



# RESOLUTION No. 24-167

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

**RESOLUTION APPROVING A SUBORDINATION AGREEMENT BETWEEN THE COUNTY OF NEVADA AND BERKADIA COMMERCIAL MORTGAGE, LLC, FOR THE LOAN BETWEEN THE COUNTY OF NEVADA, IN ITS CAPACITY AS THE ADMINISTRATOR OF THE WESTERN NEVADA COUNTY REGIONAL HOUSING TRUST FUND, AND AFFORDABLE HOUSING DEVELOPMENT CORPORATION THROUGH NEVADA CITY CASHIN'S FIELD, A LIMITED PARTNERSHIP, IN THE AMOUNT OF \$1,575,000 USED FOR "CASHIN'S FIELD," A 51-UNIT LOW- INCOME MULTI-FAMILY HOUSING PROJECT**

WHEREAS, the Western Nevada County Regional Housing Trust Fund was established on July 14, 2020, with the City of Nevada City, City of Grass Valley, and County of Nevada, for the purpose of increasing the supply of affordable housing units; and

WHEREAS, A loan for the Cashin's Field affordable housing project ("Project") for the amount of \$1,575,000, through the Western Nevada County Regional Housing Trust Fund, was approved by this Board on April 11, 2021, through Resolution 21-116; and

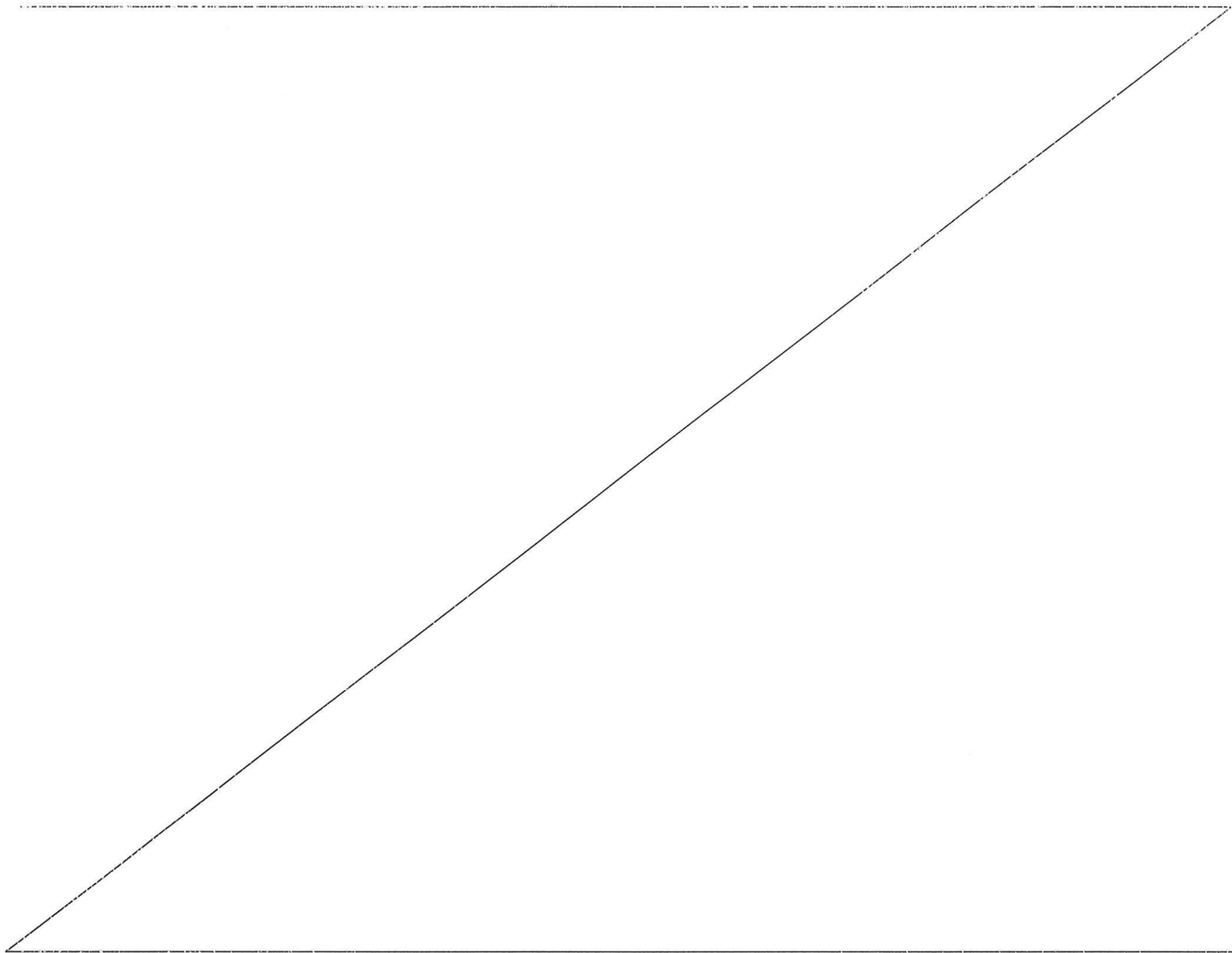
WHEREAS, the loan was one of several financial commitments needed to successfully construct the 51-unit affordable housing project; and

