



BOARD OF COUNTY COMMISSIONERS

**Planning and Development**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
321-633-2070

**Application for Zoning Action, Comprehensive Plan Amendment, or  
Variance**

Applications must be submitted in person. Please call 321-633-2070 for an appointment at least 24 hours in advance. Mailed, emailed, or couriered applications will not be accepted.

PZ # 20700033

Existing FLU: Residential-15 Existing Zoning: RU-1-7 and RU-2-30

Proposed FLU: No Change Proposed Zoning: RU-2-12  
(with BDP per page 2)

**PROPERTY OWNER INFORMATION**

If the owner is an LLC, include a copy of the operating agreement.

<u>Gregory B. Jones</u>	<u>Tropical Manor Holdings, LLC</u>		
Name(s)	Company		
<u>3353 Peachtree Road, Suite 940</u>	<u>Atlanta</u>	<u>GA</u>	<u>30326</u>
Street	City	State	Zip Code
<u>gjones@atlantafinancialgroup.com</u>	<u>(678)256-3826</u>	<u>(707)776-8421</u>	
Email	Phone	Cell	

**APPLICANT INFORMATION IF DIFFERENT FROM OWNER:**

☐ Attorney ☒ Agent ☐ Contract Purchaser ☐ Other \_\_\_\_\_

<u>Kenneth Metcalf</u>	<u>Stearns Weaver Miller, PA</u>		
Name(s)	Company		
<u>106 E. College Avenue</u>	<u>Tallahassee</u>	<u>FL</u>	<u>32301</u>
Street	City	State	Zip Code
<u>kmetcalf@stearnsweaver.com</u>	<u>(850)329-4848</u>	<u>(850) 519-6165</u>	
Email	Phone	Cell	

**APPLICATION NAME**

- ☐ Large Scale Comprehensive Plan Amendment (CP) (greater than 10 acres)
- ☐ Small Scale Comprehensive Plan Amendment (CP) (less than 10 acres)
- ☐ Text Amendment (CP): Element \_\_\_\_\_
- ☐ Other Amendment (CP): \_\_\_\_\_
- ☒ Rezoning Without CUP (RWOC)
- ☐ Combination Rezoning and CUP (CORC)
- ☐ Conditional Use Permit (CUP)
- ☐ Binding Development Plan (BDP)
- ☐ Binding Development Plan (BDP) (Amendment)
- ☐ Binding Development Plan (BDP) (Removal)
- ☐ Variance(s) (V)
- ☐ Administrative Approval of Setbacks, Lot Size, or Accessory Structures
- ☐ Administrative Approval of Flag Lot or Easement
- ☒ Other Action: Binding Development Plan

Acreage of Request: 8.46 acres

Reason for Request:

Please refer to Attachment "1" attached hereto.

The undersigned understands this application must be complete and accurate prior to advertising a public hearing:

- ☐ I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
- ☒ I am the legal representative of the owner of the subject property of this application. (Notarized Authorization to Act must be submitted with application)
- ☒ An approval of this application does not entitle the owner to a development permit.
- ☒ I certify that the information in this application and all sketches and data attached to and made part hereof are true and accurate to the best of my knowledge.

Kenneth Metcalf  
Signature of Property Owner or  
Authorized Representative

09/04/2020  
Date

State of Florida

County of Leon

Subscribed and sworn to me before me this 4<sup>th</sup> day of September, 20 20,  
(physically present) Kenneth Metcalf, who is personally known to me or  
personally appeared \_\_\_\_\_, who is personally known to me or  
produced \_\_\_\_\_ as identification, and who did / did not take an oath.

Christine L. Abbuhl  
Notary Public Signature

Seal





Office Use Only:

Accela No. 20Z0003 Fee: \$3,300.00 Date Filed: 9/4/20 District No. 2  
Tax Account No. (list all that apply) 2417034

Parcel I.D. No.

24 36 22 00 - 783  
Twp Rng Sec Sub Block Lot/Parcel

Planner: Peter J. Martin Sign Issued by: PJM Notification Radius: 500 feet

MEETINGS

- ☒ P&Z  
☐ PSJ Board  
☐ NMI Board  
☐ LPA  
☐ BOA  
☒ BCC

DATE

11/9/20

TIME

3:00pm

12/3/20

5:00pm

Wetland survey required by Natural Resources ☐ Yes ☒ No Initials: [Signature]

Is the subject property located in a JPA, MIRA, or 500 feet of the Palm Bay Extension?

☐ Yes ☒ No

If yes, list N/A

Location of subject property: West side of Jordan Road approximately 1,900 feet west of the intersection of Grove Boulevard and Courtenay Parkway (CRU-1-7)

Description of Request: Re-zoning from <sup>single-family residential</sup> High Density Multiple-Family Residential (RU-2-30) to Medium Density Multiple-Family Residential (RU-2-12) with a Binding Development Plan (BDP) limiting the development of the lot to 85 units.

ACCELA #

20Z00033

## DOCUMENT SUBMITTAL REQUIREMENTS

Application type	Application	Authorization to Act Form <sup>1</sup>	Recorded Property Deeds	Legal Description of Request <sup>2</sup>	Certified Survey <sup>8</sup>	Property Appraisers Map	Concurrency	School Concurrency <sup>3</sup>	Wetland Survey <sup>4</sup>	CUP Worksheet & Sketch <sup>5</sup>	Comp Plan Information <sup>6</sup>	Notice to Applicants	Neighbors Affidavit <sup>7</sup>	Letter to Zoning Official	Variance Hardship Worksheet <sup>9</sup>	*Additional Documentation	Fees
Staff to check indicating receipt	✓	✓	✓	✓	NA	NA	NA	✓	NA	✓	✓	✓	✓	✓	✓	✓	✓
Comprehensive Plan Amendment <sup>6</sup>	1	1	1	2	2	1	1	1	1	1	1	1	1	1	1	*	Y
Zoning request	1	1	1	1	1 <sup>8</sup>	1	1	1	1	1	1	1	1	1	1	*	Y
Conditional Use Permit (CUP)	1	1	1	1	1 <sup>8</sup>	1	1	1	1	1	1	1	1	1	1	Y	Y
AA – Waiver	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	Y	Y
AA – Easement or Flag lot	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	Y	Y
Variance	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	*	Y

<sup>1</sup> Authorization to Act form is required, if other than the owner of record is making the application. If the property is not owned in entirety, by the applicant, either a Form "A", or a notarized letter must accompany the application giving written consent by all property owners of the subject property.

<sup>2</sup> Legal Description must be typed on a separate sheet, if not easily described on the deed.

<sup>3</sup> School Board Concurrency application is required if the request represents an increase of more than one residential unit.

<sup>4</sup> Wetland Survey required on Commercial or Industrial property.

<sup>5</sup> CUP applications require a completed worksheet and a sketch plan with the application signed by a planner.

<sup>6</sup> Must include Comprehensive Plan Amendment supplemental form reviewed by a planner prior to submitting formal application. The supplement must include a written statement explaining the rational and the appropriate data and analysis necessary to support the proposed change.

<sup>7</sup> Administrative waivers requiring a signed affidavit from all abutting property owners indicating no objection to the requested waiver of lot size, width or depth requirement. The affidavit must state the specific request.

<sup>8</sup> Survey must be submitted if requested by staff.

<sup>9</sup> Variance Hardship Worksheet must be filled out completely, addressing the six criteria for a hardship.

**\* Additional information may be requested by staff dependent upon the requested action. These include but are not limited to impact analysis studies:**

Traffic Impact Analysis (TIA): TIA must be submitted if required by the County Traffic Engineer. Analysis methodology must be coordinated with the Traffic Engineering Office.

Environmental Impact Analysis: The analysis must be conducted by a qualified environmental professional and dated less than one year old. The analysis must document the types of habitat found on site; identify vegetation types, soils types, wetlands, floodplain; and any other environmental concerns.

Water and Sewer Demand: Identify the potable water and sanitary sewer demand for the amendment based on the current and proposed future land use designations using the per capita water and wastewater standards of the applicable service provider.

# CALCULATION OF PUBLIC HEARING APPLICATION FEES -ZONING OFFICE

PUBLIC HEARING APPLICATION FEES	BASE FEE	ACREAGE FEE	UNIT FEE	SUB-TOTAL
<b>REZONING</b>				
Environmental Area	511.00			
Residential Professional	960.00			
General Use and Agricultural Use	849.00*	( -5) x 24**		
Single-Family Residential	849.00*	( -5) x 24**		
Single-Family Mobile Home	849.00*	( -5) x 24**		
Commercial/Planned Commercial	1,184.00	( ) x 24		
Tourist Commercial	1,855.00	( ) x 45		
Industrial/Planned Industrial	1,855.00	( ) x 45		
Planned Unit Development	5,661.00	( ) x 45		
Single-Family Attached Residential	960.00		( ) x 24	
Multiple-Family Residential	960.00	8.46 x 10.05 ( 95 ) x 24 = 2,240		\$ 3,000.00
Recreational Vehicle Park	1,408.00	( ) x 24		
Mobile Home Park/Mobile Home Co-op	1,408.00	( ) x 24		
<b>CUP'S OR ROU APPLICATIONS</b>				
Fee per request (with rezoning)	447.00			
Fee per request (without rezoning)	849.00			
<b>OTHER APPLICATION FEES</b>				
Consultant fee Retainer per Tower Application	6,934.00			
Transfer of Development Rights	1,520.00			
Comprehensive Plan Appeals (Vested Rights)				
One (5.0 acres or less) Single-family residential	433.00			
All other Appeals	1,733.00			
Variance/Appeals of Administrative Interpretation				
Base Fee	598.00			
Fee for each additional request	182.00			
Special Hearing Fee for P & Z / LPA	3,692.00			
Special Hearing Fee for BOA	1,872.00			
All Other Unlisted Zoning Applications	849.00			
Miscellaneous				
<b>COMPREHENSIVE PLAN AMENDMENTS</b>				
Small Scale Amendment	919.00			
Large Scale Amendment	1,785.00	\$43 per acre		
Maximum Fee on a Single Application	17,334.00			
SUB-TOTAL ***				\$ 3,000.00
<b>FEES COLLECTED FOR ADMINISTRATIVE ACTIONS</b>				
Office of Natural Resources zoning review (if applicable)	300.00			\$ 300.00
flag lot &/or easement review	360.00			
Land Development PUD review	100.00			
flag lot &/or easement review	150.00			
Address Assignment review of flag lot &/or easement	100.00			
Zoning fee	277.00			
<b>BASE FEE ADJUSTMENTS</b>				
* If area for these requests have the potential for only one more lot, the fee is	288.00			
** Maximum acreage fees for these requests shall be	2,240.00			
*** Maximum Planned Unit Development Fee shall be	13,432.00			
**** Maximum fee for all other zoning requests shall be	8,955.00			
TOTAL				\$ 3,000.00



Planning & Development

Central Cashier

2725 Judge Fran Jamieson Way

Building A, Room 114

Melbourne, FL 32940

## RECEIPT OF PAYMENT

Payment Date: 9/8/2020

Receipt #: 579115

Transaction Id# 80860068

Payment Method	Payment Reference #	Amount Paid	Comments
Credit Card	80860068	\$3,300.00	
		\$3,300.00	Total

FL

Zoning Rezoning \$3,300.00

**20Z00033**

Fee	Invoice #	Amount
Rezoning Multiple Family Residential	681149	\$3,000.00
Rezoning Natural Resources Review	681149	\$300.00

**Grand Total** \$3,300.00

Additional Fees may apply to obtain a Certificate of Completion, a Certificate of Occupancy, Pre-Power, or Final Inspection.

To verify fees please visit the Brevard County Planning & Development Search.

[www.brevardcounty.us/PlanningDev](http://www.brevardcounty.us/PlanningDev)

P (321) 633-2068 F (321) 633-2052

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# Zoning Information Worksheet

Owner(s): Tropical Manor Holdings, LLC (Gregory B. Jones)  
(Does this match the warranty deed?) yes

Applicant(s): Kenneth Metcalf, Stearns Weaver Miller, PA  
(Does this person have authorization from everyone listed on the warranty deed?) yes

Parcel ID#: 24-36-22-00-783  
(If more than one parcel, they must share a property line to be on the same application.)

Present Zoning: RU-1-7 & RU-2-30

Is there a BDP or a CUP on the property? Yes/No: No (If yes, attach BDP) (N/A)

Existing BDP states: N/A

Requested Zoning/CUP: RU-2-12 with a Binding Development Plan (BDP) limiting property to maximum of 85 units.

BDP Requested? Yes/No: (See attached) limits density (development of property) to 85 units.

If CUP Request, do you have a CUP worksheet filled out by the applicant? Yes/No: N/A no CUP

Previously Approved Zoning Actions on lot:

\* Original zoning split between RU-1 & ~~RU-1~~ (multiple-family).  
5-30-72 Z-2980 (Admin Rezoning of RU-1 to RU-1-7); Z-1249 ReZoned Portion of lot from RU-1 (single-family) to RU-3 (Multiple Family) on 12/12/63.  
Z-1408 reZoned from RU-1 to RU-3 w/min 800 sq. ft./unit on 5/25/64. zoning ord 3/75 created and RU-2-15 leaving RU-3 lot & Durane; zoning ord. 3/1990 created RU-2-30 final change.  
Is this a non-conforming lot of record? Yes/No Why? The lot is not non-conforming.

Non-Conforming to: RU-1-7: Use in RU-1-7 appears non-conforming to the zoning; RU-2-30 zoning is non-conforming to RESIS

Is this a substandard lot? Yes/No/Why? Future land use designation

The lot is not substandard, but multi-family use in RU-1-7 is substandard and RU-2-30 zoning is non-conforming to comp. plan.  
What is the FLU Designation of the property?: RESIDENTIAL 15 (RES15)

- Is the requested zoning consistent with the FLU? Yes/No (See compatibility table)
- If no, what is the requested small scale plan amendment? (Must be 10 acres or less)

N/A

Character of the Area - List the recent zoning changes in same section? (Last 3 years)

Action #, Date of action and State what changed?  
Z# 19PZ00092 (10/3/19); 18PZ000123 (2/7/2019); 18PZ00130 (10/11/19) BDP  
17PZ00138 (12/1/18); 17PZ-00051 (8/3/17)  
RU-1-7 RU-1-7

\* 8/27/90 Research

(6)



If this is a CUP request, list all CUP's on adjacent properties:

N/A

Abutting property zoning: N INCL AU S RU-1-9 E Road GML(3) RU-1-7 on other side RU-1-7

JPA/Special Board/Special Section? Yes No (Circle one and make a note on the application) PSJ, NMI, MIRA  
ROCKLEDGE, MELBOURNE, PALM SHORES, TITUSVILLE, PALM BAY or within 500' of PALM BAY EXTENSION

Reason for Rezoning Request: To provide a zoning that conforms to the RES 15 Future Land Use Map designation and to which existing use and structures conform to enable existing 85 units to be remodeled.  
If proposing single-family or multi-family how many units? 85 (These are existing units)

- If proposing a CUP for alcohol, how many seats? N/A Bar or Restaurant? NA
  - Do you have a certified survey indicating there are no churches or schools within 400'? Yes/No N/A
  - Do you have a site plan showing the layout and parking configuration? Yes/No N/A
  - Do you have a CUP worksheet filled out by the applicant? Yes/No N/A
- If the request is for commercial zoning, do you have a wetland survey that includes a legal description of the wetland? Yes/No No (If no, NR must have checked no on the front of the application) ✓

Existing structures/uses on the property? 10 multifamily structures with a total of 85 units.

