



HOUSING AUTHORITY/ CITY COUNCIL STAFF REPORT

DATE: February 15, 2012

NEW BUSINESS

SUBJECT: CONSENT TO A CHANGE IN OWNERSHIP AND APPROVAL OF AN ESTOPPEL CERTIFICATE BY AND BETWEEN TAHQUITZ ASSOCIATES, LP, A CALIFORNIA LIMITED PARTNERSHIP; AND A SUBORDINATION AGREEMENT BY AND BETWEEN THE CITY OF PALM SPRINGS AS SUCCESSOR HOUSING AGENCY AND BERKADIA COMMERCIAL MORTGAGE LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND, APPROVAL OF A FREDDIE MAC RIDER TO THE REGULATORY AGREEMENT BY AND BETWEEN THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS AND TAHQUITZ ASSOCIATES, LP, A CALIFORNIA LIMITED PARTNERSHIP, FOR THE TAHQUITZ COURT APARTMENTS AT 2800, 2890, 2900 and 2990 EAST TAHQUITZ CANYON WAY

FROM: David H. Ready, City Manager/Executive Director

BY: Community & Economic Development Department

SUMMARY

This action is a relatively simple refinance of the Tahquitz Court Apartments, against which the prior Community Redevelopment Agency and the City's Housing Authority have recorded Affordability Covenants. These actions would allow Tahquitz Associates, LP, ("Tahquitz") to add a new Limited Partner, Rocky Mountain Engineering, to the partnership. This party has had a financial interest in the project since Tahquitz acquired the project from the prior owners in 2008, but were not part of the ownership of the property. Rocky Mountain Engineering has managed this project since 2008, has undertaken extensive renovations, and has filed appropriate low income reports, keeping occupancy rates close to 100%. Over the past 10 years,

ITEM NO. 5A

Rocky Mountain Engineering has managed hundreds of units in several multi-family projects, including other affordable housing projects. In addition, the owners wish to refinance the project in order to take advantage of historic low interest rates, which would require a new Subordination Agreement with the City (acting in its new role as Successor Housing Agency of the former Community Redevelopment Agency). In addition, the Lender has asked for an Estoppel Certificate, confirming that there are no known defaults in the agreements. Finally, there remains a Housing Authority Regulatory Agreement recorded against the property, even though the Housing Authority bonds were repaid several years ago. The Regulatory Agreement was amended at the time of the previous sale, in 2008, in part to allow the sale of the property to a limited partnership which was not itself a 501(c)(3) non-profit, but had a 501(c)(3) qualified general partner. Freddie Mac, which is the purchaser of the loan, has asked for an Amendment to the Freddie Mac Rider to be approved, to conform the changes in the loan to its own legal provisions.

Since the previous transaction in 2008, the State of California has now eliminated redevelopment agencies statewide. On December 29, 2011, the California Supreme Court upheld AB 1X 26, which dissolves all of the redevelopment agencies in the State of California.

On January 4, 2012, the City Council approved a resolution authorizing the City to become the Successor Agency and the Successor Housing Agency. The City Council elected to retain the responsibility for performing housing functions previously performed by the Palm Springs Community Redevelopment Agency and assume all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of in accordance with Cal. Health and Safety Code §34176.

RECOMMENDATION:

COMMUNITY REDEVELOPMENT AGENCY RECOMMENDATION:

1. Adopt Resolution No. _____, "A RESOLUTION OF THE CITY OF PALM SPRINGS, CALIFORNIA, IN ITS CAPACITY AS THE SUCCESSOR HOUSING AGENCY OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, CONSENTING TO A CHANGE IN OWNERSHIP AND APPROVING 1) AN ESTOPPEL CERTIFICATE BY AND BETWEEN THE CITY OF PALM SPRINGS AND TAHQUITZ ASSOCIATES, LP, A CALIFORNIA LIMITED PARTNERSHIP; AND, 2) A SUBORDINATION AGREEMENT BY AND BETWEEN THE CITY OF PALM SPRINGS AND BERKADIA COMMERCIAL MORTGAGE LLC, A

DELAWARE LIMITED LIABILITY COMPANY, FOR THE TAHQUITZ COURT APARTMENTS AT 2800, 2890, 2900 and 2990 EAST TAHQUITZ CANYON WAY;

HOUSING AUTHORITY RECOMMENDATION:

2. Adopt Resolution No. _____, "A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS, CALIFORNIA APPROVING A SECOND AMENDMENT TO A REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS BY AND BETWEEN THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS AND TAHQUITZ ASSOCIATES, LP, A CALIFORNIA LIMITED PARTNERSHIP BY ADDING A FREDDIE MAC RIDER;
3. Authorize the City Manager/Executive Director to execute all the documents related to the Agreements and Amendment.

STAFF ANALYSIS:

Tahquitz Court is a 108-unit garden-style family apartment project situated on approximately 5.4 acres, comprised of a campus of 10 buildings, each a two-story walk-up of wood frame, slab-on-grade construction. The project is located on Tahquitz Canyon Way adjacent to City Hall and is a short walking distance to personal services, public transportation, schools and shopping. It consists of 17 one bedroom/one bath units of approximately 700 square feet, 37 two bedroom/1.5 bath units of approximately 864 square feet, 38 two bedroom/2 bath units of approximately 1,089 square feet, and 16 three bedroom/2 bath units of approximately 1,390 square feet. The complex features two swimming pools, one spa, central laundry facilities, and covered parking. Individual units feature central heat and air conditioning, dishwashers, double sinks with garbage disposals, breakfast bars, separate linen closets and private balconies or patios.

In 1993, Corporate Fund for Housing (CFH), a California 501(c)(3) non-profit public benefit corporation, acquired the property from Redlands Federal Bank (now CitiBank) which itself acquired the property through foreclosure in 1992. Originally constructed in 1963, through the 1980's the apartments, formerly the San Carlos Apartments, had fallen into disrepair in the hands of previous owners who operated it as a market-rate project with no subsidized or designated affordable units.

CFH carried out minor rehab and added affordability restrictions that range from 40% AMI to 60% AMI. In conjunction with CFH's acquisition of Tahquitz Court in September 1993, a substantial rehabilitation program under Redlands' ownership was completed. CFH was then able to reposition the property by lowering rents to attract and retain low- and very low-income families. This project aided the City in meeting its Regional Housing Needs Assessment (RHNA) numbers for very low, low and moderate income housing. A 30-year affordability covenant was included in the August 1993 Regulatory Agreement.

In February, 1993, the Housing Authority of the City of Palm Springs approved the issuance of tax-exempt bond financing for the acquisition and rehabilitation of the apartments. The Housing Authority-backed bonds were repaid through a refinancing of the project, in 2005. In August 1993, the Community Redevelopment Agency also approved a \$590,000 forgivable grant, using Low- and Moderate Income Housing funds for the purpose of rehabilitation costs and bond issuance costs.

The successor to CFH, LINC Housing Corporation of Long Beach, CA ("LINC") always intended to apply for tax-exempt bonds and California 4% Low Income Housing Tax Credits for the refinancing, rehabilitation and construction of a new 2,800 s.f. community room at the property. Under tax credit rules they needed to own the property for 10 years before becoming eligible.