WHEREAS, this loan was placed in subordinate position to several other loans of greater value and priority; and

WHEREAS, Berkadia Commercial Mortgage, LLC, provided a higher priority loan to the Project and as such requires a subordination agreement in order to finalize its final permanent loan on the Project; and

WHEREAS, the Affordable Housing Development Corporation through Nevada City Cashin's Field, a Limited Partnership, has requested the County authorize a new Subordination Agreement with the project's permanent financing loan in place with Berkadia Commercial Mortgage, LLC.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Supervisors of the County of Nevada, State of California, approves the Subordination Agreement to the loan between the County of Nevada and Berkadia Commercial Mortgage, LLC, for the loan between the County of Nevada, in its capacity as the administrator of the Western Nevada County Regional Housing Trust Fund, and Affordable Housing Development Corporation through Nevada City Cashin's Field LP, a Limited Partnership, to establish Berkadia Commercial Mortgage, LLC, as the Senior Lender for purposes of debt repayment, and hereby authorizes the Chair of the Board of Supervisors to execute the Agreement on behalf of the County of Nevada.



PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 23rd day of April 2024, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarhout, Susan Hoek and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

Recuse: None.

ATTEST:

TINE MATHIASEN  
Chief Deputy Clerk of the Board of Supervisors

By: 

  
Hardy Bullock, Chair

**RECORDING REQUESTED BY:**

Placer Title Company  
7700 North Palm Avenue, #101,  
Fresno, CA 93711

**WHEN RECORDED RETURN TO:**

Thomas P. Wild, Esq.  
Wild & Kearney LLC  
175 W. State Street  
Doylestown, PA 18901

**SUBORDINATION AGREEMENT**

**GOVERNMENTAL ENTITY**

**(Revised 3-15-2022)**

Pursuant to Senate Bill 2 – Building Homes and Jobs Act (GC Code Section 27388.1), effective January 1, 2018, a fee of seventy-five dollars (\$75.00) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel of real property. The fee imposed by this section shall not exceed two hundred twenty-five dollars (\$225.00).

- Exempt from the fee per GC 27388.1 (a) (2); this document is subject to Documentary Transfer Tax
- Exempt from fee per GC 27388.1 (a) (2); recorded concurrently “in connection with” a transfer subject to the imposition of documentary transfer tax (DTT).
- Exempt from fee per GC 27388.1 (a) (2); recorded concurrently “in connection with” a transfer of real property that is a residential dwelling to an owner-occupier.
- Exempt from fee per GC 27388.1 (a) (1); fee cap of \$225.00 reached.
- Exempt from the fee per GC 27388.1 (a) (1); not related to real property.

Freddie Mac Loan Number: 508155495  
Property Name: Cashin's Field

## SUBORDINATION AGREEMENT

### GOVERNMENTAL ENTITY

(Revised 3-15-2022)

THIS SUBORDINATION AGREEMENT ("**Agreement**") is entered into this 30<sup>th</sup> day of April, 2024, by and between (i) BERKADIA COMMERCIAL MORTGAGE LLC, a limited liability company organized and existing under the laws of the State of Delaware ("**Senior Lender**") and (ii) COUNTY OF NEVADA, a political subdivision of the State of California (the "County"), in its capacity as the administrator of the Western Nevada County Regional Housing Trust Fund ("**Subordinate Lender**").

