

This Instrument Prepared By:

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(Space reserved for Clerk)

IMPACT FEE MITIGATION AGREEMENT AND COVENANT

THIS AGREEMENT is made as of the ____ day of _____ 2022 by and between the CITY OF FORT PIERCE, a municipal corporation in the State of Florida and BLUE MCNEIL TWO, LLC, a Florida limited liability company (“Owner”).

WHEREAS, the undersigned Owner hereby makes, declares and imposes on the land herein described, these covenants running with the title to the land, which shall be binding on the Owner, all heirs, successors, and assigns, and against all persons claiming by, through or under them; and

WHEREAS, Owner holds the fee simple title to the land in St. Lucie County, Florida described in Exhibit “A,” attached hereto and made a part hereof, hereinafter called the “Property;” and

WHEREAS, the Owner intends to develop a multi-family rental affordable housing project to be known as Blue Sky Landing II, (the "Project") on the Property; and

WHEREAS, the Fort Pierce City Commission finds creating affordable housing opportunities for very low and low income residents, as such terms are defined in Section 420.9071, F.S., as may be amended from time to time, of the City of Fort Pierce, to be a valid public purpose under the laws of Florida; and

WHEREAS, in accordance with Section 163.31801, F.S., as may be amended from time to time, the City of Fort Pierce may approve the exemption from the payment of impact fees for affordable housing projects; and

WHEREAS, Owner has agreed that the Project will be occupied by low and very low income families according to the terms herein; and

WHEREAS, Owner is submitting this Agreement to induce the Fort Pierce City Commission to grant a mitigation of the following impact fees at 50% of the total amount of the applicable impact

fees owed (check all that apply):

- x Parks and Recreation
- x Government Buildings
- x Solid Waste
- x Stormwater
- x Transportation

NOW THEREFORE, in consideration of the covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner, its successors and assigns, does hereby covenant and agrees as follows:

1. **General**

- A. That eighty-two (82) units within the Project shall be occupied on a continuous basis by members of the general public that at the time of initial occupancy are at or below 60% of AMI for a time period of ten (10) years from the date of execution of this Agreement and rent levels of the (82) units shall be in accordance with Section 42 of the Internal Revenue Code of 1986, as amended. The Owner shall verify the household income of the tenants of the affordable units prior to the initial occupancy of such units.
- B. Owner shall furnish to the City of Fort Pierce a report each year for a period of ten (10) years from the date of this covenant certifying the income of the tenants of the eighty-two (82) affordable units of the Project and compliance with the provisions of this Agreement.

2. **Administration**

- A. Notwithstanding anything contained herein to the contrary, in the event that the requirements set forth in this Agreement shall in any manner conflict with the provisions of Section 42 of the Internal Revenue Code of 1986, as may be amended from time to time, the provisions of the Internal Revenue Code shall control.
- B. The Owner or its management company shall obtain a certification of income for each prospective tenant prior to admission to the Project. The form of Certification shall be as required by the Florida Housing Finance Corporation. Should the annual income recertification of such households result in non-compliance with income occupancy requirements, the next available unit must be rented to a qualifying household in order to ensure continuing compliance of the Project under this Agreement.

3. **Termination.** Owner, its successors or assigns, shall have the right, upon written request delivered to the City of Fort Pierce, to be released and have the Project released from the terms and conditions contained herein upon tender to the City of Fort Pierce of the amount of the applicable impact fees

mitigated hereunder.

4. Covenant Running with the Land. This covenant shall constitute a covenant running with the land and may be recorded in the Public Records of, Florida, and shall remain in full force and effect and be binding upon Owner and its successors and assigns until such time as the same is modified or released or as otherwise provided in this covenant. Notwithstanding the foregoing this covenant shall automatically terminate and be of no force and effect ten (10) years from the date of execution of this covenant.