LINC proposed a \$16 million refinancing and rehabilitation program designed to update and modernize the units, as well as incorporating energy-efficiency improvements, and to ensure affordable housing choice for the long term, using a combination of low-income housing tax credits through the California Tax Credit Allocation Committee (TCAC) and tax-exempt bond financing through the California Debt Limit Allocation Committee (CDLAC).

In 2005 the Agency approved a resolution committing gap financing at that time, with a new Owner Participation Agreement to follow once the project had received the commitment of bond- and tax-credit financing. All of the units were and continue to be restricted to low- and very-low income residents.

In 2006, however, as LINC prepared to submit an Multi-family Housing Program (MHP) funding application to the State of California's Department of Housing and Community Development (HCD) a fundamental problem arose: HCD rules required HCD to consider the proposed sale of Tahquitz Court to a tax credit partnership, with LINC acting as the general partner, as a "cash out refinancing," of the project, even though CFH would carry back a \$3 million seller's note. HCD determined that Corporate Fund for Housing and LINC share offices and staff and have overlapping

Boards of Directors, and despite the fact that there is no legal connection between the two, HCD concluded that they were related entities and this type of transaction between the two non-profits is prohibited by HCD regulations, even though the sales price was based upon an appraisal. Without the MHP funding, neither CFH nor LINC were able to complete the required rehabilitation of the property.

In the end, LINC was unable to obtain State financing. One solution was to sell the property to a friendly non-profit and then collaborate on an application, but negotiations with several affordable non-profits failed. Instead, in early 2008 LINC listed the property for sale, and in November, 2008 the Agency approved the sale of the project to Tahquitz Associates, LP, with apartment owner Dalton Hydro of Utah as the majority owner (limited partner) and LINC as the 501(c)(3) minority general partner. The Agency was only asked to allow the partnership to purchase the property, and not for any additional Agency funds. Tahquitz Associates, LP, purchased this property subject to the existing covenants.

The Agency's Regulatory Agreement is still in place, with about 12 years of affordability still left on it. The original covenants were 30 years. On December 29, 2011, the California Supreme Court upheld AB 1X 26, which dissolves all of the redevelopment agencies in the State of California. The City of Palm Springs is now the successor to the Agency's interest in the Regulatory Agreement.

On January 4, 2012, the City Council approved a resolution authorizing the City to become the Successor Agency and the Successor Housing Agency. The City Council elected to retain the responsibility for performing housing functions previously performed by the Palm Springs Community Redevelopment Agency and assume all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of in accordance with Cal. Health and Safety Code §34176.

In general, all the assets, properties, contracts, leases, and records of the Palm Springs Community Redevelopment Agency, including those related to this project, were transferred to the City as Successor Agency. In carrying out this obligation, AB 1X 26 limits the liability of the Successor Agency to: "the extent of the total sum of property tax revenues it receives pursuant to this part [Part 1.85] and the value of the assets transferred to it as the successor agency for a dissolved redevelopment agency."


Additionally, Tahquitz is refinancing the project and admitting another partner to the Partnership. The Regulatory Agreement gives the City (formerly the Agency) the power to consent on changes in ownership; such consent is included in the Resolution for action.

The Housing Authority of the City of Palm Springs also approved the Prior Loan, shown in the Modification of Regulatory Agreement dated December 15, 2008 and recorded in the Official Records of Riverside County as Document 2008-0663040 ("First Modification"). The First Modification included a Freddie Mac Rider, which is now being amended through the Second Amendment.

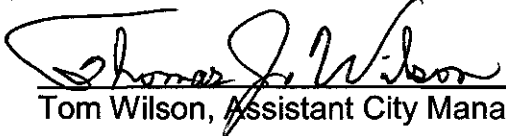
Berkadia Commercial Mortgage LLC ("Lender"), successor to the prior lender Capmark, is refinancing the Prior Loan with a loan of approximately \$5,625,000 (the "Refinance Loan"). Lender is unable to make the Refinance Loan without the Authority's consent to a second modification of the Regulatory Agreement to incorporate the terms of the Revised Freddie Mac Rider attached.

FISCAL IMPACT:

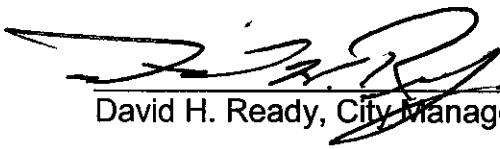
None of the actions described above create any financial impact to the City (as Successor Housing Agency) or the Housing Authority.



John Raymond, Director
Community & Economic Development



Tom Wilson, Assistant City Manager



David H. Ready, City Manager

Attachments:

1. City (as Successor Agency) Resolution
2. Housing Authority Resolution
3. (CITY) ESTOPPEL CERTIFICATE
4. (CITY) SUBORDINATION AGREEMENT
5. (HOUSING AUTHORITY) SECOND AMENDMENT TO THE REGULATORY AGREEMENT (REVISED FREDDIE MAC RIDER)

Resolution No. _____

OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, CONSENTING TO A CHANGE IN OWNERSHIP AND APPROVAL OF AN ESTOPPEL CERTIFICATE WITH TAHQUITZ ASSOCIATES, LP, A CALIFORNIA LIMITED PARTNERSHIP AND A SUBORDINATION AGREEMENT BY AND BETWEEN THE CITY OF PALM SPRINGS AS SUCCESSOR HOUSING AGENCY AND BERKADIA COMMERCIAL MORTGAGE LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR THE REFINANCING OF THE 108-UNIT TAHQUITZ COURT APARTMENTS AT 2800, 2890, 2900 and 2990 EAST TAHQUITZ CANYON WAY

WHEREAS, the Community Redevelopment Agency of the City of Palm Springs (the "Agency") has established an affordable housing setaside fund in accordance with Section 33000 et. seq. of the California Health and Safety Code; and

WHEREAS, AB 1X 26 was signed by the Governor of California on June 29, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the California Health and Safety Code, suspending most redevelopment agency activities and, among other things, prohibiting redevelopment agencies from incurring indebtedness or entering into or modifying contracts; and

WHEREAS, effective February 1, 2012, all existing redevelopment agencies and redevelopment agency components of community development agencies were dissolved; however, except for those provisions of the Redevelopment Law that are repealed, restricted, or revised pursuant to AB XI 26, all authority, rights, powers, duties and obligations previously vested with the former redevelopment agencies under the Redevelopment Law, are vested in the successor agencies;

WHEREAS, at a meeting of January 4, 2012, the City of Palm Springs took action to designate itself as the Successor Agency and the Housing Successor Agency to the Community Redevelopment Agency, as provided in California Health and Safety Code §§ 34173 and 34176; and

WHEREAS, pursuant to Cal. Health & Safety Code §34176, the City expressed its intention to retain the housing assets and functions previously performed by the Palm Springs Community Redevelopment Agency and assume all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the Palm Springs Community Redevelopment Agency; and

WHEREAS, in November, 2008, the Agency approved the sale of the project to Tahquitz Associates, LP ("Tahquitz"), with apartment owner Dalton Hydro of Utah as the majority owner (limited partner) and LINC Housing, the seller, as the 501(c)(3) minority general partner; subject to the existing covenants

WHEREAS, Tahquitz has requested City consent to the addition of a new Limited Partner, Rocky Mountain Engineering, to the Partnership; the party has had a financial interest in the project since Tahquitz acquired the project from the prior owners in 2008, but were not part of the ownership of the property; and

WHEREAS, the City has reviewed the qualifications of Rocky Mountain Engineering and determined them to be qualified to be admitted to the Partnership as a Limited Partner; and

WHEREAS, Berkadia Commercial Mortgage, LLC, the project lender, has requested a new Subordination Agreement with the City, and an Estoppel Agreement between the City and Tahquitz; and

WHEREAS, the owners still agree to continue to restrict, though an existing Regulatory Agreement, the rents on 100% of the existing units (107) to levels affordable to families with incomes no more than 60% of Area Median Income (AMI) for a the remaining term.