Describe the character of the area based upon Administration Policy 3 of FLUE (attached):

A. The proposed use is already existing on site: 85 multifamily units and no additional impacts are foreseen; B. The proposal is to remodel the units w/o increasing density or expanding sq and footage; C. The use has been in place since 1968 - it can be more compatible with adjacent properties, but it is part of the historical character of the area; D. The proposal to single-family zoning is consistent with the FLUM on the property & properties to North, and west.  
Concerns raised as part of request: adjacent properties  
propensity is adjacent residential on west & south.

Other options discussed with applicant: Comp Plan Amendment to RES 30. Rezone just RU-1-7 and BDP on entire site; Rezone to RU-2-12 on RU-2-15 without BDP (Both would allow increase in density & require School Concurrence Application. Since applicant wants to remodel and possible upgrade recreational facilities & does NOT want to increase units, the chose RU-2-12 with BDP to avoid School Concurrence Application and fees.

Did you print out the Property Appraiser's Map for this property? ✓  
Did you mark the map? ✓  
Did you stamp the deed(s)? ✓

[Signature]  
Planner Signature

9/8/2020  
Date

### **Administrative Policy 3**

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

#### **Criteria:**

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foresee ably be affected by the proposed use;
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
  - 1. Historical land use patterns;
  - 2. Actual development over the immediately preceding three years; and
  - 3. Development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

# ATTACHMENT "5"

## Notice to Applicants for Change of Land Use

The Planning and Zoning Office staff will be preparing a package of written comments concerning your request. These comments will be provided to the Planning and Zoning Board and Board of County Commissioners. The comments will address the following:

The current zoning of the property along with its current development potential and consistency with the Brevard County Comprehensive Plan use and density restrictions.

The proposed zoning of the property along with its development potential and Consistency with the Board County Comprehensive Plan use and density restrictions.

The proposal's impact on services, such as roads and schools.

The proposal's impact upon hurricane evacuation, if applicable.

Environmental factors.

Compatibility with surrounding land uses.

Consistency with the character of the area.

You may place your own written comments regarding these items into the record. Up to two typewritten pages can be included in the package if received 10 working days prior to the Planning and Zoning Board hearing. You are not required to provide written comments. *An Applicant presentation to the Planning and Zoning Board is required regardless of written submittals.* The board may approve the requested classification or a classification which is more intensive than the existing classification, but less intensive than the requested classification.

Staff comments will be available approximately one week prior to the Planning and Zoning Board hearing. These comments will be made available to you at that time. In order to expedite receipt of staff's comments, please provide an e-mail address or fax number below. Alternatively, a copy of staff's comments will be mailed via the U.S. Postal Service.

### NOTES:

- ☒ If your application generates public opposition, as may be expressed in letters, petitions, phone calls, testimony, etc., you are advised to meet with concerned parties in an effort to resolve differences prior to the BCC taking final action on the request; therefore, you are encouraged to meet with affected property owners prior to the public hearing by the Planning & Zoning Board/Local Planning Agency (P&Z/LPA). During the course of conducting the public hearing, if the P&Z/LPA finds the application is controversial, and the applicant has not met with affected property owners, the item shall be tabled to the next agenda to allow such a meeting to take place. If the item is controversial, despite the applicant's efforts to meet with affected property owners, the P&Z/LPA may include, in their motion, a requirement to meet with interested parties again prior to the BCC public hearing. The BCC may also table your request in order for you to meet with interested parties, if this has not occurred prior to the public hearing before the BCC. If you need assistance to identify these parties, please contact the Planning & Zoning Office.
- ☒ BCC approval of a zoning application does not vest a project nor ensure issuance of a permit. At the time of permit application, land development regulations and concurrency-related level of service standards must be met.

Please transmit staff's comments via:

metcalfe@skearusweaver.com or ( ) \_\_\_\_\_ e-mail address fax number or U.S. Mail \_\_\_\_\_

☒ Yes ☐ No

I have received a copy of this notice:

Kenneth McBeary  
(APPLICANT SIGNATURE)



## ATTACHMENT "3"

3

THIS INSTRUMENT CONTAINS THE OFFICIAL  
RECORD BOOK AND PAGE NUMBERS DESCRIBING  
THE PARCELS TO BE ADVERTISED.

Prepared by and return to:  
Vincent J. Piazza  
President  
First Priority Title Company  
1325 South Congress Avenue Suite 104  
Boynton Beach, FL 33426  
561-738-1370  
File Number: 18-0512-NMV  
Will Call No.: Duval

  
SIGNATURE

EX

[Space Above This Line For Recording Data]

### Special Warranty Deed

This Special Warranty Deed made this 20<sup>th</sup> day of December, 2018 between The Tropical and Shull Manor, LLC, a Florida limited liability company whose post office address is 800 North Road, Boynton Beach, FL 33435, grantor, and Tropical Manor Holdings LLC, a Delaware limited liability company whose post office address is 3353 Peachtree Road, Suite 940, Atlanta, GA 30326, grantee.

(Whenever used herein the terms grantor and grantee include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

**Witnesseth**, that said grantor, for and in consideration of the sum TEN AND NO/100 DOLLARS (\$10 00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Brevard County, Florida, to-wit:

The following described parcel being the same lands as described in O.R. Book 745, pages 37 and 38 and O.R. Book 775, Page 602 and part of lands described in O.R. Book 745, Page 36, Public Records of Brevard County, Florida, except the East 25 feet thereof for a county road right-of-way and being more particularly described as follows:

Commence at the Northeast corner of the Southeast 1/4 of the Southeast 1/4, Section 22, Township 24 South, Range 36 East, Brevard County, Florida and run North 89° 53' West along the North line of said Southeast 1/4 of the Southeast 1/4, 25 feet to a point on the West right-of-way line of the county road, being the POINT OF BEGINNING of this description. From the point of beginning continue North 89° 53' West 559.34 feet to the center line of a drainage canal; thence run along the center of said drainage canal South 11°59'30" West 91.88 feet; thence South 04°0' East 204.70 feet; thence run South 10°45' East 122.50 feet; thence run South 09°52' East 50.77 feet; thence run South 05°6'32" East 205.17 feet to a point on the South line of aforesaid property; thence run South 89° 12' East 512.08 feet to a point on the West right-of-way line of the county road; thence run North 0°11' 40" East along the said West right-of-way line 674.81 feet to the point of beginning.

Parcel Identification Number: 24-36-22-00-783

**Together** with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

**To Have and to Hold**, the same in fee simple forever

**Subject to:** those matters shown in Exhibit A attached hereto and made a part hereof, applicable land use and zoning restrictions and to easements, reservations and restrictions of record, which are specifically not reimposed or extended hereby, and to taxes for the year 2018 and subsequent years.

DoubleTime®





**And** the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under grantors

**In Witness Whereof**, grantor has hereunto set grantor's hand and seal the day and year first above written

Signed, sealed and delivered in our presence:

Witness Name: Vincent J Piazza  
Marc Hemmick  
 Witness Name: Marc Hemmick

The Tropical and Shull Manor, LLC, a Florida limited liability company

By Andrew Podray, Authorized Member

(Corporate Seal)

State of Florida  
 County of Palm Beach

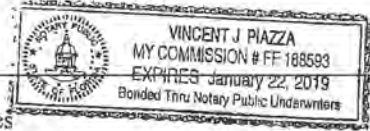
The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of December, 2018 by Andrew Podray, Authorized Member of The Tropical and Shull Manor, LLC, a Florida limited liability company, on behalf of the corporation. He ☐ is personally known to me or ☒ has produced a driver's license as identification

[Notary Seal]

Notary Public

Printed Name

My Commission Expires



## Exhibit "A" to Special Warranty Deed

1. Terms and conditions contained in the Easement and Memorandum of Agreement between Tropical and Shull Manor, LLC and Bright House Networks, LLC to install and maintain a system for the delivery of entertainment, video, internet access and other services recorded in O R Book 7748, Page 916, Public Records of Brevard County, Florida.





BOARD OF COUNTY COMMISSIONERS

Planning & Development Department  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940

# AUTHORIZATION TO ACT ON BEHALF OF OWNER

I, Gregory B. Jones being the owner of Tropical Manor Holdings LLC

Authorize Kenneth S. Metcalf to act on my behalf which may include, representing me in Public Hearings before Brevard County pertaining to the submittal of the attached application.

- ☐ Comprehensive Plan Amendment
- ☒ Rezoning
- ☐ Variance
- ☐ Administrative Action
- ☐ Development Plan

[Signature] \_\_\_\_\_  
Signature Title

State Of Georgia  
County Of Fulton

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of September 2020

By Gregory B. Jones who is personally known to me or has produced personally known

As identification and who did (did not) take an oath.

[Signature]  
Signature of Notary Public  
Carter Ryan Sechrest

02-12-2022  
Commission Expires



## Attachment "1A"

### LIMITED LIABILITY COMPANY AGREEMENT OF TROPICAL MANOR HOLDINGS LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (together with the schedules attached hereto, this "Agreement") of Tropical Manor Holdings LLC, a Delaware limited liability company (the "Company"), is entered into as of August 13, 2018 by the members identified on Schedule 1 hereto (collectively, the "Members"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule 2 hereto.

The Members, by execution of this Agreement, acknowledge and agree that the Company has been formed as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the "Act") and this Agreement, and the parties hereto hereby agree as follows:

Section 1. Name.

The name of the limited liability company is Tropical Manor Holdings LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at c/o Triumph Management Group, LLC, Atlanta Financial Center, 3353 Peachtree Road, Suite 940, Atlanta, GA 30326, or such other location as may hereafter be determined by the Manager.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is 1675 South State Street, Suite B, County of Kent, Delaware.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Capital Services, Inc., 1675 South State Street, Suite B, Dover, Delaware 19901.

Section 5. Members.

The mailing address of the Members are set forth on Schedule 1 attached hereto. The Members were admitted to the Company as members of the Company upon their execution of a counterpart signature page to this Agreement.

Section 6. Certificates.



Shawn J. Bolour is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of Delaware, her powers as an "authorized person" ceased, and each officer and/or authorized agent of the Company thereupon became a designated "authorized person" and shall continue as a designated "authorized person" within the meaning of the Act. The officers and/or authorized agents of the Company shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in Florida and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purpose.

The purpose to be conducted or promoted by the Company is to engage in the following activities: (i) to acquire, own, maintain, develop, manage, operate, lease, dispose of, hold for investment, finance, refinance, sell, market, pledge, exchange and otherwise realize the economic benefit from that certain real and personal property commonly known as "Tropical Manor" located at 1165 Jordan Road, Merritt Island, Florida 32953 (the "Property"), and such other incidental personal property necessary for the ownership, management, leasing, financing, operation and sale or other disposition of the Property; (ii) to enter into the Loan made by Lender to the Company which loan is secured by the Property; and (iii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of any of the above-mentioned purposes.

Section 8. Powers.

The Company, the Manager (as hereinafter defined) and any duly elected officers and/or authorized agents of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Management. The business and affairs of the Company, including without limitation, all day-to-day operations of the Company, shall be managed solely by or under direction of the Manager. The Manager of the Company is Tropical Manor Management LLC, a Delaware limited liability company.

(b) Powers of the Manager. Subject to Section 16, the Manager shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein. Without limiting the generality of the foregoing, the Manager shall

have the specific power and authority to cause the Company (or any or all of the officers of the Company on behalf of the Company), in the Company's own name:

(i) To acquire, own, maintain, develop, manage, operate, lease, hold for investment, finance, refinance, market, pledge (but only as security for the Loan), exchange and otherwise realize the economic benefit from the Property;

(ii) To purchase liability, errors and omissions and other insurance to protect the Company's property and business;

(iii) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term government obligations, commercial paper, money market mutual funds or other similar investments;

(iv) To sell or otherwise dispose of all or substantially all of the assets of the Company, including without limitation, the Property, as part of a single transaction or plan so long as that disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;

(v) To execute all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; operating agreements; operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Manager, which are in the best interests of the business of the Company;

(vi) To enter into any and all other agreements on behalf of the Company, with any other person for any purpose, in such form as the Manager may approve and which are in the best interests of the Company;

(vii) To make distributions in accordance with this Agreement;

(viii) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business and operation of the Property;

(ix) To make all decisions and do and perform all acts as may be necessary or appropriate to cause the Company to do any or all of the following:

1. To manage and lease all or any portion of the Property;

2. To contract with any party with respect to the management and operation of the Property;

3. To borrow money, and, as security therefor, to mortgage and pledge all or any part of the Property and in conjunction therewith execute all necessary documents, including, but not limited to, bonds, notes, mortgages, pledges, security agreements and financing statements;

4. To obtain replacements of mortgages upon the Property;

5. To prepay (in whole or in part), refinance, recast, increase, modify, consolidate, correlate, or extend any mortgages affecting the Property that exists with respect to the financing then in place;

6. To place record title to the Property in the name or names of a nominee or nominees for the purpose of mortgage financing or benefit to the Property;

7. To designate the depository or depositories in which bank accounts shall be kept and the person or persons upon whose signature withdrawals therefrom shall be made;

8. To invest its funds and to loan its funds to any other project or venture, including those of the Company or its Affiliates;

9. To prosecute, defend, settle, compromise or admit to arbitration, any suits, actions or claims at law or in equity to which the Property or the Company is a party or by which it is affected as may be necessary, proper or convenient, and to satisfy any judgment, decree or decision of any court, board, agency or authority having jurisdiction of any settlement of any suit, action or claim prior to judgment or final decision thereon;

10. To obtain insurance, in such amounts and against such risks, on behalf of and for the protection of the Property; provided, however, such insurance shall be sufficient to meet the requirements of any mortgage lender whose loan is secured by the Property;

11. To set aside funds from the Property for payment of past, current, and future liabilities relating to the Property in the form of Reserves;

12. To execute, acknowledge and deliver any and all instruments and documents, and to make expenditures and do any and all other things necessary or appropriate to effectuate any of the foregoing powers and accomplish the business and purposes of the Company; and

13. To make all other decisions in any manner relating to Property, whether or not set forth above and whether or not specifically authorized under the Act, unless specifically prohibited or restricted hereunder.

