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Щоб попросити переклад або спеціальні послуги для осіб з особливими потребами, зверніться до нас, скориставшись такими контактними даними: **hcddadmin@clackamas.us | 971-442-3954.**

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Để yêu cầu dịch vụ dịch thuật hoặc điều chỉnh liên quan đến tình trạng khuyết tật, vui lòng liên hệ với chúng tôi qua **hcddadmin@clackamas.us | 971-442-3954.**



Clackamas County
www.clackamas.us

October 8, 2026

BCC Agenda Item: _____

Board of County Commissioners
Clackamas County

**Approval of Two No Cost HOME Loan Assumption Amendments and One Subordination Agreement for the Acadia Gardens and the Town Center Station affordable housing projects.
HOME loans are funded with federal grant funds.
No County General Funds are involved.**

Previous Board Action/Review:

August 5, 2021, BCC approval of the Acadia Gardens HOME Loan transfer Agenda Item 20210805 II A.1
August 5, 2021, BCC approval of the Town Center Station HOME Loan transfer Agenda Item 20210805 II A.2

Performance Clackamas: Safe, Secure and Livable Communities

Counsel Review: Yes Andrew Naylor
Contact Person: Mark Sirois

Procurement Review: N/A
Contact Phone: 503-351-7240

EXECUTIVE SUMMARY: On behalf of the Housing and Community Development Division (HCDD), Health, Housing & Human Services requests approval of two (2) HOME Loan Assumption Amendments and one (1) Subordination Agreement for the Acadia Garden apartments and the Town Center Station affordable housing projects.

In August of 2021 these 2 properties were sold from Geller Silvis and Associates to Guardian Holding, Inc. With the proposed HOME loan assumption amendments, Guardian Holding, Inc. is now selling these two properties to Stone Way Capital, Inc.

The Acadia Garden (formerly named 85 Causey) has a HOME Loan plus interest for a current total of \$461,440.69. The Town Center Station has a HOME Loan plus interest for a current total of \$476,792.64. Both these HOME Loans would be assumed by new owners in partnership with Stone Way Capital (SWC).

The new owner of the Acadia Gardens apartments would be SWC Acadia LLC. The new owner of the Town Center Station apartments would be SWC Town Center LLC.

The Subordination Agreement applies to both loans since the Berkadia Mortgage LLC is the lender financing the purchase of the 2 properties.

RECOMMENDATION: The staff respectfully request that the Board of County Commissioners approve HOME Loan Assumption Amendments and the Subordination Agreement and authorize Chair Roberts or his designee to sign on behalf of Clackamas County.

Healthy Families. Strong Communities.

2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677
www.clackamas.us

Respectfully submitted,

Mary Rumbaugh

Mary Rumbaugh
Director of Health Housing and Human Services

**FIRST AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF
CLACKAMAS COUNTY HOME PROGRAM LOAN DOCUMENTS**

[Acadia Apartments]

This First Amendment to and Assignment and Assumption of Clackamas County HOME Program Loan Documents (this “Amendment”) is entered into as of [_____, 2026] (the “Effective Date”), by and among Clackamas County, a political subdivision of the State of Oregon (the “County”), Causey Associates Limited Partnership, an Oregon limited partnership (the “CA”), and SWC Acadia LLC, an Oregon limited liability company (the “Borrower”). Each of the County, CA and the Borrower is a “Party,” and collectively, the “Parties.”

RECITALS

WHEREAS, the County and CA entered into that certain Loan Agreement effective as of November 24, 2010 (the “Loan Agreement”), whereby the County agreed to loan HOME funds in the amount of \$350,000 (the “Loan”) to CA for the development and construction of the Project (as such term is defined in the Loan Agreement); and

WHEREAS, in connection with the Loan Agreement, CA executed and delivered to the County that certain Promissory Note dated March 25, 2011, in the original principal amount of \$350,000.00 (the “Note”); and

WHEREAS, CA executed that certain Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing, to First American Title Insurance Company, as trustee for the benefit of the County, dated March 25, 2011, and recorded in the official real property records of Clackamas County on March 29, 2011, as Document No. 2011-019157 (the “Trust Deed”); and

WHEREAS, CA executed that certain Declaration of Land Use Restrictive Covenants, dated March 25, 2011, and recorded in the official real property records of Clackamas County on March 29, 2011 as Document No. 2011-019158 (the “Covenant”), which Covenant imposes certain rental and occupancy restrictions upon the Project; and

WHEREAS, the Parties wish to modify the terms and conditions of the Loan Agreement, Note, Trust Deed, Covenant and any other documents evidencing or securing the Loan (collectively, the “Loan Documents”), to: 1) assign all of CA’s rights and obligations arising pursuant to the Loan Documents to the Borrower, and for Borrower to assume such rights and obligations; 2) change certain terms and conditions contained within the Loan Documents, as further described herein.