5. Default/Remedies. If the Owner breaches any provision set forth in this Agreement, the Owner shall cure the breach within thirty (30) days of receiving notice of such breach. In the event that the Owner is unable to cure the breach within the allotted thirty (30) days, the Owner shall request an extension of time not to exceed ninety (90) days. In the event that the Owner fails to correct such breach within either the initial thirty (30) days or any extensions thereof, the Owner shall pay to the City of Fort Pierce the principal amount of One Hundred Forty-Seven Thousand Six Hundred Sixteen Dollars and Seventy-Four Cents (\$147,616.74) which is equal to the total sum of impact fees mitigated pursuant to this Agreement. Upon full repayment by the Owner, or any of its successors or assigns or any subsequent owner of the Property, to the City of Fort Pierce of the total sum of the mitigated impact fees, this Agreement shall become null and void and shall automatically terminate.

6. Subordination. This Agreement, the rights, duties, and obligations and the covenants herein are subordinate to any existing or subsequent mortgage on the Property and in the event of foreclosure (or deed in lieu of foreclosure), this Agreement, the rights, duties, and obligations and any covenants in this Agreement (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

7. Waiver of Breach. Waiver of breach of one covenant or condition of this Agreement is not a waiver of breach of other covenants and conditions of this Agreement, or of a subsequent breach of the waived covenants or conditions.

8. Applicable Law. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement, any and all legal action necessary to enforce the provisions of this Agreement will be held in St. Lucie County, Florida. Venue for any litigation involving this Agreement shall be the Circuit Court in and for St. Lucie County, Florida.

9. Notices. Any notices required or allowed hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; (b) national express air courier, provided such courier maintains written verification of actual delivery; (c) facsimile; or (d) U.S. Mail, Certified, Return Receipt. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which

the facsimile transmission occurs, any party may change said address by giving the other parties hereto notice of such change of address in accordance with the foregoing provisions.

OWNER: Blue McNeil Two, LLC
Attn: Shawn Wilson
Blue Sky Communities, LLC
5300 W Cypress St #200
Tampa, Florida 33607

CITY: City of Fort Pierce
Attn: City Manager
100 N. US Highway 1
Fort Pierce, Florida 34950

COPY: City of Fort Pierce
Attn: City Attorney
100 N. US Highway 1
Fort Pierce, Florida 34950

10. Assignment. The City shall have the right to assign or transfer this Agreement in whole or in part to any properly authorized commission, authority, or other public agency empowered by law to serve the City of Fort Pierce.

11. Recordation of the Agreement. The parties hereto agree that a fully executed original of this Agreement shall be recorded, at Owner's expense, in the Public Records of St. Lucie County, Florida. The obligations imposed in this Agreement shall be deemed a restrictive covenant which shall run with the Property and shall be binding upon Owner's successors and assigns. The City or any successor agency or entity will, from time to time and upon the request of the Owner, execute and deliver estoppel letters affirming the status of this Agreement.

12. Severability. If any sentence, phrase, paragraph, provision, or portion of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, such portion shall be considered an independent provision and the finding shall have no effect on the validity or the balance of this Agreement.

13. Entire Agreement and Modification. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements relating to the matters set forth herein. Any changes to this Agreement shall be made in writing and approved and executed by the authorized representatives of the respective parties.

14. No Partnership or Agency. Nothing in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relations of principal/agent, employer/employee, or joint venture partnership between the parties.

15. Effective Date; Term. This Agreement shall become effective upon the date of full execution by the authorized representatives of the Owner and the City, and, except as otherwise set forth in herein, shall terminate ten (10) years from the Effective Date.

16. Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.

17. Counterpart Signatures. This Agreement may be executed in one or more counterparts, all of which shall constitute, collectively, one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

<<SIGNATURES ON FOLLOWING PAGES>>

Signed and sealed in the presence of:

“CITY OF FORT PIERCE”

By: _____

Linda Hudson, Mayor

Print Name: _____

Date: _____

Print Name: _____

STATE OF FLORIDA)

)

COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____, 20__ by _____, who [] is personally known to me or [] had produced _____ (type of identification) as identification.