(c) Unless authorized in writing to do so by this Agreement or by the Manager, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose

(except for its officers, as set forth below).

(d) Officers and Agents. The Company may have such officers and agents with such respective rights and duties as the Manager may from time to time determine. The Manager may delegate to one or more agents, officers, employees or other persons any and all powers to manage the Company that the Manager possesses under this Agreement and the Act. If an officer of the Company is appointed by the Manager and given a title that is used by officers of a business corporation, the Manager shall be deemed to have delegated to the officer the duties, responsibilities and authority that would be exercised by an officer of a business corporation with the same title, unless the Manager provides otherwise by written resolution.

(e) Indemnification. The officers and any employees or agent of the Company shall be indemnified by the Company to the fullest extent permitted by the Act and as may be otherwise permitted by applicable law.

Section 10. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and none of the directors, members, officers or agents of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a director, member, officer or agent of the Company, provided, however that any such Person shall be liable for any loss, damage or claim incurred by reason of such Person's intentional misconduct or knowing violation of law or a transaction for which such Person received an improper personal benefit in violation of this Agreement.

Section 11. Capital Contributions.

The Members have contributed to the Company cash in the amount listed on Schedule 1 attached hereto.

Section 12. Additional Contributions.

The Members are not required to make any additional capital contribution to the Company. However, the Members may make additional capital contributions to the Company at any time. The provisions of this Agreement, including this Section 12, are intended to benefit the Members and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.



Section 13. Capital Accounts and Allocations.

(a) Capital Accounts. A separate capital account (the "**Capital Account**") shall be established and maintained for each Member. The Capital Account of each Member shall be credited with such Member's Capital Contributions to the Company, all Profits allocated to such Member pursuant to Section 13(b) and any items of income or gain which are specifically allocated pursuant to Sections 13(c) and 13(d) or otherwise pursuant to this Agreement; and shall be debited with all Losses allocated such Member pursuant to Section 13(b), any items of loss or deduction of the Company specially allocated to such Member pursuant to Sections 13(c) and 13(d) or otherwise pursuant to this Agreement, and all cash and the Carrying Value of any Asset (net of liabilities assumed by such Member and the liabilities to which such Asset is subject) distributed by the Company to such Member. To the extent not provided for in the preceding sentence, the Capital Accounts of the Members shall be adjusted and maintained in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), as the same may be amended or revised; provided, that such adjustment and maintenance does not have a material adverse effect on the economic interests of the Members. Any references in any section of this Agreement to the Capital Account of a Member shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time as set forth above. In the event of any transfer of any Interest in the Company in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(b) Allocations of Profits and Losses. Except as otherwise provided in this Agreement, Profits, Losses and, to the extent necessary, individual items of income, gain, loss or deduction, of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 13(c) or elsewhere in this Agreement, the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the amount of distributions that would be made to such Member pursuant to Section 22(d) if the Company were dissolved, its affairs wound up, its assets sold for cash equal to their Carrying Value, and all Company liabilities were satisfied (limited with respect to each nonrecourse liability (including Member Nonrecourse Debt obligations) to the Carrying Value of the assets securing such liability), minus (ii) the sum of such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. Notwithstanding the foregoing, the Manager may make such allocations as it deems reasonably necessary to give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose.

(c) Special Allocation Provisions. Notwithstanding any other provision in this Section 13:

(i) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain or Member Nonrecourse Debt Minimum Gain (determined in accordance with the principles of Treasury Regulations Section 1.704-2(d) and 1.704-2(i)) during any Company taxable year, the Members shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to their respective shares of such net

decrease during such year, determined pursuant to Treasury Regulations 1.704-2(g) and 1.704-2(i)(5). The items to be so allocated shall be determined in accordance with the Treasury Regulations Section 1.704-2(f). This Section 13(c)(i) is intended to comply with the minimum gain chargeback requirements in such Treasury Regulations Sections and shall be interpreted consistently therewith, including that no chargeback shall be required to the extent of the exceptions provided in the Treasury Regulations Section 1.704-2(f) and 1.704-2(i)(4).

(ii) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in his Capital Account created by such adjustments, allocations or distributions as promptly as possible.

(iii) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore, if any, pursuant to any provisions of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible; provided, that an allocation pursuant to this Section 13(c)(iii) shall be made only if and to the extent that a Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 13 have been tentatively made as if Section 13(c)(ii) and 13(c)(iii) were not in this Agreement.

(iv) Payee Allocation. In the event any payment to any person that is treated by the Company as the payment of an expense is re-characterized by a taxing authority as a Company distribution to the payee as a Member, such payee shall be specially allocated an amount of Company gross income and gain as quickly as possible equal to the amount of the distribution.

(v) Nonrecourse Deductions. Nonrecourse Deductions shall be allocated to the Members in accordance with their respective Percentage Interests.

(vi) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any taxable period shall be allocated to the Member who bears the economic risk of loss with respect to liability to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(j).

(vii) Section 752 Specification. Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Treasury Regulations Section 1.752-3(a)(3), the Members' interests in Company profits shall be seventy percent (70%) to the Members on a *pari passu* basis in proportion to their respective Percentage Interest and thirty percent (30%) to the Manager.

(d) Tax Allocations. For income tax purposes only, each item of income, gain, loss and deduction of the Company shall be allocated among the Members in the same manner as the

corresponding items of Profits and Losses and specially allocated items are allocated for Capital Accounts purposes; provided that in the case of any Company asset the Carrying Value of which differs from its Basis for Federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for income tax purposes in accordance with the principles of Sections 704(b) and (c) of the Code (in any manner determined by the Manager) so as to take account of the difference between Carrying Value and Basis of such asset. Notwithstanding the foregoing, the Manager may make such allocations as it deems reasonably necessary to give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose.

(e) Other Allocation Provisions. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such regulations. Sections 13(b), 13(c) and 13(d) may be amended at any time by the Manager if necessary, in the opinion of tax counsel to the Company, to comply with such regulations, so long as any such amendment does not materially change the relative economic interest of the Members.

(f) Intent of Allocations/Cash Savings Clause. The parties intend that the foregoing tax allocation provisions of this Section 13 shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with Section 22(d) hereof to be made (after unpaid loans and interest thereon, including those owed to Members have been paid) in a manner identical to liquidating distributions if such distributions were made in accordance with final Capital Account balances. To the extent that the tax allocation provisions of this Section 13 would fail to produce such final Capital Account balances, (i) such provisions shall be amended by the Manager if and to the extent necessary to produce such result and (ii) taxable income and taxable loss of the Company for prior open years (or items of gross income and deduction of the Company for such years) shall be reallocated by the Manager among the Members to the extent it is not possible to achieve such result with allocations of items of income (including gross income) and deduction for the current year and future years, as approved by the Manager. This Section 13(f) shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the IRS or any other taxing authority. The Manager shall have the power to amend this Agreement without the consent of the other Members, as it reasonably considers advisable, to make the allocations and adjustments described in this Section 13(f).

Section 14. Distributions to Members/Reimbursements.

(a) Distributions. Subject to Sections 14(c) and 14(e) and except as otherwise provided in Section 22 with respect to distributions upon liquidation of the Company, the Manager shall cause the Company to distribute all Distributable Cash (other than Capital Proceeds which are to be distributed pursuant to Section 14(b) below) to the Members on each Distribution Date (unless otherwise noted), as set forth below:

(i) First, one hundred percent (100%) to the Members on a *pari passu* basis in proportion to their respective Percentage Interest, until any arrearage on the Preferred Return due to any Member prior to such Distribution Date is satisfied;

(ii) Second, one hundred percent (100%) to the Members on a *pari passu* basis in proportion to their respective Percentage Interest, until each Member has received the Preferred Return based on such Member's Initial Capital Account Contribution.

(iii) Third, as determined by Manager following completion of an annual property audit, the balance to the Members on a *pari passu* basis as follows:

(A) seventy percent (70%) to Members; and

(B) thirty percent (30%) to Manager.

(b) Distributions upon Capital Event. Notwithstanding anything to the contrary set forth above in Section 14(a), and except as provided in Section 22 with respect to distributions upon liquidation of the Company, distributions of Capital Proceeds shall be made as follows:

(i) First, to pay all obligations of the Company in connection with the operation of the Property, including payments of principal and interest required under the Loan and any taxes, insurance and operating expenses;

(ii) Second, with respect to any refinance of the Loan or any subsequent financing, to any reserves established by the Manager for capital improvements and maintenance;

(iii) Third, to repay loans made by any Member to the Company;

(iv) Fourth, one hundred percent (100%) to the Members on a *pari passu* basis in proportion to their respective Percentage Interest, until any arrearage on the Preferred Return due to any Member prior to such Distribution Date is satisfied;

(v) Fifth, one hundred percent (100%) to the Members on a *pari passu* basis in proportion to their respective Percentage Interest, until each Member has received the Preferred Return based on such Member's Initial Capital Account Contribution;

(vi) Sixth, one hundred percent (100%) to the Members on a *pari passu* basis in proportion to their respective Percentage Interest, until each of said Members' Capital Account balance is reduced to zero;

(vii) Seventh, to the Members and Manager on a *pari passu* basis, as follows: (A) seventy percent (70%) to the Members on a *pari passu* basis in proportion to their respective Percentage Interest, and (B) thirty percent (30%) to Manager. For the avoidance of doubt, Manager acknowledges and agrees that no Distributable Cash shall be distributed to the Manager pursuant to this subsection (b) unless and until each of the other Members of the Company have received their Preferred Return and had their Capital Account balance reduced to zero.



(c) Withholding. If the Manager determines that the Company is required to withhold Taxes on behalf of a Member, each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign Taxes that the Manager determines that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any Taxes required to be withheld or paid by the Company pursuant to Code § 1441, 1442, 1445 or 1446 or any other applicable sections of the Code. Any such tax withholding shall be treated for all purposes of this Agreement as a distribution pursuant to Sections 14(a) and 14(b) and credited against any such amounts otherwise due hereunder.

(d) Distribution of Assets in Kind. Except as otherwise provided herein, no Member shall have the right to require any distribution of the Company's Assets in kind. The Company's Assets may be distributed in kind, at the election of the Manager. If any of the Company's Assets is distributed in kind, such Assets shall be distributed pursuant to Sections 14(a) and 14(b) on the basis of its fair market value as reasonably determined by the Manager as of the date of such distribution, treating such distribution as a distribution of Distributable Cash in an amount equal to such fair market value.

(e) Limitations on Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make distributions pursuant to Sections 14(a) and 14(b) if such distribution would violate the Act or any other applicable law.

(f) Reimbursements; Fees. The Manager shall cause the Company to pay (or reimburse, as applicable) the parties described below, as follows :

(i) The Housing and Urban Development (HUD) submission fee in the amount of \$25,000 one hundred percent (100%) to Triumph Management Group, LLC.

(ii) The Acquisition Fee in the amount of \$102,000 fifty percent (50%) to Triumph Management Group, LLC and fifty percent (50%) to TBM Acquisitions, LLC.

(iii) Any other acquisition related fees generated on behalf of the Manager fifty percent (50%) to Triumph Management Group, LLC and fifty percent (50%) to TBM Acquisitions, LLC.

All amounts paid pursuant to this Section 14(f) shall be treated as payments to the Members in accordance with Code Section 707(a)(1) and not in their capacities as Members.

Section 15. Books and Records; Company Representative for Tax Purposes.

(a) The Manager shall keep, or cause to be kept, complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Manager. The Company's books of account shall be kept using the method of accounting determined by the Manager. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Manager.



(b) Company Representative. Manager shall serve as the "Company Representative" defined as having the meaning ascribed to the term "partnership representative" for purposes of Section 6231 of the Code. The Company Representative shall give prompt written notice to each Member upon receipt of advice that the Internal Revenue Service intends to examine or audit any tax returns of the Company.

Section 16. Single Purpose Entity Requirements.

(a) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation of the Company, for so long as the Loan exists on any portion of the Mortgaged Property, the following provisions shall control and this Section 16 will govern and supersede all other provisions of the Agreement.

(b) Single Purpose Entity. In order to preserve and ensure its separate and distinct identity, in addition to other provisions set forth herein, and until the Loan is paid in full, at all times the Company will remain a single purpose entity; and in furtherance of the foregoing, the Company:

(i) will not engage in any business or activity, other than the ownership, operation and maintenance of the Mortgaged Property and activities incidental thereto;

(ii) will not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Mortgaged Property and such Personalty as may be necessary for the operation of the Mortgaged Property, and will conduct and operate its business as presently conducted and operated;

(iii) will not commingle its assets with the assets of any other Person and will hold all of its assets in its own name;

(iv) will not acquire obligations or securities of its members or Affiliates or incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the following: (A) the Indebtedness (and any further indebtedness as described in Section 11.11 of the Loan Agreement with regard to Supplemental Instruments); and (B) customary unsecured trade payables incurred in the ordinary course of owning and operating the Mortgaged Property provided the same are not evidenced by a promissory note, do not exceed, in the aggregate, at any time a maximum amount of 2% of the original principal amount of the Indebtedness and are paid within 60 days of the date incurred;

(v) will file its own tax returns and maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and will not list its assets as assets on the financial statement of any other Person; provided, however, that (A) the Company will not be required to file its own tax returns if (1) it is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, or (2) it is required by applicable law to file consolidated tax returns, and (B) the Company's assets may be included in a consolidated financial statement of its

Affiliate provided that: (1) appropriate notation will be made on such consolidated financial statements to indicate the separateness of the Company from such Affiliate and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person; and (2) such assets will also be listed on the Company's own separate balance sheet;

(vi) except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, will only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of the Company or any Guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm's-length basis with third parties;

(vii) will not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(viii) will not assume or guaranty (excluding any guaranty that has been executed and delivered in connection with the Note) the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person;

(ix) will not make or permit to remain outstanding any loans or advances to any other Person except for those investments permitted under the Loan Documents and will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities);

(x) will hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, will correct any known misunderstanding regarding its separate identity and will not identify itself or any of its Affiliates as a division or department of any other Person; and

(xi) will pay (or cause the Asset Manager and/or the Property Manager, as applicable, to pay on behalf of the Company from the Company's funds) its own liabilities (including salaries of its own employees and any fair and reasonable allocated portion of shared expenses with Affiliates) from its own funds; provided, however, nothing in this Section will require any member or partner of the Company or any principal to make any equity contribution to the Company.