NOW, THEREFORE, BE IT RESOLVED, by the City of Palm Springs, in its capacity as the Successor Housing Agency to the Community Redevelopment Agency, as follows:

1. The above findings are true and correct and are adopted findings of the City Council of the City of Palm Springs.
2. The City Council of the City of Palm Springs, California, hereby consents to Rocky Mountain Engineering's admission as a Limited Partner to Tahquitz Associates, LP.
3. An Estoppel Certificate by and between the City of Palm Springs and Tahquitz Associates, PL, is hereby approved.
4. A Subordination Agreement by and between the City of Palm Springs and Berkadia Commercial Mortgage, LLC, is hereby approved.
5. The City Manager is hereby authorized and directed, on behalf of the City, to execute all documents, including applications or letters of intent or commitment, related to the Project and the purposes of this Resolution.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 15TH DAY OF FEBRUARY, 2012.

DAVID H. READY, CITY MANAGER

ATTEST:

JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on the 15TH day of February, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMES THOMPSON, CITY CLERK
City of Palm Springs, California

Resolution No. _____

OF THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING A SECOND AMENDMENT TO A REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS BY AND BETWEEN THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS AND TAHQUITZ ASSOCIATES, LP, A CALIFORNIA LIMITED PARTNERSHIP, BY ADDING A FREDDIE MAC RIDER FOR THE REFINANCING OF THE 108-UNIT TAHQUITZ COURT APARTMENTS AT 2800, 2890, 2900 and 2990 EAST TAHQUITZ CANYON WAY

WHEREAS, In February, 1993, the Housing Authority of the City of Palm Springs ("Housing Authority") approved the issuance of tax-exempt bond financing for the acquisition and rehabilitation of the Tahquitz Court Apartments located at 2800, 2890, 2900 and 2990 East Tahquitz Canyon Way (the "Property") on behalf of the Corporate Fund for Housing; such bonds were repaid through a refinancing of the Property in 2005 by its successor, LINC Housing; and

WHEREAS, in November, 2008, the Housing Authority approved the sale of the Property to Tahquitz Associates, LP ("Tahquitz"), with apartment owner Dalton Hydro of Utah as the majority owner (limited partner) and LINC Housing, the seller, as the 501(c)(3) minority general partner; subject to the existing covenants and approved the Prior Loan, shown in the Modification of Regulatory Agreement dated December 15, 2008 and recorded in the Official Records of Riverside County as Document 2008-0663040 ("First Modification"); and

WHEREAS, Berkadia Commercial Mortgage LLC ("Lender"), successor to the prior lender Capmark, is refinancing the Prior Loan with a loan of approximately \$5,625,000 (the "Refinance Loan") but is unable to make the Refinance Loan without the Housing Authority's consent to a Second Modification of the Regulatory Agreement to incorporate the terms of the Revised Freddie Mac Rider, attached as Exhibit "A" to this resolution; and

WHEREAS, Tahquitz still agrees to continue to restrict, though an existing Regulatory Agreement, the rents on 100% of the existing units (107) to levels affordable to families with incomes no more than 60% of Area Median Income (AMI) for a the remaining term.

NOW, THEREFORE, BE IT RESOLVED, by the Housing Authority of the City of Palm Springs, as follows:

1. The above findings are true and correct and are adopted findings of the Housing Authority of the City of Palm Springs.
2. The Housing Authority of the City of Palm Springs, California, hereby approves the Second Modification of the Regulatory Agreement to incorporate the terms of the Revised Freddie Mac Rider, attached as Exhibit "A" to this resolution.
3. The Executive Director is hereby authorized and directed, on behalf of the Housing Authority, to execute all documents, including applications or letters of intent or commitment, related to the Property and the purposes of this Resolution.

PASSED, APPROVED AND ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS THIS 15TH DAY OF FEBRUARY, 2012.

 DAVID H. READY, EXECUTIVE DIRECTOR

ATTEST:

 JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
 COUNTY OF RIVERSIDE) ss.
 CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. ____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on the 15TH day of February, 2012, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

 JAMES THOMPSON, CITY CLERK
 City of Palm Springs, California

ESTOPPEL CERTIFICATE

This Certificate is provided by the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, CALIFORNIA, a public body corporate and politic ("Agency") in favor of, and may be relied upon by, BERKADIA COMMERCIAL MORTGAGE LLC, a Delaware limited liability company ("Lender") and by TAHQUITZ ASSOCIATES, LP, a California limited partnership ("Tahquitz").

A. CORPORATE FUND FOR HOUSING, a California nonprofit public benefit corporation ("CFH") was the owner of certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit A attached hereto and incorporated herein ("Property").

B. Agency made a \$590,000 loan to CFH (the "Loan"), as evidenced by a Promissory Note Secured by Deed of Trust dated September 28, 1993 ("Note").

C. CFH and Agency entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated September 28, 1993, recorded September 30, 1993, in the Official Records of Riverside County, California as Instrument No. 382201 ("Regulatory Agreement"), which provides for certain terms, conditions, covenants and restrictions relating to a low income multi-housing project located on the Property.

D. The Loan is secured by A Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing dated September 28, 1993, recorded September 30, 1993, in the Official Records of Riverside County, California as Instrument No. 382205 ("Deed of Trust"). The Note, Regulatory Agreement, Deed of Trust and all other documents evidencing or securing the Loan are referred to herein as the 'Loan Documents'.

E. CFH transferred the Project (as defined in the Loan Documents) and assigned the Loan Documents to Tahquitz and Tahquitz accepted the same and is currently obligated under the Loan Documents.

F. In connection with the transfer of the Property and the Project to Tahquitz, Capmark Bank, predecessor to Lender, made a purchase loan to Tahquitz, secured in part by the Property. Lender is now refinancing the purchase loan with a loan of approximately \$5,625,000, and has requested this Estoppel Certificate.

Agency therefore certifies as follows:

1. There are no uncured defaults by Tahquitz under the Loan or the Loan Documents, and Agency knows of no events or conditions which, with the passage of time or notice, or both, would constitute a default by Tahquitz under the Loan or the Loan Documents.