NOTARY PUBLIC OF FLORIDA

Notary Public

My Commission Expires: _____


AFFIX NOTARY STAMP

Expires: _____

“OWNER”

**BLUE MCNEIL TWO, LLC, a Florida
limited liability company**

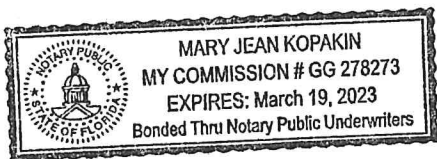
By: Blue McNeil Two M, LLC, its
Manager

BY: 
Shawn Wilson, Manager


STATE OF FLORIDA)
)
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me, a Notary Public, by means of [] physical presence or [] online notarization this 12th day of April, 2022, by Shawn Wilson as Manager of Blue McNeil Two M, LLC, Manager of Blue McNeil Two, LLC, a Florida limited liability company, on behalf of said limited liability company, who [] is personally known to me or [] has produced (type of identification) _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 12th day of April, 20 22.



NOTARY PUBLIC OF FLORIDA


Notary Public

My Commission Expires: _____

Printed Name: _____

AFFIX NOTARY STAMP

EXHIBIT "A"
LEGAL DESCRIPTION

A parcel of land lying in the Northwest One-Quarter of Section 19, Township 35 South, Range 40 East, St. Lucie County, Florida, and being more particularly described as follows:

BEGIN at the most Easterly Northeast Corner according to the Plat A PLAT OF WAL-MART AT FORT PIERCE, according to the Plat thereof as recorded in Plat Book 36 at Page 12 of the Public Records of St. Lucie County, Florida;

Said Northeast Corner being a point on the arc of a circular curve concave Easterly having a radius of 655.00 feet; a radial line to said point bears South $83^{\circ}13'48''$ West from the center of said curve;

Thence Northerly along the arc of said curve to the right having a central angle of $11^{\circ}49'05''$, a distance of 135.10 feet to a Point of Compound Curvature with a circular curve concave Easterly, having a radius of 2103.43 feet;

Thence Northerly along the arc of said curve to the right having a central angle of $05^{\circ}48'00''$, a distance of 212.93 feet;

The last two courses being coincident with the Westerly Line of an INGRESS AND EGRESS EASEMENT, as recorded in Official Records Book 769 at Page 2146;

Thence departing said Westerly Line North $79^{\circ}09'07''$ West along a Line Radial to said previously described curve, a distance of 25.50 feet;

Thence North $10^{\circ}50'53''$ East, a distance of 46.00 feet;

Thence North $79^{\circ}09'07''$ West, a distance of 22.58 feet to a point on the arc of a circular curve concave Easterly, having a radius of 2152.00 feet; a radial line to said point bears North $77^{\circ}55'38''$ West from the center of said curve;

Thence Southerly along the arc of said curve to the left having a central angle of $06^{\circ}17'35''$, a distance of 236.37 feet;

Thence South $89^{\circ}21'58''$ West, a distance of 159.94 feet along a line 167.00 feet Northerly of and parallel with the Southerly Property Line, to a Point of Curvature of a circular curve concave Northeasterly, having a radius of 48.00 feet;

Thence Westerly, Northwesterly and Northerly along the arc of said curve to the right having a central angle of $96^{\circ}03'11''$, a distance of 80.47 feet to a Point of Tangency;

Thence North $05^{\circ}25'09''$ East, a distance of 161.00 feet along a line 167.00 feet Easterly of and parallel with the Westerly Property Line;

Thence North 84°34'51" West, a distance of 76.50 feet;

Thence South 05°25'09" West, a distance of 12.00 feet;

Thence North 84°34'51" West, a distance of 19.83 feet to a Point of Curvature of a circular curve concave Southeasterly, having a radius of 15.00 feet;

Thence Westerly, Southwesterly and Southerly along the arc of said curve to the left having a central angle of 90°00'00", a distance of 23.56 feet to a Point of Tangency;

Thence South 05°25'09" West, a distance of 20.00 feet;

Thence North 84°34'51" West, a distance of 26.00 feet;

Thence North 05°25'09" East, a distance of 49.29 feet;

Thence North 84°34'51" West, a distance of 29.67 feet to the intersection with a line being an Easterly line of said Plat A PLAT OF WAL-MART AT FORT PIERCE, (the next three courses being coincident with said Plat);

Thence South 05°25'09" West, a distance of 394.68 feet;

Thence South 82°29'17" East, a distance of 53.44 feet;

Thence North 89°21'58" East, a distance of 391.21 feet to the POINT OF BEGINNING.

Said Parcel lying and being in St. Lucie County, Florida.