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

1. Defined Terms. Capitalized terms used and not defined in this Amendment shall have the meanings given to them in the Note or the Loan Agreement, as applicable.

2. Outstanding Loan Amount. The Parties hereto agree that as of the Effective Date, the outstanding amount of the Loan, including principal and accrued interest due under the terms of the Loan Agreement and Note, is [\$461,440.69.]
3. Defined Terms. For purposes of the Loan Documents, notwithstanding any other use or meaning, “Net Cash Flow” shall mean the sum of (i) all cash received from rents, lease payments and all other sources, excluding (A) tenant security deposits (except to the extent forfeited), (B) capital contributions and interest thereon, (C) proceeds from capital transactions, (D) insurance proceeds (other than business interruption proceeds available for distribution), and (E) other funds restricted from distribution, less (ii) all cash expenditures and expenses paid or properly accrued in connection with the ownership and operation of the Project, including operating expenses, debt service due under any senior secured loan to which this Note is subordinate, fees or loans payable to any Member of Borrower, lender-required reserves, capital expenditures, and such reserves as Borrower reasonably determines are necessary for the future repair, replacement, maintenance, operation, or capital needs of the Project.
4. Amendment to Section 1.d. of the Note. Section 1.d. of the Note is hereby deleted in its entirety and replaced with the following:

“d. Payments of interest shall be made on the loan as required under this Note from 50% of Net Cash Flow while the Loan remains outstanding. Principal shall be required to be paid upon the occurrence of any event described in Section 1.f. hereof. No late fees will be charged.
5. Amendment to Section 1.e. of the Note. Section 1.e. of the Note is hereby deleted in its entirety and replaced with the following:

“e. Each payment of interest shall be due on the 180th day following the close of Borrower’s fiscal year to which the payment relates and shall be based on the computation of Net Cash Flow based on an unaudited financial statement of SWC Acadia LLC.”
6. Amendment to Section 1.f. of the Note. The following shall be added to the end of Section 1.f. of the Note:

“Notwithstanding any other provision herein or in any other Loan Document, the loan shall not be repayable in full in the event the Lender consents to the assignment of the Loan Documents by Borrower to a third-party, which the Lender shall not unreasonably withhold or delay its consent to if requested by Borrower by providing notice to the Lender 30 days prior to such requested assignment.”
7. Amendment to Section 1.j. of the Loan Agreement. The following shall be added to the end of Section 1.j. of the Loan Agreement:

“Notwithstanding any other provision in any other Loan Document, direct or indirect interests in the Borrower may be transferred without the prior written consent of the County so long as Stoneway Asset Management LLC maintains a direct or indirect controlling interest in Borrower and, to the extent more than a 20% direct or indirect interest in Borrower is transferred at any one time, Borrower provides notice of such transfer to Lender 15 days prior to such transfer being effective.”

8. Assignment and Assumption. CA hereby assigns all of its right, title and interest in and to the Loan Documents to the Borrower, and the Borrower hereby assumes all of the duties and obligations of CA thereunder subject to and in accordance with the terms of this Amendment, and CA shall be released from liability with respect to the Loan that occurs after the effective date of this Amendment. CA represents, warrants and confirms that: (i) it has not assigned, pledged, or otherwise transferred, in full or in part, the Loan or any interest in the Loan Documents, or any part thereof or interest therein, and has held its interest in the Loan at all times free from third party interests; (ii) there are no uncured defaults under any of the Loan Documents or events, with the passage of time, may constitute a default under any of the Loan Documents, however characterized; and (iii) execution of this Amendment has been duly authorized by CA, is valid, binding, and enforceable against CA in accordance with its applicable terms, and the person executing this Amendment on behalf of CA has been duly authorized to do so and to bind CA.
9. County Consent. The County hereby unconditionally consents to the assignment and assumption of the Loan and Loan Documents by CA and the Borrower as set forth in this Amendment and any other approval or consent required under the Loan Documents to the transactions contemplated herein have been granted by the County.
10. No Other Amendments. Except as expressly modified by this Amendment, the Loan Documents shall remain in full force and effect and are hereby ratified and confirmed in all respects. In the event of any conflict between this Amendment and the Loan Documents, this Amendment shall control.
11. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
12. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Oregon without regard to choice of law principles.