(c) Capitalized terms used in this Section 16 but not otherwise defined herein shall have the meanings defined in the Loan Agreement.

Section 17. Other Business.

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The Manager, and any Affiliate thereof, the Members, and any Affiliate thereof, may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others notwithstanding any provision to the contrary at law or in equity. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 18. Exculpation and Indemnification.

(a) None of the Members, or any employee or agent of the Company or any employee, representative, agent or Affiliate of the Members (collectively, the "Covered Persons") shall, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 18 by the Company shall be provided out of and to the extent of Company assets only, and none of the Members, including the Manager, shall have any personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 18.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.





(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person to the Company or its Members otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 18 shall survive any termination of this Agreement.

Section 19. Assignments.

Subject to terms and conditions of the Loan Documents and receipt by the Members of the prior written consent of Manager, which consent may be withheld by Manager in its sole and absolute discretion, the Members may assign in whole or in part its limited liability company Interest in the Company. Subject to Section 24, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its Interest in the Company pursuant to this Section 19, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation in compliance with the Transaction Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 20. [Reserved].

Section 21. Admission of Additional Members.

Subject to the terms and conditions of the Loan Documents, one or more additional Members of the Company may be admitted to the Company with the written consent of the Manager.

Section 22. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be



a member of the Company or that causes the Members to cease to be members of the Company (other than continuation of the Company without dissolution upon (i) an assignment by the last remaining Member of all of its Interest in the Company and the admission of the transferee pursuant to Section 20, or (ii) the resignation of the last remaining Member and the admission of an additional member of the Company pursuant to Section 20), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company's assets will be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefore, will be applied and distributed by the Manager in the following order:

(i) First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members and to the establishment of any reserves therefor;

(ii) Second, to the payment and discharge of all of the Company's debts and liabilities to Members; and

(iii) The balance, if any, to the Members, in accordance with Section 14(a).

Any distribution to a Member pursuant to Section 22(d)(ii) or 22(d)(iii) above will be net of any amounts owed to the Company by such Member.

(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 23. Right to Partition; Nature of Interest.



To the fullest extent permitted by law, the Manager shall have a right or power to cause the Company or any of its assets to be partitioned, subject to all prohibitions and limitations with respect to such right contained in any of the Transaction Documents. The Members shall not have any interest in any specific assets of the Company, and the Members shall not have the status of a creditor with respect to any distribution pursuant to Section 14 hereof. The Interest of the Members in the Company is personal property.

Section 24. Special Lender Provisions.

For so long as the Loan remains outstanding, notwithstanding anything to the contrary contained herein:

(a) Transfers. No Transfer will be permitted under this Agreement unless such Transfer complies with the terms and conditions of the Loan Documents.

(b) Indemnification Obligations. Any indemnification obligation of the Company set forth in this Agreement shall be subject and fully subordinated to any obligations respecting the Property (including, without limitation, the Loan) and, to the fullest extent permitted by law, such indemnification obligation shall not constitute a claim against the Company in the event that the Company's cash flow in excess of amounts necessary to pay holders of such obligations with respect to the Property is insufficient to pay such indemnity obligations.

(c) Member/Partner Loans. No member/partner shall be permitted to make any loan to the Company.

(d) Fees Payable to Affiliates. Any fees set forth in the this Agreement that are payable to affiliates in connection with asset management services or other related services shall be subject and fully subordinated to the Loan and subject to the debt limitations set forth in the Loan Agreement.

Section 25. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Members. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person.

Section 26. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 27. Entire Agreement.

This Agreement constitutes the entire agreement of the Members with respect to the subject matter hereof.

Section 28. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Members agree that this Agreement constitutes a legal, valid and binding agreement of the Members, and is enforceable against the Members in accordance with its terms.

Section 29. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 30. Amendments.

This Agreement may only be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by both the Members.

Section 31. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 32. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of a Member, to the Member at its address as listed on Schedule 1 attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 33. Waiver of Jury Trial.

By acceptance of this agreement, the members hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating directly or indirectly to the matters set forth herein.

Section 34. Non-Solicitation.

Each Member covenants and agrees that it will not, and will not permit any of its affiliates, to directly contact or solicit any equity investor of any other Member, excluding such





persons with whom each Member has a preexisting relationship (to the extent disclosed in connection with this Agreement and/or the acquisition of the Property, in general), without the express prior written consent of said Member.

[SIGNATURE PAGE FOLLOWS]




IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement of Tropical Manor Holdings LLC as of the date first above written.


**MEMBERS:**

TROPICAL MANOR MANAGEMENT LLC, a  
Delaware limited liability company

By: Triumph Management Group, LLC, a  
Georgia limited liability company, its  
Managing Member

By:   
Gregory B. Jones  
Authorized Signatory

By: TBM Acquisitions LLC, a Florida limited  
liability company, its Managing Member

  
By: \_\_\_\_\_  
Shawn J. Bolour  
Manager

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

## SCHEDULE 2

### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

**"Act"** has the meaning set forth in the preamble to this Agreement.

**"Affiliate"** means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

**"Agreement"** means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

**"Assets"** means all real and personal property owned by a Person from time to time during the term of its existence and any improvements thereto, and shall include both tangible and intangible property. With respect to the Company, the term "Assets" shall include, without limitation, the Properties.

**"Bankruptcy"** means, with respect to any Person, (A) if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (B) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

**"Basis"** means, with respect to any of the Company's Assets, the adjusted basis of such asset for Federal income tax purposes.

**"Budget"** means the annual budget established by the Manager for the Property, as the same may be amended from time to time to reflect modifications thereto.

**"Capital Account"** means, with respect to any Member, the capital account maintained for such Member equal to all Capital Contributions to the Company made by such Member, less the aggregate distributions made to such Member pursuant to Section 14(b) of this Agreement, and otherwise in accordance with the provisions of Section 13(a) of this Agreement.

**"Capital Contributions"** means, with respect to any Member, the aggregate amount of cash and the Carrying Value of any Contributed Property contributed to the Company in exchange for such Member's Interest.

**"Capital Event"** means (a) the sale or other disposition of the Property; (b) the refinancing of debt on the Property; and (c) the release by Lender to the Company post-closing of any "earn-out" loan proceeds escrowed by Lender in connection with the Loan at the closing of the Company's acquisition of the Property.

**"Capital Proceeds"** means (a) proceeds generated from a Capital Event; (b) proceeds of any casualty and/or liability insurance, if available to the Company for distribution; and (c) proceeds of any condemnation or condemnation insurance, if available to the Company for distribution.

**"Carrying Value"** means, with respect to any Company Assets, the Asset's Basis, except, other than as provided herein, that (i) the initial Carrying Value of any Property contributed by a Member to the Company shall be an amount equal to the fair market value of such Asset (as determined in good faith by the Manager), and (ii) the Carrying Values of all Company Assets may be adjusted to equal their respective fair market values (as determined in good faith by the Manager), in accordance with the rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(I) immediately prior to: (a) the date of the acquisition of any additional Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the date of the distribution of more than a de minimis amount of the Company Assets (other than a *pro rata* distribution) to a Member; or (c) such other dates as may be specified in Treasury Regulations under Section 704 of the Code; provided, that adjustments pursuant to clauses (a), (b) and (c) above shall be made only if the Manager determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic Interests of the Members. The Carrying Value of any Company Assets distributed to any Member shall be adjusted immediately prior to such distribution to equal its fair market value. In the case of any Assets that have a Carrying Value that differs from its adjusted tax Basis, Carrying Value shall be adjusted by the amount of Depreciation calculated for purposes of the definition of "Profits and Losses" rather than the amount of depreciation determined for Federal income tax.

**"Certificate of Formation"** means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on May 11, 2018, as amended or amended and restated from time to time.

**"Company"** means Tropical Manor Holdings LLC, a Delaware limited liability company.

**"Company Representative"** has the meaning set forth in Section 15(b).

**"Company Minimum Gain"** has the meaning given to the terms "Partnership Minimum Gain" as set forth in Treasury Regulation §§1.704-2(b)(2) and 1.704-2(d), and any Member's share of Company Minimum Gain shall be determined in accordance with Treasury Regulation §1.704-2(g)(1).

**"Contributed Property"** shall mean each Member's Interest in Assets or other consideration (excluding services) contributed to the capital of the Company by such Member.



**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly 10% or more of the ownership interests.

**"Covered Persons"** has the meaning set forth in Section 18(a).

**"Depreciation"** means, for each Fiscal Year or other period, an amount equal to the cost recovery deduction allowable with respect to an asset for such year or other period as determined for federal income tax purposes, provided that, if the Carrying Value of such asset differs from its Basis at the beginning of such Fiscal Year or other period, depreciation shall be determined as provided in Treasury Regulation § 1.704-1(b)(2)(iv)(g)(3).

**"Distributable Cash"** means the cash receipts generated by the Company or its Subsidiaries from operations (including the release of any reserves) computed on a consolidated basis and proceeds from any financing, insurance payout, condemnation award, sale of the Company's Assets or similar Capital Event, after payment of all expenses and liabilities of the Company (including loans due to any Member) and the establishment of any reserves therefore by the Managing Member in its sole discretion.

**"Distribution Date"** means the date of any distribution as the Manager, in its sole discretion, may designate from time to time, but not less frequently than quarterly with respect to Distributable Cash generated by the Company.

**"Expenses"** means, for any period, the total gross expenditures of the Company reasonably relating to the operations of the Company, ownership, maintenance, management, operations, sale, financing or refinancing of Company Property during such period contemplated by the then applicable Budget or otherwise approved (either prospectively or retroactively) by the Manager, including: (a) all cash operating expenses (including, without limitation, real estate taxes and assessments, personal property taxes, sales taxes, and all fees, commissions, expenses and allowances paid or reimbursed to any Member or any of its Affiliates pursuant to any property management agreement or otherwise as permitted hereunder); (b) all deposits of Revenues to the Company's reserve accounts; (c) all debt service payments on the Loan; and (d) all expenditures which are treated as capital expenditures (as distinguished from expense deductions included in (a)) under GAAP; provided, however, that "Expenses" shall not include (i) any payment or expenditure to the extent (A) the sources of funds used for such payment or expenditure are not included in Revenues or (B) such payment or expenditure is paid out of any Company reserves unless the withdrawal of the funds to make such payment or expenditure was treated as Revenues, and (ii) any expenditure properly attributable to the liquidation of the Company.

**"Fiscal Year"** means the 12-month period ending on December 31 of each year or such other fiscal year as the Manager may select in its reasonable discretion from time to time in accordance with the Code and the Treasury Regulations.

**"GAAP"** means United States generally accepted accounting principles consistently applied.

**"Initial Capital Account Contribution"** means, with respect to any Member, the initial Capital Account balance in the amount equal to all Capital Contributions to the Company made by such Member upon the date of the Company's acquisition of the Property.

**"Interest"** means a Member's entire ownership interest in the Company, including any and all benefits to which holders of such Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.

**"IRS"** means the Internal Revenue Service.

**"Lender"** means Berkeley Point Capital LLC, a Delaware limited liability company and its successors and assigns.

**"Loan"** means that certain loan in the original principal amount of approximately Five Million Seven Hundred Fifty-Nine Thousand and No/100<sup>th</sup> Dollars (\$5,759,000.00) to be made by Lender and assigned to Federal Home Loan Mortgage Corporation, which loan is secured by a first priority lien on the Property.

**"Loan Agreement"** means the [Multifamily Loan and Security Agreement] by and between the Company and Lender entered into in connection with the Loan, as such may hereafter be further amended, restated, or modified.

**"Loan Documents"** means those certain documents and instruments executed in connection with the Loan, as such may hereafter be further amended, restated, or modified.

**"Manager"** or **"Managing Member"** means Tropical Manor Management LLC, a Delaware limited liability company.

**"Member"** means the Persons identified on Schedule 1 attached hereto, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company.

**"Member Nonrecourse Debt"** has the meaning given to the term "Partner Nonrecourse Debt" as set forth in Treasury Regulation § 1.704-2(b)(4).

**"Member Nonrecourse Debt Minimum Gain"** has the meaning given to the term "Partner Nonrecourse Debt Minimum Gain" in Treasury Regulation § 1.704-2(i)(2) and shall be determined in the manner set forth in Treasury Regulation § 1.704-2(i)(3). A Member's share of the Member Nonrecourse Debt Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(5).

**"Member Nonrecourse Deductions"** has the meaning given to the term "Partner Nonrecourse Deductions" as set forth in Treasury Regulation § 1.704-2(i)(2). For any Company Fiscal Year, the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt equal the net increase during the year, if any, in the amount of Member Nonrecourse Debt Minimum Gain reduced (but not below zero) by proceeds of the liability that are both attributable to the liability and allocable to an increase in the Member Nonrecourse Debt Minimum Gain.

**"Net Cash Flow"** means, for any period, the excess of (a) Revenues for such period over (b) (i) Expenses for such period and (ii) payments into any Reserve.

**"Nonrecourse Deductions"** has the meaning set forth in Treasury Regulation § 1.704-2(b)(1). The amount of Nonrecourse Deductions for any Fiscal Year equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that Fiscal Year over the aggregate amount of any distributions during that Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Treasury Regulation §§ 1.704-2(c) and (d).

**"Nonrecourse Liability"** has the meaning set forth in Treasury Regulation § 1.704-2(b)(3).

**"Percentage Interest"** of a Member means the ratio (expressed as a percentage) of (a) the Capital Contributions of such Member to (b) the aggregate Capital Contributions of all the Members. The initial **"Percentage Interest"** of each Member is set forth opposite such Member's name on Schedule 1. The combined Percentage Interest of all Members shall at all times equal 100%.

**"Person"** means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

**"Preferred Return"** means, with respect to each Member, a cumulative simple, non-compounded return (calculated like interest) equal to eight percent (8%) per annum on each such Member's Capital Account balance outstanding from time to time.