2. All conditions of the Loan and the Loan Documents to be performed by Tahquitz and necessary to the continuance of the Loan and the Loan Documents in good standing have been satisfied.

EXECUTED this _____ day of December, 2011

AGENCY:
THE COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF PALM SPRINGS,
CALIFORNIA

By: _____

Its: _____

ATTEST:

By: _____

EXHIBIT A

LEGAL DESCRIPTION

LOT 15 IN SECTION 13, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, AS PER MAP OF PALM VALLEY COLONY LANDS, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED IN BOOK 14, PAGE 652 OF MAPS, SAN DIEGO COUNTY RECORDS.

EXCEPT THE PORTION LYING NORTH OF THE SOUTH LINE OF ENCHANTED HOMES UNIT NO. 1, RECORDED IN BOOK 34, PAGE 17 OF MAPS, RIVERSIDE COUNTY RECORDS.

SAID PROPERTY IS SHOWN ON RECORD OF SURVEY ENTITLED "RECORD OF SURVEY OF A PORTION OF LOT 1 OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, AS SHOWN BY MAP OF PALM VALLEY COLONY LANDS, AS RECORDED IN BOOK 14, PAGE 652 OF MAPS, SAN DIEGO COUNTY RECORDS" ON FILE IN BOOK 33, PAGE 77, RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS.

APN: 502-143-004-5

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Palm Springs
Box 2743
Palm Springs, CA 92263

SECOND MODIFICATION OF REGULATORY AGREEMENT

THIS SECOND MODIFICATION OF REGULATORY AGREEMENT ("**Modification**") is made this ____ day of December, 2011 by and among THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS, a housing authority of the State of California duly organized and existing under the laws thereof ("**Authority**"), and TAHQUITZ ASSOCIATES, LP, a California limited partnership ("**Tahquitz**").

RECITALS

A. Authority, Corporate Fund for Housing, a California nonprofit public benefit corporation, predecessor to Tahquitz ("**CFH**"), and Seattle-First National Bank, as trustee, were parties to that certain Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory Agreement**") dated September 1, 1993, recorded September 30, 1993, in the Official Records of Riverside County, California as Instrument No. 382200, affecting certain real property then owned by CFH located in the City of Palm Springs, County of Riverside, State of California more particularly described in Exhibit A attached hereto and incorporated herein by reference ("**Property**"). The Regulatory Agreement was executed in connection with the issuance of \$3,380,000.00 Housing Authority of the City of Palm Springs Multifamily Housing Mortgage Revenue Bonds (Tahquitz Court Apartments) ("**Bonds**"), and provides for certain terms, conditions, covenants and restrictions relating to a low income multi-family housing project located on the Property.

B. The Bonds have been redeemed and paid in full, and as of the date hereof no Bonds are outstanding.

C. On December 15, 2008, CFH transferred the Project (as defined in the Regulatory Agreement) to Tahquitz and Tahquitz obtained financing from Capmark Bank ("**Capmark**") in the amount of \$4,326,000.00 ("**Prior Loan**"). The Authority approved the Prior Loan, as evidenced by a Modification of Regulatory Agreement dated December 15, 2008 and recorded in the Land Records of Riverside County, California as Document 2008-0663040 ("**First Modification**"). The First Modification included a "Freddie Mac Rider" attached to the First Modification as Exhibit A.

D. Berkadia Commercial Mortgage LLC ("**Lender**"), successor to Capmark, is now refinancing the Prior Loan with a loan of approximately \$5,625,000 (the "**Refinance Loan**"). Lender is unable to make the Refinance Loan without the Authority's consent to a second modification of the Regulatory Agreement to incorporate the terms of the Revised Freddie Mac Rider attached hereto.

E. The Authority has approved a second modification of the Regulatory Agreement to incorporate the terms of the Revised Freddie Mac Rider attached hereto.

NOW, THEREFORE, Authority and Tahquitz declare, covenant and agree, in consideration of the mutual promises contained herein, and for other good and valuable consideration, as follows.

1. The Regulatory Agreement is amended to incorporate the terms and conditions of the Revised Freddie Mac Rider attached hereto.

2. Except as otherwise provided herein, the Regulatory Agreement shall be and remain unmodified and in full force and effect.

3. This Modification may be executed in any number of counterparts each of which shall be an original but all of which shall constitute one and the same document.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Modification of Regulatory Agreement as of the date first above written.

AUTHORITY:

ATTEST:

HOUSING AUTHORITY OF THE CITY
OF PALM SPRINGS

By: _____

By: _____
Its: _____

TAHQUITZ:
TAHQUITZ ASSOCIATES, LP,
a California limited partnership

By: LINC-TAHQUITZ LLC,
a California limited liability company
Its: Managing General Partner

By: LINC Housing Corporation,
a California nonprofit public benefit corporation
Its: Sole Member and Manager

By: _____
Kent Davis
Its: Senior Vice President

By: TAHQUITZ ASSOCIATES, LLC,
a California limited liability company
Its: Co-General Partner

By: Dalton Hydro, LLC,
a Vermont limited liability company
Its: Manager

By: S. R. C. Corp.,
a Utah corporation
Its: Manager

By: _____
Steve Harmsen
Its: President

ACKNOWLEDGMENT

State of California)
County of _____)ss.

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California)
County of _____)ss.

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California)
County of _____)ss.

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized

capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California)
County of _____)ss.

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

**EXHIBIT A
LEGAL DESCRIPTION**

LOT 15 IN SECTION 13, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, AS PER MAP OF PALM VALLEY COLONY LANDS, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED IN BOOK 14, PAGE 652 OF MAPS, SAN DIEGO COUNTY RECORDS.

EXCEPT THE PORTION LYING NORTH OF THE SOUTH LINE OF ENCHANTED HOMES UNIT NO. 1, RECORDED IN BOOK 34, PAGE 17 OF MAPS, RIVERSIDE COUNTY RECORDS.

SAID PROPERTY IS SHOWN ON RECORD OF SURVEY ENTITLED "RECORD OF SURVEY OF A PORTION OF LOT 1 OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, AS SHOWN BY MAP OF PALM VALLEY COLONY LANDS, AS RECORDED IN BOOK 14, PAGE 652 OF MAPS, SAN DIEGO COUNTY RECORDS" ON FILE IN BOOK 33, PAGE 77, RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS.

APN: 502-143-004-5

REVISED FREDDIE MAC RIDER TO REGULATORY AGREEMENT

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REVISED FREDDIE MAC RIDER TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Rider”), executed as of December __, 2011 is deemed attached to and to form a part of the Regulatory Agreement and Declaration of Restrictive Covenants (the “**Regulatory Agreement**”), dated as of September 1, 1993, as amended, by and between **TAHQUITZ ASSOCIATES, LP**, a California limited partnership, as successor to Corporate Fund For Housing, a California nonprofit public benefit corporation (“**Owner**”), its successors and assigns, and **THE HOUSING AUTHORITY OF THE CITY OF PALM SPRINGS**, a housing authority of the State of California (“**Authority**”).