### RECITALS

- A. NEVADA CITY CASHIN'S FIELD, LP, a limited partnership organized under the laws of the State of California ("**Borrower**") is the owner of certain land located in Nevada County, California, described in Exhibit A ("**Land**"). The Land is improved with a multifamily rental housing project ("**Improvements**").
- B. Senior Lender has made or is making a loan to Borrower in the original principal amount of \$ 3,842,000.00 ("**Senior Loan**") upon the terms and conditions of a Multifamily Loan and Security Agreement dated as of April 30, 2024, between Senior Lender and Borrower ("**Senior Loan Agreement**") in connection with the Mortgaged Property. The Senior Loan is secured by a Multifamily Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing dated as of the date of the Senior Loan Agreement recorded concurrently herewith ("**Senior Mortgage**") encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the "**Mortgaged Property**."
- C. Pursuant to a Construction and Permanent Loan Agreement dated as of May 1, 2021, between Subordinate Lender and Borrower ("**Subordinate Loan Agreement**"), Subordinate Lender has made or is making a loan to Borrower in the original principal amount of \$1,575,000 ("**Subordinate Loan**"). The Subordinate Loan is or will be secured by a Construction Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated as of May 1, 2021 ("**Subordinate Mortgage**") encumbering all or a portion of the Mortgaged Property.
- D. The Senior Mortgage will be recorded concurrently herewith in Nevada County, California Official Records ("**Recording Office**") The Subordinate Mortgage is recorded in the Recording Office at Instrument No. 2021-17311.

- E. The execution and delivery of this Agreement is a condition of Senior Lender's making of the Senior Loan.

## AGREEMENT

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

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings:

The terms "**Condemnation**," "**Imposition Deposits**," "**Impositions**," "**Leases**," "**Rents**" and "**Restoration**," as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

"**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 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.

"**Borrower**" means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" will not include Senior Lender if Senior Lender acquires title to the Mortgaged Property.

"**Casualty**" means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

"**Enforcement Action**" means any of the following actions taken by or at the direction of Subordinate Lender: 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 exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

**“Enforcement Action Notice”** means a Notice given from Subordinate Lender to Senior Lender following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

**“Lien”** means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

**“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 of any Condemnation or Casualty.

**“Notice”** means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

**“Regulatory Agreement”** means the Regulatory Agreement and Declaration of Restrictive Covenants between Borrower and Subordinate Lender dated as of May 1, 2021 and recorded at Instrument No. 2021-17310 in the Recording Office.

**“Senior Indebtedness”** means the “Indebtedness” as defined in the Senior Loan Agreement.

**“Senior Lender”** means the “Lender” as defined in the Senior Mortgage. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

**“Senior Loan Documents”** means the “Loan Documents” as defined in the Senior Loan Agreement, as such documents may be amended.

**“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 Loan Agreement.

**“Senior Note”** means the promissory note or other evidence of the Senior Indebtedness and any replacement of the Senior Note.

**“Subordinate Indebtedness”** means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

**“Subordinate Lender”** 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.

**“Subordinate Loan Documents”** means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Regulatory Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

**“Subordinate Mortgage Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), Subordinate Lender to take an Enforcement Action.

**“Subordinate Note”** means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

**“Surplus Cash”** means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (a) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Deposits.
- (b) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

## **2. Subordinate Lender’s Representations and Warranties.**

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
  - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
  - (ii) No Subordinate Mortgage Default has occurred and is continuing.
  - (iii) The current unpaid principal balance of the Subordinate Indebtedness is **\$1,575,000**.
  - (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
  - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.

- (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
- (iii) Accept any prepayment of the Subordinate Indebtedness.

**3. Terms of Subordination.**

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender 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.
- (c) Payments Before Senior Loan Default; Soft Subordinate Debt]. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.
  - (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of Section 3(d) of this Agreement will apply.
  - (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
    - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.



- (B) Any proceeds from any Enforcement Action.
- (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

#### **4. Default Under Subordinate Loan Documents.**

- (a) Notice of Subordinate Loan Default and Cure Rights.
  - (i) Subordinate Lender will deliver to Senior Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
  - (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:
    - (A) Discontinues its pursuit of any cure.

- (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
  - (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
  - (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.
- (i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
  - (ii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
    - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
    - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
  - (iii) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
  - (iv) Senior Lender 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 Subordinate