**"Profits"** and **"Losses"** means for each Fiscal Year or other period an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code § 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code § 703(a)(1)), with the following adjustments:

(i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Loss shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in and within the meaning of Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Loss, shall be subtracted from such taxable income or loss;

(iii) gain or loss resulting from any disposition of the Company's Assets with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Carrying Value of the Asset, notwithstanding that the Basis of the Asset differs from its Carrying Value;

(iv) in lieu of depreciation, amortization and other cost recovery deductions taken into account for federal income tax purposes, there shall be taken into account Depreciation for such year or other period, computed in accordance with the Treasury Regulation § 1.704-1(b)(2)(iv)(g);

(v) any items that are specially allocated to a Member pursuant to Section 13(c) through 13(e) shall not be taken into account in determining Profits and Losses; and

(vi) any increase or decrease to capital accounts as a result of any adjustment to the book value of the Company's Assets pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(f) or (g) shall constitute an item of Profit or Loss, as appropriate.

**"Reserves"** means such reserves as established by Manager for the purpose of providing funds for a specific purpose pursuant to the Budget or as otherwise required by the Loan Agreement, such as loan payments, tax payments, and repair or improvement of the Property, but specifically excluding reserves withheld pursuant to Section 14(a)(iii)(b).

**"Revenues"** means, for any period, the total gross revenues received by the Company during such period, including all receipts of the Company from: (a) rent, cost, expense and other recoveries and all additional rent paid to the Company; (b) concessions to the Company which are in the nature of revenues; (c) rent or business interruption insurance, if any; (d) funds made available to the extent such funds are withdrawn from the Company's reserve accounts and deposited into the Company's operating accounts; and (e) any other revenues and receipts realized by the Company, to the extent such other revenues and receipts are not Capital Proceeds.

**"Subsidiary"** means any Person in which more than 50% of the voting stock or beneficial ownership of such Person is owned, either directly or indirectly, by the Company (or other specified Person).

**"Tax(es)"** means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any Interest, penalty or addition thereto.

**"Treasury Regulation(s)"** as used herein means the Treasury Regulations, including Temporary Treasury Regulations, promulgated under the Code, as from time to time in effect.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.



## Attachment "1B"

### LIMITED LIABILITY COMPANY AGREEMENT OF TROPICAL MANOR MANAGEMENT LLC

**LIMITED LIABILITY COMPANY AGREEMENT** (together with the schedules attached hereto, this "**Agreement**") of **TROPICAL MANOR MANAGEMENT LLC**, a Delaware limited liability company (the "**Company**"), is entered into as of May 11, 2018 (the "**Effective Date**") by the Persons identified on Schedule 1 hereto (collectively, the "**Members**"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule 2 hereto.

The Members, by execution of this Agreement, acknowledge and agree that the Company has been formed as a limited liability company pursuant to and in accordance with the provisions of the Limited Liability Company Act of the State of Delaware, which is Title 6, Subtitle II, Chapter 18 of the Delaware Code (the "**Act**"), and this Agreement, and the parties hereto hereby agree as follows:

1. **Name.** The name of the limited liability company is Tropical Manor Management LLC.

2. **Principal Business Office.** The principal business office of the Company shall be located at c/o Triumph Management Group, LLC, Atlanta Financial Center, 3353 Peachtree Road, Suite 940, Atlanta, GA 30326, or such other location as may hereafter be determined by the Managing Members.

3. **Registered Office.** The address of the registered office of the Company in the State of Delaware is Capital Services, Inc., 1675 South State Street, Suite B, Dover, Delaware 19901.

4. **Registered Agent.** The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Capital Services, Inc., 1675 South State Street, Suite B, Dover, Delaware 19901.

5. **Members.** The mailing addresses of the Members are set forth on Schedule 1 attached hereto. The Members were admitted to the Company as members of the Company upon the formation of the Company.

6. **Certificates.** Shawn J. Bolour is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of Delaware, his powers as an "authorized person" ceased, and each officer and/or authorized agent of the Company thereupon became a designated "authorized person" and shall continue as a designated "authorized person" within the meaning of the Act. The officers and/or authorized agents of the Company shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in Florida and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

7. **Purpose.** The purpose to be conducted or promoted by the Company is to engage in the following activities: (i) to serve as the sole managing member of Tropical Manor Holdings LLC, a Delaware limited liability company ("***Property Owner***") and, in such capacity to, among other things, facilitate the acquisition of the property commonly known as "Tropical Manor" located at 1165 Jordan Road, Merritt Island, Florida 32953 ("***Property***") by Property Owner through the Acquisition Financing and enable the preservation of the Property by Property Owner for future development and potential tax credits, subsidies and/or other economic incentives; (ii) to own (either directly or indirectly), maintain, develop, manage, control, operate, lease, dispose of, hold for investment, finance, refinance, sell, market, pledge, exchange and otherwise realize the economic benefit from the Property, and such other incidental personal property necessary for the ownership, management, leasing, financing, operation and sale or other disposition of the Property; and (iii) to engage in any lawful act or activity not described above with the prior consent of the Members (subject to the terms herein), and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of any of the above-mentioned purposes.

8. **Powers.** The Company, the Managing Members (as hereinafter defined) and any duly elected officers and/or authorized agents of the Company on behalf of the Company shall, subject to the terms and conditions set forth in Section 9 below, (i) have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

9. **Management.**

9.1 **Exclusive Responsibility.** The business and affairs of the Company shall be managed by or under the direction of the Managing Members. The Company may act only by actions taken by or under the direction of the Managing Members in accordance with this Agreement. The Managing Members may delegate the right, power, and authority to manage the day-to-day business, affairs, operations, and activities of the Company to any officer, employee, or agent of the company, subject to the ultimate direction, control, and supervision of the Managing Members. The Managing Members of the Company are Triumph Management Group, LLC, a Georgia limited liability company ("***TMG***"), and TBM Acquisitions, LLC, a Florida limited liability company ("***TBM***").

(a) **Powers of the Managing Members.** Subject to the limitations set forth in subsection (c) below, each of the Managing Members shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein. Without limiting the generality of the foregoing, each of the Managing Members shall have the specific power and authority to cause the Company (or any or all of the officers of the Company on behalf of the Company), in the Company's own name:

(i) To conduct the business of the Company on a day-to-day basis;

(ii) To protect and preserve the assets of the Company in the ordinary course of business;

(iii) To open Company bank accounts in which all Company funds shall be deposited and from which payments shall be made; and

(iv) To cause the Company to take and carry-out, in the name of the Company, all actions necessary or incidental to, or deemed by the Managing Members to be in furtherance of, the management, business, operations and/or affairs of the Owner.

(b) Unless authorized in writing to do so by this Agreement or by the Managing Members, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose (except for its officers, as set forth below).

(c) Certain Limitations. Notwithstanding the generality of the foregoing, and in addition to other acts expressly prohibited by this Agreement or by law, TBM, in its capacity as a Managing Member shall not have the unilateral authority to do any of the following acts without the prior written consent of TMG:

(i) do any act in contravention of this Agreement or the Property Owner's operating agreement;

(ii) do any act which would make it impossible to carry-on the ordinary business, operations or affairs of the Company or Property Owner, except as expressly provided in this Agreement or Property Owner's operating agreement;

(iii) confess a judgment against the Company or Property Owner or otherwise settle or compromise any litigation or other adversarial proceeding;

(iv) execute or deliver any general assignment for the benefit of the creditors of the Company or Property Owner, or declare or admit that the Company or Property Owner is insolvent or bankrupt;

(v) assign rights in specific Company property or Property Owner property for other than for a Company or Property owner purpose;

(vi) knowingly do any act (except an act expressly required by this Agreement or Property Owner's operating agreement) which would cause the Company or Property Owner to become an "association" taxable as a corporation for federal income tax purposes;

(vii) hire any employee or pay any salary, commissions, fees or other compensation to any Officer, Manager or employee of the Company or Property Owner;

(viii) enter into any transaction or amend any contracts, agreements, understandings, arrangements or other documents with a Member, or any affiliate of a Member, or a member of Property Owner, or any affiliate of a member of Property Owner;



(ix) encumber, pledge or allow any lien or security interest to be created against or placed upon any assets of the Company or Property Owner;

(x) enter into any contract, agreement, understanding, arrangement or other document, or bind the Company or Property Owner to any debt, obligation or liability, involving any developer, contractor, subcontractor, property manager, architect, engineer, accountant, auditor, vendor, investor, lender or other similar or like service providers with respect to the Property;

(xi) borrow, finance, refinance involving the Company or Property Owner;

(xii) to the extent the Property is the interest of a lender or other creditor under a bond, loan or other debt, on behalf of the Company or Property Owner, (a) issue or withhold any consent, approval, waiver, amendment or modification or other decision under any loan document, bond indenture, loan servicing agreement, inter-creditor agreement or the like, (b) decide to pursue or waive any rights or remedies, and (c) decide to seek and terms of any workout, deed in lieu of foreclosure, friendly foreclosure agreement, adversarial foreclosure, bankruptcy election, or litigation;

(xiii) approve, on behalf of the Company or Property Owner, the Budget on an annual basis, and all modifications and variances therefrom;

(xiv) approve, on behalf of the Company or Property Owner, any (a) termination of the property management agreement with Triumph Housing Management, LLC, (b) replacement of property manager engaged (or to be engaged) by the Company or Property Owner, (c) property management agreement, construction management agreement or leasing agreement or (d) Budgeted expenditure or contract for services, materials, the payment of money, or otherwise with a value in excess of \$5,000 or not terminable on not more than 30 days' notice without fee or cost, and all decisions, elections, approvals and determinations to be made by the Company or Property Owner thereunder;

(xv) respond to any legal proceedings in the name of the Company or Property Owner, and the decision whether to settle any such proceedings and, if so, the terms of any such settlement (except personal injury matters covered by insurance without insurer reservation of rights and residential lease litigation solely related to tenant defaults, both in the ordinary course of business);

(xvi) sell, transfer or other dispose of the Property or similar capital event (or any interest therein) on behalf of the Company or Property Owner or any other assets of the Company or Property Owner, or any merger, consolidation, reorganization or other business combination transaction involving the Company or Property Owner;

(xvii) accept any good faith offer on behalf of the Company or Property Owner received from a third party in connection with any proposed sale, transfer or other disposition of the Property or similar capital event;



(xviii) admit any person as a member to the Company or Property Owner, other than as specifically provided for in this Agreement or the Property Owner's operating agreement;

(xix) make any distribution pursuant to this Agreement or Property Owner's operating agreement;

(xx) pay any capital raising, finder's or similar fees, whether fixed or contingent, on behalf of the Company or Property Owner;

(xxi) create or form a subsidiary, limited liability company or partnership affiliated with the Company or Property Owner, entering into any joint venture arrangement, or making any investments in any person;

(xxii) amend this Agreement or Property Owner's operating agreement or amend the Certificate of Formation or the Property Owner's certificate of formation to materially affect a Member's beneficial ownership differently from another Member's beneficial ownership; and

(xxiii) take any action that would cause the Company or Property Owner to cease being taxed as a partnership for income tax purposes or that would cause either entity to be taxed as a corporation or any other form of entity that owes income taxes under the Code based on its own income.

(d) Limitation of Liability. The Managing Members shall not be personally liable, as such, for monetary damages (other than under criminal statutes and under federal, state, and local laws imposing liability on managers for the payment of taxes) for any action taken, or any failure to take any action, unless the Managing Members' conduct constitutes recklessness, willful misconduct, or a knowing violation of law. No amendment or repeal of this section shall apply to or have any effect on the liability or alleged liability of any Person who is or was the Managing Member of the Company for or with respect to any acts or omissions of the Managing Members occurring prior to the effective date of such amendment or repeal.

(e) Officers and Agents. The Company may have such officers and agents with such respective rights and duties as the Managing Members may from time to time determine. The Managing Members may delegate to one or more agents, officers, employees or other persons any and all powers to manage the Company that the Managing Members possess under this Agreement and the Act. If an officer of the Company is appointed by the Managing Members and given a title that is used by officers of a business corporation, the Managing Members shall be deemed to have delegated to the officer the duties, responsibilities and authority that would be exercised by an officer of a business corporation with the same title, unless the Managing Members provides otherwise by written resolution.

(f) Indemnification. The officers and any employees or agent of the Company shall be indemnified by the Company to the fullest extent permitted by the Act and as may be otherwise permitted by applicable law.

(g) Authorizations. Notwithstanding any provision in this Agreement to the contrary, the Members hereby consent to the following actions on behalf of the Company:

**RESOLVED**, that the Members, and the Company in its capacity as the sole manager of the Property Owner, hereby ratify and approve the actions of the Property Owner and hereby authorize the Company to do any and all things deemed necessary or advisable and in the best interest of the Property Owner, individually and in its capacity as the sole manager of the Property Owner, as applicable, in connection with (x) the acquisition of the Property by the Property Owner; (y) the Acquisition Financing; and (z) the day to day operations of the Property Owner; and

**RESOLVED**, that the Members, on behalf of the Company, specifically appoint Gregory B. Jones, individually, as an "Authorized Signatory" of the Company and, in his capacity as an Authorized Signatory of the Company, acting alone and without the necessity of attestation, is hereby authorized and directed to execute and deliver in the name of the Company any and all documents, agreements, documents, promissory notes, mortgages, deeds of trust, assignment agreements, pledge agreements, consents, notices, certificates and affidavits, and to do all such other things on behalf of and/or in the name of the Company, either individually, or in its capacity as the sole manager of the Property Owner, in connection with (x) the acquisition of the Property by the Property Owner, and (y) the Acquisition Financing; and (z) the day to day operations of the Property Owner; and

**RESOLVED**, that the transactions contemplated by the foregoing resolutions are reasonably expected to benefit the Company, both directly and indirectly.

10. Limited Liability. Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and none of the directors, members, officers or agents of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a director, member, officer or agent of the Company, provided, however that any such Person shall be liable for any loss, damage or claim incurred by reason of such Person's intentional misconduct or knowing violation of law or a transaction for which such Person received an improper personal benefit in violation of this Agreement.

11. Capital Contributions. The Members have contributed to the Company cash in the amount listed on Schedule 1 attached hereto.

12. Additional Contributions. The Members are not required to make any additional capital contribution to the Company unless the Members unanimously agree. However, the Members may make loans to the Company additional capital contributions to the Company as absolutely necessary ("**Member Loans**"). Member Loans shall bear interest at a rate of seven percent (7%) per annum and shall be repaid prior to the pro rata distributions to the Members pursuant to Section 14 hereof. The provisions of this Agreement, including this Section 12, are intended to benefit the Members and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such

creditor of the Company shall be a third-party beneficiary of this Agreement) and the Members shall not have any duty or obligation to any creditor of the Company to make any contribution or loan to the Company or to issue any call for capital pursuant to this Agreement.