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[Signature Page(s) Follow. Remainder Intentionally Left Blank.]

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

BORROWER:

SWC Acadia LLC, an Oregon limited liability company

By: _____

Name: _____

Its: _____

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

CA:

Causey Associates Limited Partnership,
an Oregon limited partnership

By: Causey Affordable Ventures LLC,
an Oregon limited liability company,
its General Partner

By: GM Acadia Gardens LLC,
an Oregon limited liability company,
its Manager

By: Guardian Development LLC,
an Oregon limited liability company,
its Manager

By: Guardian Real Estate Services LLC,
an Oregon limited liability company,
its Sole Member and Manager

By: Guardian Holding, Inc.,
an Oregon corporation,
its Manager

By: _____
Name: Thomas B. Brenneke
Title: President

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

COUNTY:

Clackamas County, a political subdivision of
the State of Oregon

By _____
_____, _____

**FIRST AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF
CLACKAMAS COUNTY HOME PROGRAM LOAN DOCUMENTS**

[Town Center Station]

This First Amendment to and Assignment and Assumption of Clackamas County HOME Program Loan Documents (this “Amendment”) is entered into as of [_____, 2026] (the “Effective Date”), by and among Clackamas County, a political subdivision of the State of Oregon (the “County”), Town Center Associates Limited Partnership, an Oregon limited partnership (the “TCA”), and SWC Town Center LLC, an Oregon limited liability company (the “Borrower”). Each of the County, TCA and the Borrower is a “Party,” and collectively, the “Parties.”

RECITALS

WHEREAS, the County and TCA entered into that certain Loan Agreement effective as of July 31, 2008 (the “Loan Agreement”), whereby the County agreed to loan HOME funds in the amount of \$335,000 (the “Loan”) to TCA for the development and construction of the Project (as such term is defined in the Loan Agreement); and

WHEREAS, in connection with the Loan Agreement, TCA executed and delivered to the County that certain Promissory Note dated May 27, 2009, in the original principal amount of \$335,000.00 (the “Note”); and

WHEREAS, TCA executed that certain Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing, to First American Title Insurance Company, as trustee for the benefit of the County, dated May 27, 2009, and recorded in the official real property records of Clackamas County on May 27, 2009, as Document No. 2009-036892 (the “Trust Deed”); and

WHEREAS, TCA executed that certain Declaration of Land Use Restrictive Covenants, dated May 27, 2009, and recorded in the official real property records of Clackamas County on May 27, 2009, as Document No. 2009-036893 (the “Covenant”), which Covenant imposes certain rental and occupancy restrictions upon the Project; and

WHEREAS, the Parties wish to modify the terms and conditions of the Loan Agreement, Note, Trust Deed, Covenant and any other documents evidencing or securing the Loan (collectively, the “Loan Documents”), to: 1) assign all of TCA’s rights and obligations arising pursuant to the Loan Documents to the Borrower, and for Borrower to assume such rights and obligations; 2) change certain terms and conditions contained within the Loan Documents, as further described herein.

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

1. Defined Terms. Capitalized terms used and not defined in this Amendment shall have the meanings given to them in the Note or the Loan Agreement, as applicable.