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement.
2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, the Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and shall be deemed applicable to any successor in interest to the Owner.
3. **Obligations Not Secured by the Project.** The payment and performance obligations of the Owner and any subsequent owner of the Project under the Regulatory Agreement shall not be secured by or constitute a security interest in the Project. The occurrence of an event of default under the Regulatory Agreement shall not defeat or render invalid the lien of the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by the Owner for the benefit of Berkadia Commercial Mortgage LLC (“**Berkadia**”), dated as of December __, 2011 (“**Security Instrument**”), as assigned of even date therewith from Berkadia to the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”). For purposes of this Rider, Berkadia and Freddie Mac and their successors and/or assigns, individually and together, are “Lender”.
4. **Obligations Personal.** The Authority agrees that no owner of the Project (including Lender) subsequent to the Owner will be liable for, assume or take title to the Project subject to:
 - (a) any failure of any prior owner of the Project to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and
 - (b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Project under the Regulatory Agreement.

The Owner and each subsequent owner of the Project shall be responsible under the Regulatory Agreement only for its own acts and omissions occurring during the period of its ownership of the Project. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Project.

Initials: _____ Authority / _____ Tahquitz

5. **Foreclosure/Deed in Lieu of Foreclosure.** All provisions of Section 15 of the Regulatory Agreement related to the sale or transfer of the Project which require the consent of the Authority or transfer agreements, compliance with Authority transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, shall not apply to any transfer of title to the Project to Lender and/or a nominee thereof by foreclosure or deed in lieu of foreclosure or to any third party purchaser from Lender and/or a nominee thereof at or subsequent to foreclosure or deed in lieu of foreclosure, and there shall be no reversion of title to Owner by reason of any such transfer. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Loan Documents (as defined in the Loan Agreement secured by the Security Instrument) which requires the Owner to obtain the consent of Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Owner. No covenant obligating the Owner to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall apply to a transfer to Lender and/or a nominee thereof upon foreclosure or deed in lieu of foreclosure.

For purposes of Section 16 of the Regulatory Agreement, a foreclosure or delivery of a deed in lieu of foreclosure under the Security Instrument shall be deemed a foreclosure of the lien of the "Credit Bank" and "Project Mortgage" such that the terms of the Regulatory Agreement shall terminate and be of no further force and effect.

6. **Damage, Destruction or Condemnation of the Project.** In the event that the Project is damaged or destroyed or title to the Project, or any part thereof, is taken through the exercise or the threat of the exercise of the power of eminent domain, the Owner shall comply with all applicable requirements of the Loan Agreement and Security Instrument and the applicable requirements of the Loan Agreement and Security Instrument shall control over any conflicting provision of the Regulatory Agreement. In furtherance, and not in limitation of the foregoing, Lender shall have the sole right to determine, in accordance with the standards set forth in the Loan Agreement and Security Instrument, whether insurance or condemnation proceeds are to be applied to restore the Project (and to approve the plans and specifications in connection with any such restoration) or to prepay indebtedness.
7. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:
- a. The occurrence of an Event of Default under the Regulatory Agreement shall not defeat or render invalid the lien of the Security Instrument.
 - b. The occurrence of an Event of Default under the Regulatory Agreement shall not be or be deemed to be a default under the Loan Documents, except as may be otherwise specified in the Loan Documents.
8. **Rider Provisions Control.** The provisions of this Rider shall govern and control with respect to the matters set forth herein, regardless of whether, pursuant to Section 29 of the Regulatory Agreement, the rent and income restrictions of the "Agency Regulatory Agreement" defined in Section 29 control due to an inconsistency between the two Agreements.

Initials: _____ Authority / _____ Tahquitz

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is entered into this ____ day of, February, 2012, by and between (i) **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company (the "**Senior Mortgagee**"), and (ii) **THE CITY OF PALM SPRINGS, CALIFORNIA**, a California Charter City (the "**Subordinate Mortgagee**").

RECITALS

- A. Tahquitz Associate, LP, a California limited partnership (the "**Borrower**") is the owner of certain land located in Riverside County, California, described in Exhibit A hereto (the "**Land**"). The Land is currently improved with a multifamily housing project (the "**Improvements**").
- B. The Senior Mortgagee is making a loan to the Borrower in the original principal amount of \$ _____. The loan will be secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated December ___, 2011 (the "**Senior Mortgage**") encumbering the Land and Improvements and other "**Mortgaged Property**" (as defined in the Senior Mortgage).
- C. The Subordinate Mortgagee has made a loan to the Borrower in the original principal amount of \$590,000.00. The loan is secured by a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing dated September 28, 1993 (the "**Subordinate Mortgage**") encumbering the Land and Improvements.
- D. The Senior Mortgage recorded in the land records of Riverside County, California (the "**Recording Office**") of even date herewith and prior hereto. The Subordinate Mortgage is recorded in the Recording Office as Document Number 382201.
- E. The execution and delivery of this Agreement is a condition of Senior Mortgagee's making of the Senior Mortgage loan.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), shall have the following meanings.
- (a) The terms “**Condemnation**”, “**Impositions**”, “**Leases**”, “**Rents**”, “**Restoration**” and “**Transfer**”, as well as any term used in this Agreement and not otherwise defined in this Agreement, shall have the meanings given to those terms in the Senior Mortgage.
 - (b) “**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to the Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
 - (c) “**Borrower**” means all persons or entities identified as “Borrower” in the first paragraph of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Land and Improvements after the date of this Agreement; provided that the term “Borrower” shall not include the Senior Mortgagee in the event that the Senior Mortgagee may acquire title to the Land and Improvements.
 - (d) “**Casualty**” means the occurrence of damage to or loss of any of the Mortgaged Property by fire or other casualty.
 - (e) “**Enforcement Action**” means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the taking of any other enforcement action against the Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
 - (f) “**Enforcement Action Notice**” means a written notice from the Subordinate Mortgagee to the Senior Mortgagee, given following a Subordinate Mortgage Default and the expiration of any notice or cure periods provided for such Subordinate Mortgage Default in the Subordinate Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by the Subordinate Mortgagee.

- (g) **“Loss Proceeds”** means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result or any Condemnation or Casualty.
- (h) **“Senior Indebtedness”** means the “Indebtedness” as defined in the Senior Mortgage.
- (i) **“Senior Loan Documents”** means the “Loan Documents” as defined in the Senior Mortgage.
- (j) **“Senior Mortgage Default”** means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Mortgage.
- (k) **“Senior Mortgagee”** means the “Lender” as defined in the Senior Mortgage. When any other person or entity becomes the legal holder of “Note” (as defined in the Senior Mortgage), such other person or entity automatically shall become the Senior Mortgagee.
- (l) **“Subordinate Indebtedness”** means all sums evidenced or secured or guaranteed by, or otherwise due and payable to the Subordinate Mortgagee pursuant to, the Subordinate Loan Documents.
- (m) **“Subordinate Loan Documents”** means the Subordinate Mortgage, the promissory note or other evidence of the Subordinate Indebtedness referred to in the Subordinate Mortgage and any replacement thereof (the **“Subordinate Note”**), Regulatory Agreement and Declaration of Covenants and Restrictions date September 28, 1993 and recorded September 30, 1993 as Documents Number 382201 in the Recording Office, as amended (the **“Regulatory Agreement”**) and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended from time to time.
- (n) **“Subordinate Mortgage Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), the Subordinate Mortgagee to take an Enforcement Action.
- (o) **“Subordinate Mortgagee”** means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