13. **Allocation of Profits and Losses.** The Company's profits and losses shall be allocated to the Members in accordance with their respective percentage interests in the Company as set forth in the column on Schedule 1 labeled "Capital Contribution Membership Percentages".

14. **Distributions.**

(a) Prior to payment of any distribution to any Member, any costs or expenses incurred by the Company as a result of an Event of Default by any Member shall be paid in full out of the distributions which would otherwise be paid to such Member. Subject to the foregoing, the Company shall distribute all cash available for distribution (net of expenses and any reserves deemed reasonably necessary by the Managing Members for continued operations of the Company and/or the Property) on a quarterly basis to the Members, pro rata in accordance with their respective percentage interests in the Company as set forth in the column on Schedule 1 labeled "Capital Contribution Membership Percentages".

(b) With respect to Net Capital Proceeds, the Company shall make distributions to the Members (after payment of operating expenses in connection with any such Capital Event and any reserves), pro rata in accordance with their respective percentage interests in the Company as set forth in the column on Schedule 1 labeled "Capital Contribution Membership Percentages". Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Members on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

15. **Books and Records; Company Representative.**

(a) TMG shall keep, or cause to be kept, complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by TMG. The Company's books of account shall be kept using the method of accounting determined by TMG. The Company's independent auditor, if any, shall be an independent public accounting firm selected by TMG.

(b) TMG shall serve as the "*Company Representative*" defined as having the meaning ascribed to the term "partnership representative" for purposes of Section 6231 of the Code. The Company Representative shall give prompt written notice to each Member upon receipt of advice that the Internal Revenue Service intends to examine or audit any tax returns of the Company.

16. **Capital Accounts.**

(a) Each Member shall have a Capital Account maintained in accordance with the rules in Section 1.704-1(b)(2)(iv) of the Treasury Regulations, which generally require that each Capital Account be increased by (i) the amount of money contributed by the Member to the



Company, (ii) the amount of any Company liabilities assumed by the Member (other than liabilities described in subparagraph (x), below), (iii) the initial Gross Asset Value of property contributed by the Member to the Company (net of liabilities secured by the contributed property that the Company is deemed to assume or take subject to under Section 752 of the Code), and (iv) allocations to the Member of Company income and gain (or items thereof), including income and gain exempt from tax, and be decreased by (w) the amount of money distributed to the Member by the Company, (x) the Gross Asset Value of property distributed to the Member by the Company (net of liabilities secured by the distributed property that the Member or assignee is considered to assume or take subject to under Section 752 of the Code), (y) allocations to the Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code, and (z) allocations of Company loss and deduction (or items thereof).

(b) Immediately prior to (i) the admission of any Member to the Company, (ii) the liquidation of a Member's Percentage Interest (iii) the making of any additional capital contributions or partial withdrawals (other than de minimus amounts) by a Member which changes that Member's Percentage Interest in the Company as determined by reference to the relative balances in the Capital Accounts, or (iv) the liquidation of the Company, all the property of the Company shall be revalued at its fair market value, and the Capital Accounts shall be adjusted to reflect the manner in which the unrealized income, gain, loss or deduction inherent in such property (that has not been reflected in adjustments to the Capital Accounts previously) would be allocated among the Members if the property were sold at its fair market value on such valuation date. The term "fair market value" as used in this Agreement shall mean a value unanimously agreed upon by all of the Members. If, after the Members have negotiated in good faith for a period of ten (10) days and are unable to agree upon the value of the Company's property, then an independent certified appraiser shall be employed to determine the fair market value of the Company's property at that time. The Managing Members shall appoint the appraiser, and the fair market value of the Company's property shall be the appraised value. An appraisal made pursuant to this paragraph shall be final and binding on all of the Members. The cost of the appraiser shall be borne equally by all of the Members. All appraisals shall be performed by independent certified appraisers.

17. **Other Business.** The Managing Members, and any Affiliate thereof, the Members, and any Affiliate thereof, may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others notwithstanding any provision to the contrary at law or in equity. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

18. **Exculation and Indemnification.**

(a) None of the Members, or any employee or agent of the Company or any employee, representative, agent or Affiliate of the Members (collectively, the "***Covered Persons***") shall, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person



shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 18 by the Company shall be provided out of and to the extent of Company assets only, and none of the Members, including the Managing Members, shall have any personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 18.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person to the Company or its Members otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 18 shall survive any termination of this Agreement.

#### 19. Assignments.

(a) Subject to terms and conditions of the Acquisition Financing and, notwithstanding anything to the contrary herein, receipt by the Members of the prior written consent of Managing Members, which consent may be withheld in such parties' sole and absolute discretion, the Members may assign in whole or in part its membership interest in the



Company. The transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If any Member transfers all of its membership interest in the Company pursuant to this Section 19, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation in compliance with the Entity Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

(b) In the event that a Member (the "Selling Member") wishes to dispose of all or any part of its ownership interest in the Company (the "Offered Interest"), whether voluntarily or involuntarily, the Selling Member shall notify the Company and the other Members of the identity of the Selling Member, the proposed purchaser or purchasers, the Offered Interest, and the proposed price as well as the terms and conditions of sale. The notice to the Company and to the other Members shall be in writing.

(c) The Company, upon receiving the notice required in Section 19(b) above, shall have a right of first refusal to distribute cash in liquidation of all of the Offered Interest at the price offered by the proposed purchaser(s). Any such distributions by the Company shall be on the terms offered by the proposed purchaser(s). The Company shall exercise its right to liquidate the Offered Interest by the Managing Members, or if no Managing Members exist or a Managing Member is a Selling Member then a designated Member will give notice to the Selling Member, indicating the Offered Interest that the Company will liquidate, with such liquidation to occur within thirty (30) days following receipt of the notice from the Selling Member. The decision to liquidate such Offered Interest shall be made by the affirmative vote of Members (other than the Selling Member) owning more than seventy-five percent (75%) of the Percentage Interest (excluding the Percentage Interest owned by the Selling Member) of the Company.

(d) If the Company does not exercise its right to liquidate all of the Offered Interest within the thirty (30) day period, the other Members shall have the right to purchase all, but not less than all, of the Offered Interest at the same price and on the same terms as were available to the Company. In order to exercise this right to purchase, the other Member or Members, on or before the tenth (10<sup>th</sup>) day after receiving notice from the Company that the Company does not intend to liquidate all of the Offered Interest, or alternatively, on or before the tenth (10<sup>th</sup>) day after the expiration of the thirty (30) day period during which the Company had the right to liquidate the Offered Interest, whichever is sooner, shall deliver to the Managing Members a written election to purchase so much of the available Offered Interest as the Member or Members desire to purchase. The written election shall specify the Offered Interest to be purchased, the price, and the terms and conditions of purchase. If the total Offered Interest that all other Members desire to purchase exceeds the available Offered Interest, then the Offered Interest shall be allocated to the Members electing to purchase in accordance with the following formula: each "purchasing" Member shall have the priority, up to the Offered Interest set forth in his written election, to that fraction of the available Offered Interest in which the numerator is the Percentage Interest owned by the Member and the denominator is the Percentage Interest

owned by all other "purchasing" Members. The available Offered Interest not purchased on this priority basis shall be allocated in one or more successive allocations to those Members who have indicated in their written elections that they desire to purchase more than the number of Offered Interest to which they have a priority right. The Offered Interest shall continue to be allocated proportionally using a fraction in which the numerator is the Percentage Interest owned by the "purchasing" Member and the denominator is the Percentage Interest owned by all other remaining "purchasing" Members.

(e) If neither the Company nor the other Members together timely exercise their liquidation and purchase rights, respectively, as provided herein with respect to all of the Offered Interest, then the Selling Member shall be free for a period of ninety (90) days thereafter to sell the entire Offered Interest to the purchaser or purchasers indicated on the notice of intended sale; provided, however, that (i) the sale must be at the same price, and on the same terms and conditions as were set forth in the notice of intended sale, and (ii) the offer to purchase the Offered Interest described in the notice of intended sale is a bona fide offer from a purchaser or purchasers that are not Affiliates of the Selling Member.

(f) A purchaser or purchasers of the Offered Interest hereunder shall be an assignee, subject to the provisions of this Section 19.

20. **Resignation.** Subject to the terms and conditions of the Acquisition Financing and, notwithstanding anything to the contrary herein, receipt by the Members of the prior written consent of Managing Members and the other Members, if any, which consent may be withheld in such parties' sole and absolute discretion, the Members may not resign unless an additional member is admitted to the Company pursuant to Section 21. If a Member is permitted to resign pursuant to this Section 20 and such resignation does not violate the terms and conditions of the Acquisition Financing, or any subsequent financing, an additional member of the Company shall be admitted to the Company, subject to Section 21, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

21. **Admission of Additional Members.** Notwithstanding anything to the contrary herein, and subject to the terms and conditions of the Acquisition Financing, one or more additional Members of the Company may be admitted to the Company with the unanimous written consent of the Managing Members.

22. **Dissolution.**

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution of the Company under the Act. Upon the occurrence of

any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Members to cease to be members of the Company (other than continuation of the Company without dissolution upon (i) an assignment by the last remaining Member of all of its membership interest in the Company and the admission of the transferee pursuant to Section 20, or (ii) the resignation of the last remaining Member and the admission of an additional member of the Company pursuant to Section 20), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Act.

(d) The Company's assets will be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefore, will be applied and distributed to the Members so that, after such allocation, the positive Capital Account balances of the Members are, as nearly as is practicable, equal to the amounts that would be distributable to each Member under Section 14 above, whether or not distributions are being made under Section 14 above.

(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

23. **Right to Partition; Nature of Interest.** To the fullest extent permitted by law, the Managing Members shall have a right or power to cause the Company or any of its assets to be partitioned, subject to all prohibitions and limitations with respect to such right contained in any of the Entity Documents. The Members shall not have any interest in any specific assets of the Company, and the Members shall not have the status of a creditor with respect to any distribution pursuant to Section 14 hereof. The interest of the Members in the Company is personal property.

24. **Benefits of Agreement; No Third-Party Rights.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Members. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person.





25. **Severability of Provisions.** Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

26. **Entire Agreement.** This Agreement constitutes the entire agreement of the Members with respect to the subject matter hereof.

27. **Binding Agreement.** Notwithstanding any other provision of this Agreement, the Members agree that this Agreement constitutes a legal, valid and binding agreement of the Members, and is enforceable against the Members in accordance with its terms.

28. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

29. **Amendments.** This Agreement may only be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by both the Members.

30. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

31. **Notices.** Any notices required to be delivered hereunder or pursuant to any project documents shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of a Member, to the Member at its address as listed on Schedule 1 attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

32. **Waiver of Jury Trial.** By acceptance of this agreement, the members hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating directly or indirectly to the matters set forth herein.

33. **Non-Solicitation.** Each Member covenants and agrees that it will not, and will not permit any its affiliates, to directly contact or solicit any equity investor of any other Member (to the extent disclosed in connection with this Agreement and/or the acquisition of the Property, in general), without the express prior written consent of said Member.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement of the Company as of the Effective Date.

**MANAGING MEMBER:**

TRIUMPH MANAGEMENT GROUP, LLC,  
a Georgia limited liability company

By: 

Gregory B. Jones,  
Authorized Signatory

**MANAGING MEMBER:**

TBM ACQUISITIONS, LLC,  
a Florida limited liability company

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

Shawn J. Bolour, Manager

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement of the Company as of the Effective Date.

**MANAGING MEMBER:**

TRIUMPH MANAGEMENT GROUP, LLC,  
a Georgia limited liability company

By: \_\_\_\_\_  
Gregory B. Jones,  
Authorized Signatory

**MANAGING MEMBER:**

TBM ACQUISITIONS, LLC,  
a Florida limited liability company

By: Shawn J. Bolour  
Shawn J. Bolour, Manager

SCHEDULE 1

**Members' Names, Addresses, Capital Contributions and  
Capital Contribution Membership Percentages**

<u>Name</u>	<u>Agreed Value of Capital Contribution</u>	<u>Capital Contribution Membership Percentages</u>	<u>Ownership Percentage Interest</u>
<b>Triumph Management Group, LLC</b> , a Georgia limited liability company Atlanta Financial Center 3353 Peachtree Road, Suite 940 Atlanta, GA 30326	\$50.00	50%	60%
<b>TBM Acquisitions, LLC</b> , a Florida limited liability company c/o Shawn J. Bolour 200 South Camden Drive Beverly Hills, California 90212	\$50.00	50%	40%
<b><u>TOTAL</u></b>	\$100	100%	100%



## SCHEDULE 2

### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

**"Acquisition Financing"** shall mean those certain loans from Lender to the Property Owner in connection with the acquisition of the Property.

**"Act"** has the meaning set forth in the preamble to this Agreement.

**"Affiliate"** means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

**"Agreement"** means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

**"Bankruptcy"** means, with respect to any Person, (A) if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (B) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

**"Budget"** means the consolidated annual operating budget and capital budget covering the Company's and Property Owner's anticipated operations, as approved in writing by the Members and in effect from time-to-time pursuant to this Agreement.

**"Capital Contribution"** means the amount of the agreed value contributed to the Company by each Member as reflected on Schedule I, as the same may be amended from time to time.

**"Capital Contribution Membership Percentages"** means the respective capital contribution interest of each Member as reflected on Schedule I.

**"Capital Event"** means the sale or other disposition of the assets of the Company.

**"Capital Proceeds"** means proceeds generated from a Capital Event.

**"Certificate of Formation"** means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on May 11, 2018, as amended or amended and restated from time to time.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding Law).

**"Company"** means Tropical Manor Management LLC, a Delaware limited liability company.

**"Company Representative"** has the meaning set forth in Section 15(b).

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly 10% or more of the ownership interests.

**"Covered Persons"** has the meaning set forth in Section 18(a).

**"Entity Documents"** means, collectively, the Certificate of Formation and this Agreement.

**"Effective Date"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Event of Default"** means (a) if a Member commits a material violation or breach of any of the provisions of this Agreement and such violation or breach is not cured (including, without limitation, by the breaching Member reimbursing the Company for the resulting material damage or loss) within ten (10) days following receipt by the breaching Member of written notice from the non-defaulting Member(s).

**"Lender"** means Berkeley Point Capital LLC, together with its successors and assigns.

**"Managing Members"** means, collectively, Triumph Management Group, LLC, a Georgia limited liability company, and TBM Acquisitions, LLC, a Florida limited liability company.