2. Outstanding Loan Amount. The Parties hereto agree that as of the Effective Date, the outstanding amount of the Loan, including principal and accrued interest due under the terms of the Loan Agreement and Note, is [\$476,792.64.]
3. Defined Terms. For purposes of the Loan Documents, notwithstanding any other use or meaning, “Net Cash Flow” shall mean the sum of (i) all cash received from rents, lease payments and all other sources, excluding (A) tenant security deposits (except to the extent forfeited), (B) capital contributions and interest thereon, (C) proceeds from capital transactions, (D) insurance proceeds (other than business interruption proceeds available for distribution), and (E) other funds restricted from distribution, less (ii) all cash expenditures and expenses paid or properly accrued in connection with the ownership and operation of the Project, including operating expenses, debt service due under any senior secured loan to which this Note is subordinate, fees or loans payable to any Member of Borrower, lender-required reserves, capital expenditures, and such reserves as Borrower reasonably determines are necessary for the future repair, replacement, maintenance, operation, or capital needs of the Project.
4. Amendment to Section 1.d. of the Note. Section 1.d. of the Note is hereby deleted in its entirety and replaced with the following:

“d. Payments of interest shall be made on the loan as required under this Note from 50% of Net Cash Flow while the Loan remains outstanding. Principal shall be required to be paid upon the occurrence of any event described in Section 1.f. hereof. No late fees will be charged.
5. Amendment to Section 1.e. of the Note. Section 1.e. of the Note is hereby deleted in its entirety and replaced with the following:

“e. Each payment of interest shall be due on the 180th day following the close of Borrower’s fiscal year to which the payment relates and shall be based on the computation of Net Cash Flow based on an unaudited financial statement of SWC Town Center LLC.”
6. Amendment to Section 1.f. of the Note. The following shall be added to the end of Section 1.f. of the Note:

“Notwithstanding any other provision herein or in any other Loan Document, the loan shall not be repayable in full in the event the Lender consents to the assignment of the Loan Documents by Borrower to a third-party, which the Lender shall not unreasonably withhold or delay its consent to if requested by Borrower by providing notice to the Lender 30 days prior to such requested assignment.”
7. Amendment to Section 1.j. of the Loan Agreement. The following shall be added to the end of Section 1.j. of the Loan Agreement:

“Notwithstanding any other provision in any other Loan Document, direct or indirect interests in the Borrower may be transferred without the prior written consent of the County so long as Stoneway Asset Management LLC maintains a direct or indirect controlling interest in Borrower and, to the extent more than a 20% direct or indirect interest in Borrower is transferred at any one time, Borrower provides notice of such transfer to Lender 15 days prior to such transfer being effective.”

8. Assignment and Assumption. TCA hereby assigns all of its right, title and interest in and to the Loan Documents to the Borrower, and the Borrower hereby assumes all of the duties and obligations of TCA thereunder subject to and in accordance with the terms of this Amendment, and TCA shall be released from liability with respect to the Loan that occurs after the effective date of this Amendment. TCA represents, warrants and confirms that: (i) it has not assigned, pledged, or otherwise transferred, in full or in part, the Loan or any interest in the Loan Documents, or any part thereof or interest therein, and has held its interest in the Loan at all times free from third party interests; (ii) there are no uncured defaults under any of the Loan Documents or events, with the passage of time, may constitute a default under any of the Loan Documents, however characterized; and (iii) execution of this Amendment has been duly authorized by TCA, is valid, binding, and enforceable against TCA in accordance with its applicable terms, and the person executing this Amendment on behalf of TCA has been duly authorized to do so and to bind TCA.
9. County Consent. The County hereby unconditionally consents to the assignment and assumption of the Loan and Loan Documents by TCA and the Borrower as set forth in this Amendment and any other approval or consent required under the Loan Documents to the transactions contemplated herein have been granted by the County.
10. No Other Amendments. Except as expressly modified by this Amendment, the Loan Documents shall remain in full force and effect and are hereby ratified and confirmed in all respects. In the event of any conflict between this Amendment and the Loan Documents, this Amendment shall control.
11. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
12. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Oregon without regard to choice of law principles.

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[Signature Page(s) Follow. Remainder Intentionally Left Blank.]