2. SUBORDINATION OF SUBORDINATE INDEBTEDNESS.

- (a) The Subordinate Indebtedness is and shall at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.
- (b) Until the occurrence of a Senior Mortgage Default, the Subordinate Mortgagee shall be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; provided no such payment is made more than ten (10) days in advance of the due date thereof. However, immediately upon the Subordinate Mortgagee's receipt of notice or actual knowledge of a Senior Mortgage Default, the Subordinate Mortgagee will not accept any payments on account of the Subordinate Indebtedness, and the provisions of Section 2(c) of this Agreement shall apply. The Subordinate Mortgagee acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, the Subordinate Mortgagee shall be deemed to have actual knowledge of a Senior Mortgage Default.
- (c) If (i) the Subordinate Mortgagee receives any payment, property, or asset of any kind or in any form on account of the Subordinate Indebtedness (including, without limitation, any proceeds from any Enforcement Action) after a Senior Mortgage Default of which the Subordinate Mortgagee has actual knowledge or has been given notice, or (ii) the Subordinate Mortgagee receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for the Senior Mortgagee. The Subordinate Mortgagee will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to the Senior Mortgagee. The Senior Mortgagee shall apply any payment, asset, or property so received from the Subordinate Mortgagee to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as the Senior Mortgagee shall determine in its sole and absolute discretion. The Subordinate Mortgagee hereby designates and appoints, irrevocably and coupled with an interest, the Senior Mortgagee (and all persons and entities designated by the Senior Mortgagee) as the Subordinate Mortgagee's true and lawful attorney-in-fact with power to endorse the name of the Subordinate Mortgagee upon any check or other instrument and to take any action necessary to collect any payment, property, or asset referred to in, or otherwise to effectuate the provisions of this Section 2(c).
- (d) Without limiting the complete subordination of the Subordinate Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness shall first be paid in full in cash

before the Subordinate Mortgagee shall be entitled to receive any payment or other distribution on account of or in respect of the Subordinate Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which the Subordinate Mortgagee would be entitled but for this Agreement (whether in cash, property, or other assets) shall be made to the Senior Mortgagee.

- (e) The subordination of the Subordinate Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of the Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to the Borrower or its insolvent estate, or avoided, set aside or required to be paid to the Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

3. SUBORDINATION OF SUBORDINATE LOAN DOCUMENTS.

- (a) The Subordinate Mortgage and each of the other Subordinate Loan Documents are, and shall at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of the Senior Mortgage and each of the other Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Mortgage and other Senior Loan Documents and of the Subordinate Mortgage and other Subordinate Loan Documents, and (ii) the availability of any collateral to the Senior Mortgagee, including the availability of any collateral other than the Mortgaged Property.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of the Subordinate Mortgagee under the Subordinate Mortgage under the Subordinate Loan Documents in or to the Mortgaged Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of the Senior Mortgagee under the Senior Loan Documents in and to the Mortgaged Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom and the Loss Proceeds payable with respect thereto.

- (d) If the Subordinate Mortgagee, by indemnification, subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Mortgaged Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by the Senior Mortgagee of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (e) In confirmation, and not as a condition, of the subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, the Subordinate Lender shall place on or attach to the Subordinate Note the following notice, and shall provide the Senior Mortgagee with a copy of the Subordinate Note showing such notice: "The right of the holder of this promissory note to payment of any of the indebtedness evidenced by this promissory note is and shall at all time be subordinate to the right of the holder of that certain Multifamily Note dated December __, 2011 from the maker of this promissory note to the order of Berkadia (the "Senior Note"), to payment in full of the indebtedness evidenced by the Senior Note. The foregoing subordination is pursuant to a Subordination Agreement date December __, 2011, between Berkadia and the holder on the date of the Subordination Agreement of this promissory note."
- (f) Notwithstanding any provisions of the Regulatory Agreement to the contrary, all provisions which require the consent of Subordinate Mortgagee to the sale or transfer of the Land or compliance with certain transfer criteria and requirements, assumption or transfer fees shall not apply to any transfer of the Land to Senior Mortgagee and/or a nominee thereof by foreclosure or deed in lieu of foreclosure or to any third party purchaser from Senior Mortgagee and/or a nominee thereof at or subsequent to foreclosure or a deed in lieu of foreclosure.

4. ADDITIONAL REPRESENTATIONS AND COVENANTS.

- (a) The Subordinate Mortgagee represents and warrants that (i) the Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents; (ii) the Subordinate Loan Documents are now in full force and effect; (iii) the Subordinate Loan Documents have not been modified or amended; (iv) no Subordinate Mortgage Default has occurred; (v) the current principal balance of the Subordinate Indebtedness is \$_____ ; (vi) no scheduled monthly payments under the Subordinate Note have been or will be prepaid; and (vii) none of the rights of the Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of the Senior Mortgagee in each instance, the Subordinate Mortgagee shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Subordinate Loan Documents; or (ii) pledge,

assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents; or (iii) accept any payment on account of the Subordinate Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than ten (10) days prior to the due date thereof, or as expressly authorized in Section 4(i); or (iv) take any action which has the effect of increasing the Subordinate Indebtedness; or (v) appear in, defend or bring any action to protect the Subordinate Lender's interest in the Mortgaged Property; or (vi) take any action concerning environmental matters affecting the Mortgaged Property.

- (c) The Subordinate Mortgagee shall deliver to the Senior Mortgagee a copy of each notice received or delivered by the Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with the Subordinate Mortgagee's delivery or receipt of such notice. The Senior Mortgagee shall deliver to the Subordinate Mortgagee a copy of each notice of a Senior Mortgage Default delivered by the Senior Mortgagee simultaneously with the Senior Mortgagee's delivery of such notice. Neither giving nor failing to give a notice to the Senior Mortgagee or Subordinate Mortgagee pursuant to this Section 4(c) shall affect the validity of any notice given by the Senior Mortgagee or Subordinate Mortgagee to the Borrower, as between the Borrower and such of the Senior Mortgagee or the Subordinate Mortgagee as provided the notice to the Borrower.
- (d) Without the prior written consent of the Senior Mortgagee in each instance, the Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, the Subordinate Mortgagee shall not vote affirmatively in favor of any plan of reorganization or liquidation unless the Senior Mortgagee has also voted affirmatively in favor of such plan. In the event of any Bankruptcy Proceeding, the Subordinate Mortgagee shall not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.
- (e) Whenever the Subordinate Loan Documents give the Subordinate Mortgagee approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to the Senior Mortgagee pursuant to the Senior Loan Documents or otherwise, the Senior Mortgagee's approval or consent or failure to approve or consent, as the case may be, shall be binding on the Subordinate Mortgagee. None of the other provisions of this Section 4 are intended to be in any way in limitation of the provisions of this Section 4(e).
- (f) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) shall be deemed satisfied if the Borrower complies

with the insurance requirements under the Senior Loan Documents. All original policies of insurance required pursuant to the Senior Loan Documents shall be held by the Senior Mortgagee. Nothing in this Section 4(f) shall preclude the Subordinate Mortgagee from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by the Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Proceeds, or that the Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by the Borrower with respect to the Mortgaged Property.