**"Member(s)"** means the Persons identified on Schedule I attached hereto, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company.

**"Net Capital Proceeds"** means the excess of (a) Capital Proceeds over (b) (i) expenses incurred solely in connection with generating such Capital Proceeds.

**"Person"** means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.





**ATTACHMENT "6"**

Prepared by: \_\_\_\_\_  
Address: \_\_\_\_\_

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the  
BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of  
the State of Florida (hereinafter referred to as "County") and  
Tropical Manor Holdings, LLC, a Limited Liability Company (hereinafter referred to as "Developer/Owner").

**RECITALS**

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard  
County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by  
this reference; and

WHEREAS, Developer/Owner has requested the RU-2-12 zoning classification(s)  
and desires to develop the Property by  
renovating existing multifamily buildings and incorporating recreational amenities with no additional  
buildings or change in the number or size of the existing multifamily buildings, and pursuant to the  
Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to  
mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any  
way in the construction or maintenance of the improvements. It is the intent of the parties that the  
Developer/Owner, its grantees, successors or assigns in interest or some other association and/or  
assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

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development of the ~~to~~ to <sup>Property revised by EGM</sup>  
<sup>(Per permission of applicant)</sup>  
<sup>this</sup>

2. The Developer/Owner shall limit density to not exceed 85 units and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
3. No changes are proposed to the existing ingress/egress.
4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
5. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
7. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

\_\_\_\_\_  
Bryan Lober, Chair  
As approved by the Board on \_\_\_\_\_

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES: (INSERT BUSINESS NAME or INDIVIDUAL NAME(s))  
as DEVELOPER/OWNER

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
(President)  
\_\_\_\_\_  
(Name typed, printed or stamped)

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me, by means of \_\_\_\_\_ physical presence or  
\_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by  
\_\_\_\_\_, President of \_\_\_\_\_, who is  
personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

\_\_\_\_\_  
Notary Public  
(Name typed, printed or stamped)

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**Attachment "1"**  
**Reason for Requested Rezoning**

The Subject Property was developed in 1968 as a Section 8, multifamily housing project consisting of 85 residential units. The Subject Property is designated as Residential-15 on the Future Land Use Map, but it is currently zoned with the RU-1-7 and RU-2-30 zoning districts as shown on **Exhibit "1"** attached hereto. Therefore, the current zoning does not conform to the Residential-15 future land use category. In addition, Buildings J and K, as referenced on the survey enclosed with this application, are located partly within the portion of the property zoned RU-1-7, which does not permit multifamily units. The proposed rezoning to RU-2-12 will correct those nonconforming conditions and eliminate the split zoning condition, which is not desirable for the Property and actually divides the two buildings (i.e., the zoning boundary crosses through the buildings). Finally, it is important to note that s. 163.3194(3), Florida Statutes, and the Brevard County Comprehensive Plan require zoning to be consistent with the adopted Comprehensive Plan. The proposed rezoning achieves consistency with the Brevard County Comprehensive Plan.

The RU-2-30 zoning district applies to 7.63 acres of the property and permits a maximum density of 30 units per acre, which exceeds the maximum permitted density of 15 units per acre in the Residential-15 future land use category. The RU-1-7 zoning district, which applies to .83 acres of the property located along the western boundary, does not permit multifamily use. The proposed RU-2-12 zoning district allows multifamily use at a density of 12 units per acre, which will conform to the Residential-15 future land use category in terms of the multifamily use and permitted density. Please note that the applicant could have proposed the RU-2-15 zoning district, which would also be conforming to the Residential-15 future land use category, but the applicant has instead proposed a downzoning to RU-2-12, which reduces the maximum permitted density by three units per acre as compared to the Residential 15 future land use category. The following tables document the proposed reduction in zoning density based on a GIS estimate of the acreage within each zoning district:

<b>Current Zoning</b>	<b>Acres</b>	<b>Maximum Permitted Density</b>	<b>Maximum Units</b>
RU-1-7	.83	One (1) unit per acre	.83
RU-2-30	7.63	Thirty (30) units per acre	228.9
<b>Total</b>	<b>8.46</b>		<b>229</b>

<b>Proposed Zoning</b>	<b>Acres</b>	<b>Maximum Permitted Density</b>	<b>Maximum Units</b>
RU-12-30	8.46	Twelve (12) units per acre	101

The proposed rezoning results in a reduction in the maximum permitted zoning density, calculating to a 128-unit reduction. The Residential-15 future land use category permits up to 126 units as compared to the 101 units that will be permitted by the proposed rezoning. The proposed rezoning achieves consistency with the Comprehensive Plan as required by s. 163.3194(3), Florida Statutes. Moreover, the reduction in permitted density will reduce the demand for transportation, infrastructure and school capacity as compared to the maximum permitted density permitted by the Residential-15 future land use category and current zoning districts. We have confirmed that

the Brevard County School District does not require review of this rezoning application, as the rezoning application does not propose an increase in units, does not involve an accompanying comprehensive plan amendment and does not include a proposed site plan to increase dwelling units as further discussed. Please refer to the attached email (**Exhibit "2"**) from Ms. Black confirming these findings. For the same reasons, the concurrency assessment (**Exhibit "3"**) confirms that concurrency review is not required.

As background, it is important to emphasize that a sale of the property is pending, and the contract purchaser proposes to improve the condition of the property **with no proposed increase in the number of dwelling units**. The contract purchaser intends to rehabilitate the buildings and incorporate additional recreational amenities in order to improve the quality of life for the residents of the project. The existing 85 units calculate to an existing density of 10.05 units per acre. This rezoning application requests the lowest-density, zoning district that will make the entire site conforming from a use and density perspective rather than maintaining the undesirable current situation, resulting from the past split zoning as applied to the property. From a compatibility perspective, the rezoning will not change the property's relationship to surrounding uses. As shown on the attached aerial photograph (**Exhibit "4"**), the buildings on the property are located a significant distance from adjacent uses, which include single-family homes to the west and south, an elementary school to the east and vacant land to the north. The proposed rezoning will make the two most-western buildings conforming uses. These two buildings are over 200' from the nearest homes to the west, which are screened by a heavy vegetative buffer.

Based on the proposed reduction in density as described above, the proposed rezoning is consistent with the Brevard County Comprehensive Plan including, but not limited to, the following Administrative Policies as well as policies requiring zoning to be consistent with the Future Land Use designation and housing policies intended to preserve existing affordable housing inventory:

**Administrative Policy 3 Finding:**

- A. The proposed rezoning and resulting reduction in permitted density will not increase lighting, noise levels, traffic or otherwise diminish the enjoyment of, safety or quality of life in the adjacent neighborhoods.
- B. The proposed rezoning and resulting reduction in permitted density will not impact property values in the neighborhood.
- C. The proposed rezoning and resulting reduction in permitted density does not change the existing use of the property. As such, the proposed rezoning does not alter the development patterns historically established within this general area.
- D. Buildings J and K are conforming to the Residential-15 future land category, but the current zoning for these two buildings is not consistent with the Comprehensive Plan. The proposed rezoning will not result in a violation of the Comprehensive Plan, but rather achieve consistency with the Comprehensive Plan.

**Administrative Policy 4 Finding:** The proposed rezoning does not introduce commercial or industrial use. It merely makes the zoning consistent with the Residential-15 future land use category.



**Administrative Policy 5 Finding:** The proposed rezoning and resulting reduction in permitted density merely makes the zoning consistent with the Residential-15 future land use category and will not result in substantial and adverse impacts on transportation conditions as addressed by the criteria in this policy. A concurrency analysis is not required for this rezoning request, as it does not result in an increase in density, and the number of units on the property will not change as a result of the proposed rezoning.

**Administrative Policy 6 Finding:** The proposed rezoning and resulting reduction in permitted density ensures consistency with the Residential-15 future land use category, the future land use element and all other elements of the Comprehensive Plan.

**Administrative Policy 7 Finding:** The proposed rezoning and resulting reduction in permitted density will not result in a drainage problem affecting surrounding properties and will not impact wetlands, waterbodies or habitat for listed species. The property does not contain any such resources and is not adjacent to any such resources.

**Future Land Use Policy 13.3 Finding:** This policy requires zoning classifications to be consistent with the future land use map. The proposed rezoning implements Policy 13.3.

**Future Land Use Policy 14.2 Finding:** This policy require residential zoning classifications to meet the housing needs of Brevard County. The proposed rezoning ensures that the existing multifamily project will continue to address Brevard County's affordable housing needs by ensuring that all buildings are conforming and may be substantially improved or reconstructed in the event of a hurricane or other casualty.

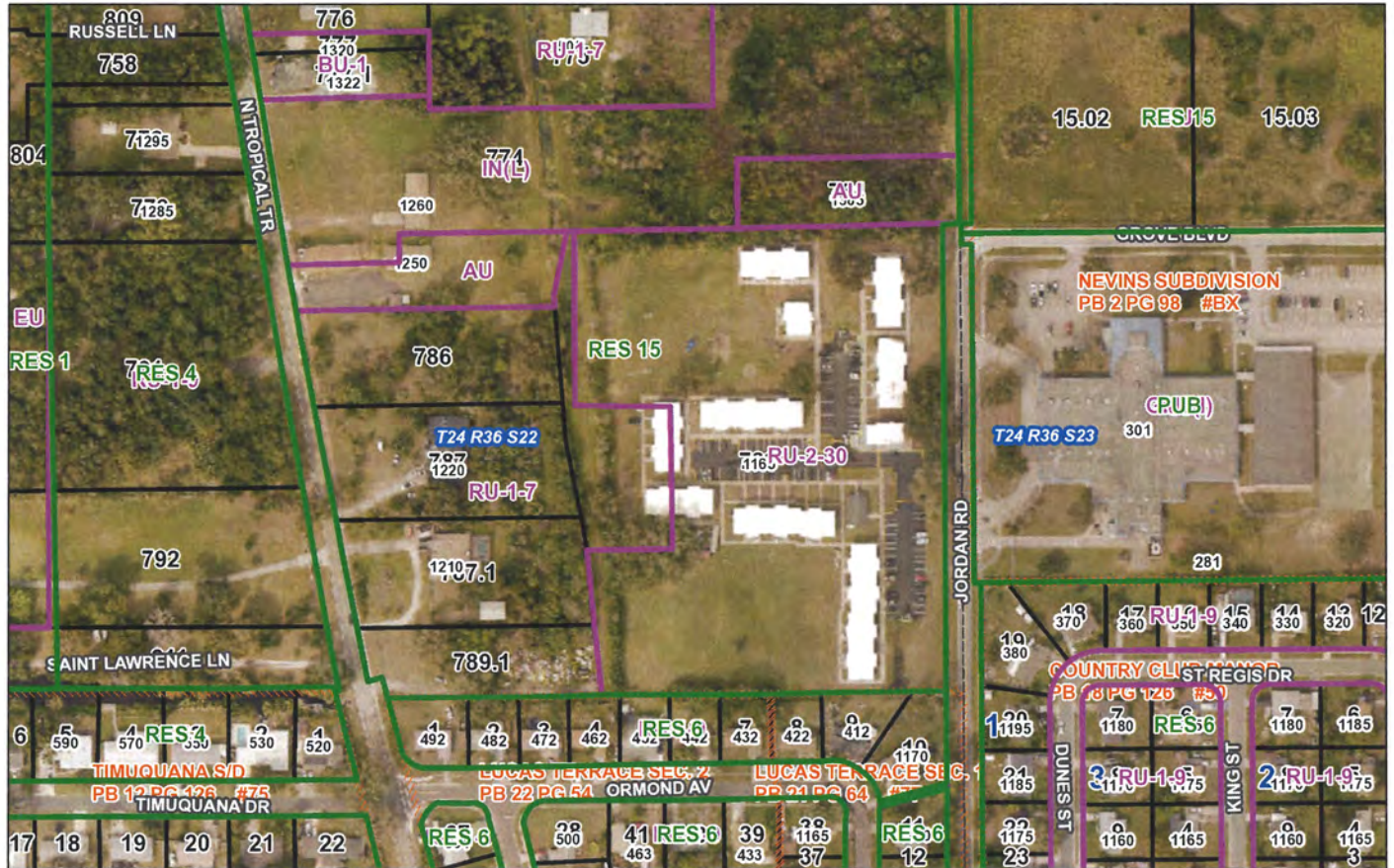
**Housing Element Policy 1.10 Finding:** This policy calls for the BOCC, County departments and agencies to recognize that affordable housing is a vital component of the local economy and to participate in solution oriented efforts to facilitate, preserve, and increase affordable housing inventory. The proposed rezoning will facilitate and preserve the affordable housing on the property by ensuring that all buildings are conforming and may be substantially improved or reconstructed in the event of a hurricane or other casualty.

Finally, we emphasize that the contract purchaser desires this rezoning to facilitate refinancing to support the proposed improvements as previously described. We respectfully request that planning staff, the Planning and Zoning Board and the Board of County Commissioners support this rezoning application to facilitate improvements to this affordable housing project.



EXHIBIT "I"

Account #: 2417034 FLU (Green) Zoning (Purple)



- Future Landuse
- Zoning
- Address
- Street Label
- Section



1:2,400  
0 0.02 0.04 0.08 mi  
0 0.0325 0.065 0.13 km  
Brevard County Property Appraiser Office

8/31/2020, 10:03:37 AM

Web AppBuilder for ArcGIS  
Brevard County Property Appraiser Office |





## Exhibit "2"

### Kenneth Metcalf

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**From:** Black.Karen@PIng, Design and Constr <Black.Karen@Brevardschools.org>  
**Sent:** Friday, September 4, 2020 9:25 AM  
**To:** Kenneth Metcalf  
**Cc:** 'Martin, Peter'  
**Subject:** RE: Pending Rezoning Application

Mr. Metcalf,

You are correct, due to the fact that this is a request for rezoning with no site plan or plat and the number of units is decreasing from the current allowable number of units in the RU-2-30 classification, and the site does not require a large scale comprehensive plan amendment-we do not require a preliminary school concurrency application. However, as you note, if at any time, a site plan or plat is submitted which generates one student or more based on the student generation multipliers for any school type, a school concurrency application would be required.

