the South right-of-way line of Griffin Road; thence S.89°25'54"W., a distance of 504.64 feet along said South right-of-way line to a non-tangent point of curvature; thence Southwesterly 39.51 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 65°37'03", and a chord bearing and distance of S.32°48'31"W., 37.39 feet; thence S.00°00'00"E., a distance of 44.14 feet to a point of curvature; thence Southerly 35.41 feet along the arc of a curve to the right, said curve having a radius of 45.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'35"W., 34.52 feet; thence S.44°35'11"W., a distance of 84.86 feet to a point of curvature; thence Southerly 26.85 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 44°35'11", and a chord bearing and distance of S.22°17'36"W., 26.17 feet; thence S.00°00'00"E., a distance of 138.68 feet to a point of curvature; thence Southeasterly 27.10 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 45°00'00", and a chord bearing and distance of S.22°30'00"E., 26.41 feet; thence S.45°00'00"E., a distance of 163.01 feet to a point of curvature; thence Southeasterly 67.81 feet along the arc of a curve to the right, said curve having a radius of 115.50 feet, a central angle of 33°38'26", and a chord bearing and distance of S.28°10'47"E., 66.84 feet; thence S.19°00'15"E., a distance of 64.30 feet; thence S.11°21'34"E., a distance of 38.22 feet; thence S.13°09'36"W., a distance of 29.42 feet; thence S.00°09'04"W., a distance of 57.30 feet; thence S.50°32'42"W., a distance of 44.43 feet; thence S.51°01'26"W., a distance of 37.97 feet; thence S.60°23'32"W., a distance of 54.98 feet; thence N.87°26'58"W., a distance of 49.62 feet; thence N.16°46'15"E., a distance of 5.43 feet; thence N.73°40'56"E., a distance of 34.16 feet; thence N.45°45'25"E., a distance of 27.46 feet; thence N.09°56'51"W., a distance of 40.48 feet; thence S.81°35'24"W., a distance of 15.58 feet; thence S.41°55'23"W., a distance of 78.40 feet to a point of curvature; thence Southerly 3.30 feet along the arc of a curve to the left, said curve having a radius of 4.50 feet, a central angle of 42°04'32", and a chord bearing

and distance of S.20°53'07"W., 3.23 feet; thence S.00°09'09"E., a distance of 198.33 feet to a point of curvature; thence Southeasterly 30.39 feet along the arc of a curve to the left, said curve having a radius of 34.50 feet, a central angle of 50°27'54", and a chord bearing and distance of S.25°23'06"E., 29.41 feet; thence S.55°18'50"E., a distance of 13.50 feet; thence N.83°25'04"E., a distance of 42.52 feet; thence N.67°10'31"E., a distance of 59.38 feet; thence S.87°35'00"E., a distance of 68.14 feet; thence N.46°08'46"E., a distance of 20.75 feet; thence N.04°04'34"W., a distance of 32.71 feet; thence N.42°04'07"E., a distance of 38.84 feet; thence S.85°16'23"E., a distance of 47.58 feet; thence N.82°32'11"E., a distance of 49.32 feet; thence S.85°49'01"E., a distance of 47.71 feet; thence S.11°57'02"E., a distance of 36.55 feet; thence N.75°18'55"E., a distance of 29.85 feet; thence N.42°20'44"E., a distance of 29.94 feet; thence N.44°37'32"E., a distance of 49.67 feet; thence S.57°47'19"E., a distance of 33.89 feet; thence S.47°03'53"E., a distance of 31.58 feet; thence N.57°58'38"E., a distance of 23.82 feet; thence S.61°00'43"E., a distance of 47.64 feet; thence S.19°25'17"E., a distance of 42.05 feet; thence S.55°57'47"E., a distance of 29.69 feet to the POINT OF BEGINNING.