- (g) In the event of a Condemnation or a Casualty, the following provisions shall apply:
 - (i) the rights of the Subordinate Mortgagee (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, shall be and remain subordinate in all respects to the Senior Mortgagee's rights under the Senior Loan Documents with respect thereto, and the Subordinate Mortgagee shall be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by the Senior Mortgagee;
 - (ii) all Loss Proceeds shall be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by the Senior Mortgagee in its sole discretion;
 - (iii) in the event the Senior Mortgagee applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, the Subordinate Mortgagee shall release for such purpose all of its right, title and interest, if any, in and to such Loss Proceeds. If the Senior Mortgagee holds Loss Proceeds, or monitors the disbursement thereof, the Subordinate Mortgagee shall not do so. Nothing contained in this Agreement shall be deemed to require the Senior Mortgagee to act for or on behalf of the Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of the Subordinate Mortgagee, and all or any Loss Proceeds may be commingled with any funds of the Senior Mortgagee; and
 - (iv) if the Senior Mortgagee elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by the Senior Mortgagee shall be paid

to the Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.

- (h) The Subordinate Mortgagee shall enter into recognition and non-disturbance agreements with any tenants under commercial or retail Leases, if any, to whom the Senior Mortgagee has granted recognition and non-disturbance, on the same terms and conditions given by the Senior Mortgagee.
- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, the Subordinate Mortgagee shall not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if the Senior Mortgagee is not collecting escrow payments for one or more Impositions (as defined in the Senior Mortgage), the Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by the Subordinate Mortgagee shall be held in trust by the Subordinate Mortgagee to be applied only to the payment of such Impositions.
- (j) Within ten (10) days after request by the Senior Mortgagee, the Subordinate Mortgagee shall furnish the Senior Mortgagee with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and such other information with respect to the Subordinate Indebtedness as the Senior Mortgagee may request.
- (k) The Senior Mortgagee may, waive, postpone, extend, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing notice to the Subordinate Mortgagee, and without affecting any of the provisions of this Agreement. Notwithstanding the forgoing, Senior Mortgagee may not modify any provisions of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that results from advances made by Senior Mortgagee to protect the security or lien priority of Senior Mortgagee under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.

5. DEFAULT UNDER LOAN DOCUMENTS.

- (a) For a period of ninety (90) days following delivery of an Enforcement Action Notice given by the Subordinate Mortgagee as a consequence of the Subordinate Mortgage Default, the Senior Mortgagee shall have the right to cure any Subordinate Mortgage Default, provided if such Subordinate Mortgage Default is not capable of being cured within such ninety (90) day period and Senior Mortgagee has commenced and is diligently pursuing such cure to completion, such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as the Senior Mortgagee delivery to

the Subordinate Mortgagee of written consent to an Enforcement Action described in an Enforcement Action Notice given by the Subordinate Mortgagee as a consequence of the Subordinate Mortgage Default. The Senior Mortgagee shall not have any obligation whatsoever to cure any Subordinate Mortgage Default. The Senior Mortgagee shall not be subrogated to the rights of the Subordinate Mortgagee under the Subordinate Loan Documents by reason of the Senior Mortgagee having cured any Subordinate Mortgage Default. However, the Subordinate Mortgagee acknowledges that all amounts advanced or expended by the Senior Mortgagee in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default shall be added to and become a part of the Senior Indebtedness under Section 12 of the Senior Mortgage and shall be secured by the lien of, the Senior Mortgage.

- (b) The Senior Mortgagee shall deliver to the Subordinate Mortgagee a notice within five business days in each case where the Senior Mortgagee has given notice to the Borrower of a Senior Mortgage Default. Failure of the Senior Mortgagee to send notice to the Subordinate Mortgagee shall not prevent the exercise of the Senior Mortgagee's rights and remedies under the Senior Mortgage Documents subject to the provisions of this Agreement. The Subordinate Mortgagee shall have the right, but not the obligation, to cure any such Senior Mortgage Default within thirty (30) days following the date of such notice; provided, however, that the Senior Mortgagee shall be entitled during such thirty (30) day period to continue to pursue its remedies under the Senior Mortgage Documents. Subordinate Mortgagee may have up to ninety (90) days from the date of the notice to cure a non-monetary default if during such ninety (90) day period, Subordinate Mortgagee keeps current all payments required by the Senior Mortgage Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Mortgagee's secured position relative to the Mortgaged Property, as determined by the Senior Mortgagee in its sole discretion, then the Senior Mortgagee may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by the Subordinate Mortgagee to the Senior Mortgagee to cure a Senior Mortgage Default shall be deemed to have been advanced by the Subordinate Mortgagee pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.
- (c) In the event of a Subordinate Mortgage Default, the Subordinate Mortgagee will not commence any Enforcement Action until after the expiration of a period of ninety (90) days after the Subordinate Mortgagee has given the Senior Mortgagee an Enforcement Action Notice with respect to such Enforcement Action, provided that during such ninety (90) day period, the Subordinate Mortgagee shall be entitled to seek specific performance to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement subject to Senior Mortgagee's right to cure a Subordinate Mortgage Default set forth in Section 5(a). The Subordinate Mortgagee may not commence any other Enforcement Action, including but not limited to any

foreclosure action under the Subordinate Loan Documents, until the earlier of (A) the expiration of such ninety (90) day period or (B) the delivery by Senior Mortgagee to the Subordinate Mortgagee of the Senior Mortgagee's written consent to such Enforcement Action by the Subordinate Mortgagee. The Subordinate Mortgagee acknowledges that the Senior Mortgagee may grant or refuse consent to the Subordinate Mortgagee's Enforcement Action in the Senior Mortgagee's sole and absolute discretion and that such discretion may be exercised in an arbitrary manner. At the expiration of such ninety (90) day period subject to Senior Mortgagee's right to cure set forth in Section 5(a), Subordinate Mortgagee may commence any Enforcement Action. Any Enforcement Action on the part of the Subordinate Mortgagee shall be subject to the provisions of this Agreement. The Subordinate Mortgagee acknowledges that the provisions of this Section 5(c) are fair and reasonable under the circumstances, that the Subordinate Mortgagee has received a substantial benefit from the Senior Mortgagee having granted its consent to the Subordinate Mortgagee, and that the Senior Mortgagee would not have granted such consent without the inclusion of these provisions in this Agreement.