Sincerely,



Karen M. Black, AICP Candidate  
Manager-Facilities Planning & Intergovernmental Coordination

School Board of Brevard County  
Facilities Services, Planning & Project Management  
2700 Judge Fran Jamieson Way  
Viera, FL 32940  
Office Phone: 321-633-1000, Ext. 11418  
E-mail [Black.Karen@BrevardSchools.org](mailto:Black.Karen@BrevardSchools.org)

**From:** Kenneth Metcalf <kmetcalf@stearnsweaver.com>  
**Sent:** Friday, September 4, 2020 9:02 AM  
**To:** Black.Karen@PIng, Design and Constr <Black.Karen@Brevardschools.org>  
**Cc:** 'Martin, Peter' <Peter.Martin@brevardfl.gov>  
**Subject:** Pending Rezoning Application

**Caution:** This email originated from outside of Brevard Public Schools. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Karen,

As we discussed, my client is the contract purchaser of an existing Section 8 affordable housing project located at 1165 Jordan Road on Merritt Island. My client is planning to rehabilitate the buildings and add recreational amenities, but does not intend to increase the existing 85 residential units on the 8.46-acre property. I am acting as agent for the current owner (Tropical Manor Holdings, LLC) in coordination with the contract purchaser to file a rezoning application to downzone the property, which is currently designated RU-1-7 on .8 acres and RU-2-30 on 7.6 acres. We are proposing the RU-2-12 zoning district for the entire property. This will make the multifamily use and density conforming to the Future Land Use Category (Res-15), which is necessary in order to facilitate HUD review of the project. We are not proposing an amendment to the Comprehensive Plan. As there are no additional units proposed for the property, it



is my understanding that no further review will be required by the Brevard County School District for this rezoning application. We understand that if a development application were filed in the future to increase the number of units on the property, school concurrency review would be required at that time.

I have copied Peter Martin at Brevard County Planning and Zoning. I would appreciate if you would "reply all" to this email and confirm that no further review will be required by the Brevard County School District for this rezoning application. Thank you for your prompt attention to this matter.

Regards,

Kenneth B. Metcalf, AICP  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
106 E. College Avenue, Suite 700  
Tallahassee, FL 32301  
Direct Number: 850-329-4848  
Cell Phone: 850-519-6165  
Email: [kmetcalf@stearnsweaver.com](mailto:kmetcalf@stearnsweaver.com)  
[www.stearnsweaver.com](http://www.stearnsweaver.com)

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Due to Florida's broad public records law, most written communications to or from government employees regarding public education are public records. Therefore, this e-mail communication may be subject to public disclosure.



**EXHIBIT "3"**  
**CONCURRENCY ASSESSMENT**

The Property is already developed with 85 multifamily dwelling units. The proposed rezoning reduces the maximum development potential of the site to 101 units. The applicant will be filing required applications to renovate the buildings and incorporate additional recreational amenities to improve the quality of life for residents of the project. The renovation of the units will not change the size of the units. The rezoning application does not require a concurrency determination as the demands of the existing project will not change.



Exhibit "4"







# Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

## PROPERTY DETAILS

Account 2417034  
 Owners Tropical Manor Holdings LLC  
 Mailing Address 3353 NE Peachtree NE Rd, Ste 940 Atlanta GA 30326  
 Site Address 1165 Jordan Rd Merritt Island FL 32953  
 Parcel ID 24-36-22-00-783  
 Property Use 0354 - Low Rise Apartments - 2 OR 3 Stories - 50 Units  
 Exemptions A  
 Taxing District None  
 Total Acres 2200 - Unincorp District 2  
 Subdivision 8.47  
 Site Code --  
 Plat Book/Page 0001 - No Other Code Appl.  
 Land Description 0000/0000  
 Part Of NE 1/4 Of SE 1/4 Of SE 1/4 As Des IN Orb 1001  
 Pg 1005



## VALUE SUMMARY

Category	2020	2019	2018
Market Value	\$4,425,000	\$4,100,000	\$2,000,000
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$4,425,000	\$4,100,000	\$1,266,440
Assessed Value School	\$4,425,000	\$4,100,000	\$2,000,000
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$4,425,000	\$4,100,000	\$1,266,440
Taxable Value School	\$4,425,000	\$4,100,000	\$2,000,000

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
12/20/2018	\$5,100,000	WD	Improved	8336/0370
12/14/2001	\$3,200,000	WD	Improved	4487/2605
01/02/1968	\$49,800	--	--	1001/1005

## BUILDINGS

### PROPERTY DATA CARD #1

**Building Use:** 0850 - Multiple Living Units - 5 To 9 Units

Materials	Details	
Exterior Wall:	Painted Exterior	Year Built 1968
Frame:	Masnryconc	Story Height 9
Roof:	Roll Composition	Floors 2
Roof Structure:	Wood Truss	Residential Units 8
		Commercial Units 0
Sub-Areas	Extra Features	
Base Area (1st)	3,264 Paving - Concrete	21,728
Base Area (2nd)	3,264 Wall - Concrete - Block	300
Open Porch	1,088 Paving - Asphalt	32,478
Total Base Area	6,528 Fence - Vinyl 6'	2,270
Total Sub Area	7,616	



**PROPERTY DATA CARD #2****Building Use:** 0850 - Multiple Living Units - 5 To 9 Units**Materials**

Exterior Wall:	Painted Exterior	Year Built	1968
Frame:	Masnryconc	Story Height	9
Roof:	Roll Composition	Floors	2
Roof Structure:	Wood Truss	Residential Units	8
		Commercial Units	0

**Sub-Areas**

Base Area (1st)	3,264	<b>Extra Features</b>	No Data Found
Base Area (2nd)	3,264		
Open Porch	1,088		
Total Base Area	6,528		
Total Sub Area	7,616		

**PROPERTY DATA CARD #3****Building Use:** 0850 - Multiple Living Units - 5 To 9 Units**Materials**

Exterior Wall:	Painted Exterior	Year Built	1968
Frame:	Masnryconc	Story Height	9
Roof:	Roll Composition	Floors	2
Roof Structure:	Wood Truss	Residential Units	8
		Commercial Units	0

**Sub-Areas**

Base Area (1st)	3,264	<b>Extra Features</b>	No Data Found
Base Area (2nd)	3,264		
Open Porch	1,088		
Total Base Area	6,528		
Total Sub Area	7,616		

**PROPERTY DATA CARD #4****Building Use:** 0850 - Multiple Living Units - 5 To 9 Units**Materials**

Exterior Wall:	Painted Exterior	Year Built	1968
Frame:	Masnryconc	Story Height	9
Roof:	Roll Composition	Floors	2
Roof Structure:	Wood Truss	Residential Units	8
		Commercial Units	0

**Sub-Areas**

Base Area (1st)	3,264	<b>Extra Features</b>	No Data Found
Base Area (2nd)	3,264		
Open Porch	1,088		
Total Base Area	6,528		
Total Sub Area	7,616		

**PROPERTY DATA CARD #5****Building Use:** 0850 - Multiple Living Units - 5 To 9 Units**Materials****Details**



Exterior Wall:	Painted Exterior	Year Built	1968
Frame:	Masnryconc	Story Height	9
Roof:	Roll Composition	Floors	2
Roof Structure:	Wood Truss	Residential Units	8
		Commercial Units	0

Sub-Areas		Extra Features
Base Area (1st)	3,264	No Data Found
Base Area (2nd)	3,264	
Open Porch	1,088	
Total Base Area	6,528	
Total Sub Area	7,616	

#### PROPERTY DATA CARD #6

**Building Use:** 0353 - Low Rise Apartments - 2 OR 3 Stories - 10 To 49 Units

Materials		Details	
Exterior Wall:	Painted Exterior	Year Built	1968
Frame:	Masnryconc	Story Height	9
Roof:	Roll Composition	Floors	2
Roof Structure:	Wood Truss	Residential Units	12
		Commercial Units	0

Sub-Areas		Extra Features
Base Area (1st)	4,930	No Data Found
Base Area (2nd)	4,930	
Open Porch	1,632	
Total Base Area	9,860	
Total Sub Area	11,492	

#### PROPERTY DATA CARD #7

**Building Use:** 0353 - Low Rise Apartments - 2 OR 3 Stories - 10 To 49 Units

Materials		Details	
Exterior Wall:	Painted Exterior	Year Built	1968
Frame:	Masnryconc	Story Height	9
Roof:	Roll Composition	Floors	2
Roof Structure:	Wood Truss	Residential Units	12
		Commercial Units	0

Sub-Areas		Extra Features
Base Area (1st)	4,930	No Data Found
Base Area (2nd)	4,930	
Open Porch	1,632	
Total Base Area	9,860	
Total Sub Area	11,492	

#### PROPERTY DATA CARD #8

**Building Use:** 0353 - Low Rise Apartments - 2 OR 3 Stories - 10 To 49 Units

Materials		Details	
Exterior Wall:	Painted Exterior	Year Built	1968
Frame:	Masnryconc	Story Height	9
Roof:	Roll Composition	Floors	2
Roof Structure:	Wood Truss	Residential Units	16

73

Commercial Units 0

#### Sub-Areas

Base Area (1st)	6,528
Base Area (2nd)	6,528
Open Porch	2,176
Total Base Area	13,056
Total Sub Area	15,232

#### Extra Features

No Data Found

### PROPERTY DATA CARD #9

**Building Use:** 0840 - Quadruplex

#### Materials

Exterior Wall:	Painted Exterior
Frame:	Masnryconc
Roof:	Roll Composition
Roof Structure:	Wood Truss

#### Details

Year Built	1968
Story Height	9
Floors	2
Residential Units	4
Commercial Units	0

#### Sub-Areas

Base Area (1st)	1,632
Base Area (2nd)	1,632
Open Porch	544
Total Base Area	3,264
Total Sub Area	3,808

#### Extra Features

No Data Found

### PROPERTY DATA CARD #10

**Building Use:** 0840 - Quadruplex

#### Materials

Exterior Wall:	Painted Exterior
Frame:	Masnryconc
Roof:	Bu-Tg/Mmbrn
Roof Structure:	Wood Truss

#### Details

Year Built	1968
Story Height	9
Floors	2
Residential Units	4
Commercial Units	0

#### Sub-Areas

Base Area (1st)	1,700
Base Area (2nd)	1,326
Open Porch	112
Open Porch	128
Total Base Area	3,026
Total Sub Area	3,266

#### Extra Features

No Data Found

### PROPERTY DATA CARD #11

**Building Use:** 2500 - Repair Svc Shop - Excl Auto - (Radio, Tv, Electric Repair, Refrig Service, Paint

#### Materials

Exterior Wall:	Painted Exterior
Frame:	Masnryconc
Roof:	Asph/Asb Shngl
Roof Structure:	Wood Truss

#### Details

Year Built	1993
Story Height	8
Floors	1
Residential Units	1
Commercial Units	0

#### Sub-Areas

Base Area (1st)	1,000
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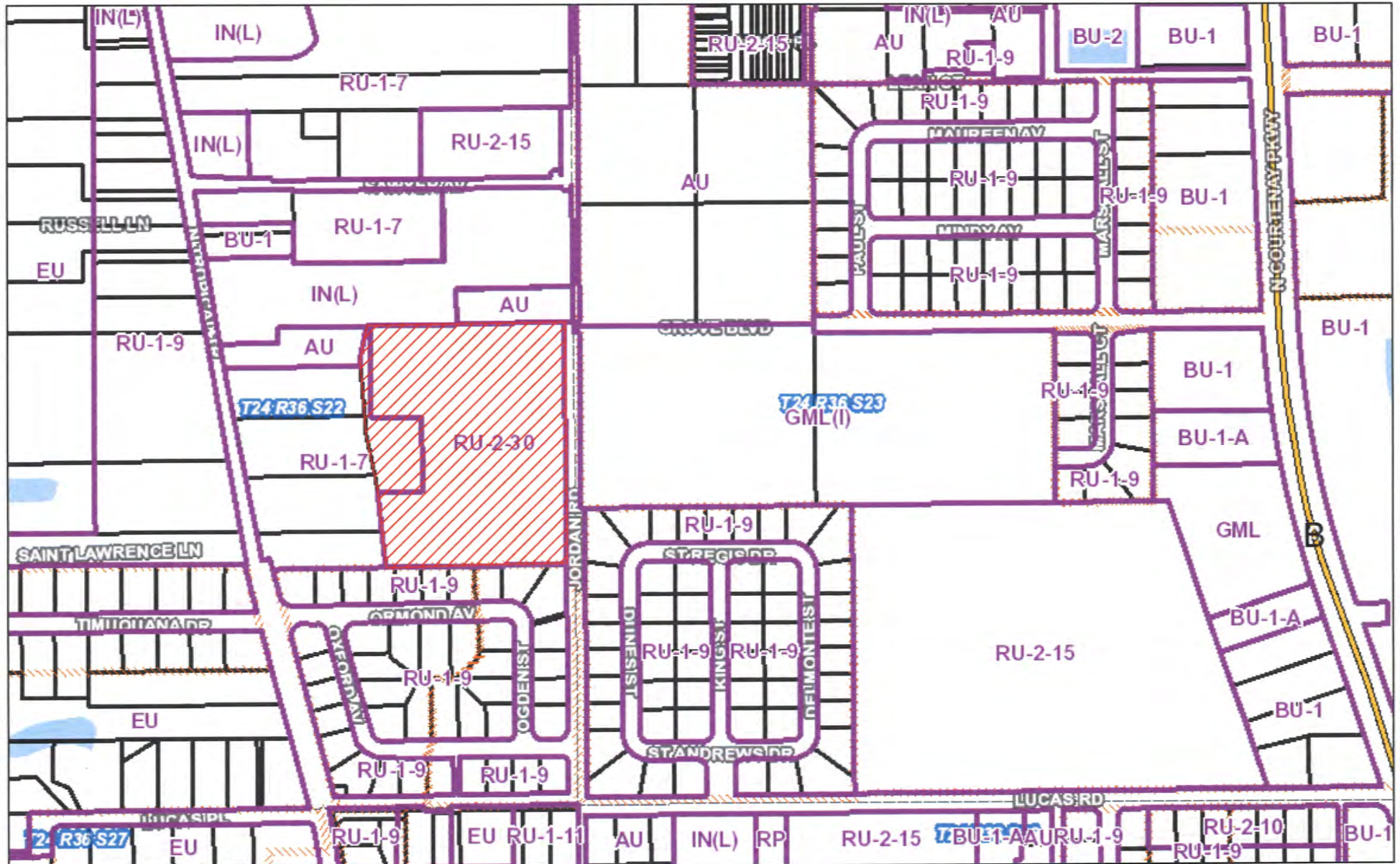
#### Extra Features

No Data Found



Total Base Area	1,000
Total Sub Area	1,000





□ Zoning

□ Section

City (Large Scale)

CAPE CANAVERAL

September 8, 2020