- (d) The Senior Mortgagee may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by the Subordinate Mortgagee. No action or failure to act on the part of the Senior Mortgagee in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action shall constitute a waiver on the part of the Senior Mortgagee of any provision of the Senior Loan Documents or this Agreement.
- (e) In the event that the Enforcement Action taken by the Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the rents, issues, profits and proceeds collected by the receiver shall be paid and applied by the receiver solely to and for the benefit of the Senior Mortgagee until the Senior Indebtedness shall have been paid in full.
- (f) The Subordinate Mortgagee hereby expressly consents to and authorizes the release by the Senior Mortgagee of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. The Subordinate Mortgagee hereby expressly consents to and authorizes the release by the Senior Mortgagee of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. The Subordinate Mortgagee hereby waives to the fullest extent permitted by law, all equitable or other rights it may have (i) in connection with any release of all or any portion of the Mortgaged Property, (ii) to require the separate sales of any portion of the Mortgaged Property or to require the Senior Mortgagee to exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness, or (iii) to require the Senior Mortgagee to proceed against the Borrower, any other party that may be liable for any of the Senior Indebtedness

(including any general partner of the Borrower if the Borrower is a partnership), any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as the Senior Mortgagee determines. The Subordinate Mortgagee waives to the fullest extent permitted by law any and all benefits under California Civil Code Sections 2845, 2849 and 2850. The Subordinate Mortgagee hereby expressly consents to and authorizes, at the option of the Senior Mortgagee, the sale, either separately or together, of all or any portion of the Mortgaged Property. The Subordinate Mortgagee acknowledges that without notice to the Subordinate Mortgagee and without affecting any of the provisions of this Agreement, the Senior Mortgagee may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange, surrender, release and otherwise deal with any additional collateral for the Senior Indebtedness.

- (g) If any party other than the Borrower (including the Senior Mortgagee) acquires title to any of the Mortgaged Property pursuant to a foreclosure of, or trustee's sale or other exercise of any power of sale under, the Senior Mortgage conducted in accordance with applicable law, the lien, operation, and effect of the Subordinate Mortgage and other Subordinate Loan Documents automatically shall terminate with respect to such Mortgaged Property.

6. MISCELLANEOUS PROVISIONS.

- (a) In the event of any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall control.
- (b) This Agreement shall be binding upon and shall inure to the benefit of the respective legal successors and assigns of the parties hereto.
- (c) This Agreement does not constitute an approval by the Senior Mortgagee of the terms of the Subordinate Loan Documents.
- (d) Each notice, request, demand, consent, approval or other communication (collectively, "notices," and singly, a "notice") which is required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received on

the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

- (i) Notices intended for the Senior Mortgagee shall be addressed to the address set forth in the Senior Mortgage for notices to the Senior Mortgage.
- (ii) Notices intended for the Subordinate Mortgagee shall be addressed to:

Any party, by notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt. Neither party shall refuse or reject delivery of any notice given in accordance with this Section.

- (e) Nothing herein or in any of the Senior Loan Documents or Subordinate Loan Documents shall be deemed to constitute the Senior Mortgagee as a joint venturer or partner of the Subordinate Mortgagee.
- (f) Upon notice from the Senior Mortgagee from time to time, the Subordinate Mortgagee shall execute and deliver such additional Instruments and documents, and shall take such actions, as are required by the Senior Mortgagee in order to further evidence or effectuate the provisions and intent of this Agreement.
- (g) This Agreement shall be governed by the laws of the State in which the Land is located.
- (h) If any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.
- (i) The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement shall be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by the Senior Mortgagee as described in Section 2(e) hereof, (ii) the payment of all of the Subordinate Indebtedness other than by reason of payments which the Subordinate Mortgagee is obligated to remit to the Senior Mortgagee pursuant to this Agreement, (iii) the acquisition by the Senior Mortgagee or by a third party purchaser, of title to the Land and Improvements pursuant to a foreclosure of or trustee's sale or other exercise of a power of sale under, the Senior Mortgage; or (iv) without limiting the provisions of Section 5(d), the acquisition by the Subordinate Mortgagee, with the prior written consent of the Senior Mortgagee, of title to the Land and Improvements subject to the

Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Subordinate Mortgage.

- (j) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
- (k) Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (l) No party other than the Senior Mortgagee and the Subordinate Mortgagee shall have any rights under, or be deemed a beneficiary of any of the provisions of this Agreement.
- (m) No Amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.
- (n) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[signature and acknowledgment pages follow]

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

SENIOR MORTGAGEE:

BERKADIA COMMERCIAL MORTGAGE LLC, a Delaware limited liability company

By: _____
Max W. Foore
Authorized Representative

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of

County of

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent reattachment of this form.

| CAPACITY CLAIMED BY SIGNER | DESCRIPTION OF ATTACHED DOCUMENT |
|--|---|
| <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER: TITLE(S) <input type="checkbox"/> PARTNER(S): <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER | TITLE OR TYPE OF DOCUMENT |
| | NUMBER OF PAGES |
| | _____ DATE OF DOCUMENT |
| SIGNER IS REPRESENTING: NAME OF PERSONS OR ENTITY(IES) | SIGNER(S) OTHER THAN NAMED |
| ABOVE | |

SUBORDINATE MORTGAGEE:

THE CITY OF PALM SPRINGS, CALIFORNIA, a
California Charter City

By: _____
Name: _____
Title: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of

County of

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

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| SIGNER IS REPRESENTING: NAME OF PERSONS OR ENTITY(IES) ABOVE | SIGNER(S) OTHER THAN NAMED |

CONSENT OF BORROWER

Borrower hereby acknowledges receipt of a copy of this Subordination Agreement, dated December __, 2011, by and between Berkadia and The Community Redevelopment Agency of the City of Palm Springs, California and consents to the agreement of the parties set forth herein.

BORROWER:

TAHQUITZ ASSOCIATES, LP, a
California limited partnership

By: _____
LINC-Tahquitz LLC, a
California limited liability
company, its Managing General
Partner

By: LINC Housing Corporation, a
California nonprofit public benefit
corporation, its Sole Member and
Manager

By: _____
Kent Davis
Senior Vice President

By: Tahquitz Associate, LLC a
limited liability company, its
General Partner

By: Dalton Hydro, LLC, a
limited liability company

By: S.R.C. Corp., a Utah

By: _____
Stephen M. Harmsen
President

California
Co-

Vermont

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of

County of

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

OPTIONAL

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|---|---|
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| <input type="checkbox"/> CORPORATE OFFICER: | |
| TITLE(S) | TITLE OR TYPE OF DOCUMENT |
| <input type="checkbox"/> PARTNER(S): <input type="checkbox"/> LIMITED | |
| <input type="checkbox"/> GENERAL | |
| <input type="checkbox"/> ATTORNEY-IN-FACT | |
| <input type="checkbox"/> TRUSTEE(S) | NUMBER OF PAGES |
| <input type="checkbox"/> GUARDIAN/CONSERVATOR | |
| <input type="checkbox"/> OTHER | |
| | _____ DATE OF DOCUMENT |
| SIGNER IS REPRESENTING: NAME OF PERSONS OR ENTITY(IES) | |
| ABOVE | SIGNER(S) OTHER THAN NAMED |

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of

County of

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| SIGNER IS REPRESENTING: NAME OF PERSONS OR ENTITY(IES) ABOVE | SIGNER(S) OTHER THAN NAMED |

EXHIBIT A
LEGAL DESCRIPTION