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

BORROWER:

SWC Town Center LLC, an Oregon limited liability company

By: _____

Name: _____

Its: _____

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

TCA:

Town Center Associates Limited Partnership, an Oregon limited partnership

By: TCS Developers LLC,
an Oregon limited liability company,
its General Partner

By: GM Town Center Station LLC,
an Oregon limited liability company,
its Manager

By: Guardian Development LLC,
an Oregon limited liability company,
its Manager

By: Guardian Real Estate Services LLC,
an Oregon limited liability company,
its Sole Member and Manager

By: Guardian Holding, Inc.,
an Oregon corporation,
its Manager

By: _____
Name: Thomas B. Brenneke
Title: President

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

COUNTY:

Clackamas County, a political subdivision of
the State of Oregon

By _____
_____, _____

Prepared by, and after recording
return to:

Cassin & Cassin LLP
711 Third Avenue, 20th Floor
New York, New York 10017
Attn: Recording Department

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 2-25-2025)

Freddie Mac Loan Number: _____

Property Name: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 2-25-2025)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 20__, by and between (i) **BERKADIA COMMERCIAL MORTGAGE LLC**, a limited liability organized and existing under the laws of the State of Delaware (“**Senior Lender**”) and (ii) **CLACKAMAS COUNTY**, a political subdivision organized and existing under the laws of the State of Oregon (“**Subordinate Lender**”).

RECITALS

- A. **SWC ACADIA LLC**, a limited liability company organized under the laws of the State of Oregon and **SWC TOWN CENTER LLC**, a limited liability company organized under the laws of the State of Oregon, as Co-Borrowers, jointly and severally (individually and collectively, “**Borrower**”) are the owners of certain land located in Clackamas County, **Oregon**, described in Exhibit A (“**Land**”). The Land is improved with two multifamily rental housing projects (“**Improvements**”).
- B. Senior Lender has made or is making a loan to Borrower in the original principal amount of \$ _____ (“**Senior Loan**”) upon the terms and conditions of a Multifamily Loan and Security Agreement dated as of _____ 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** dated as of the date of the Senior Loan Agreement (“**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 that certain Loan Agreement Clackamas County HOME Program dated July 31, 2008, between Subordinate Lender and Town Center Associates Limited Partnership (“**Subordinate Loan Agreement 1**”), Subordinate Lender made a loan to Town Center Associates Limited Partnership in the original principal amount of \$335,000.00 (“**Subordinate Loan 1**”). Subordinate Loan 1 is secured by a Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated as of May 27, 2009 (“**Subordinate Mortgage 1**”) encumbering a portion of the Mortgaged Property. Town Center Associates Limited Partnership assigned to SWC Town Center LLC and SWC Town Center LLC assumed from Town Center Associates Limited Partnership all rights and obligations under the Subordinate Loan Documents 1 pursuant to that certain First Amendment to and

Assignment and Assumption of Clackamas County HOME Program Loan Documents dated as of [_____, 2026].

- D. Pursuant to that certain Loan Agreement Clackamas County HOME Program dated November 24, 2010, between Subordinate Lender and Causey Associates Limited Partnership (“**Subordinate Loan Agreement 2**”), Subordinate Lender made a loan to Causey Associates Limited Partnership in the original principal amount of \$350,000.00 (“**Subordinate Loan 2**”). Subordinate Loan 2 is secured by a Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated as of March 25, 2011 (“**Subordinate Mortgage 2**”) encumbering a portion of the Mortgaged Property. Causey Associates Limited Partnership assigned to SWC Acadia LLC and SWC Acadia LLC assumed from Causey Associates Limited Partnership all rights and obligations under the Subordinate Loan Documents 2 pursuant to that certain First Amendment to and Assignment and Assumption of Clackamas County HOME Program Loan Documents dated as of [_____, 2026].
- E. The Senior Mortgage will be recorded in **Clackamas County Official Records (“Recording Office”)**. Subordinate Mortgage 1 was recorded in the Recording Office on May 27, 2009, with document number 2009-036892, and Subordinate Mortgage 2 recorded in the Recording Office on March 29, 2011, with document number 2011-019157.
- F. 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 are 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 Reserve 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 each individually and collectively of (i) the **DECLARATION OF LAND USE RESTRICTIVE COVENANTS** between Town Center Associates Limited Partnership and Subordinate Lender dated May 27, 2009, recorded on May 27, 2009, with document number 2009-036893 in the Recording Office, and assigned to SWC Town Center LLC by Town Center Associates Limited Partnership (“**Regulatory Agreement 1**”), and (ii) the **DECLARATION OF LAND USE RESTRICTIVE COVENANTS** between Causey Associates Limited Partnership and Subordinate Lender dated March 25, 2011, recorded on March 29, 2011, with document

number 2011-019158 in the Recording Office, and assigned to SWC Acadia LLC by Causey Associates Limited Partnership (“**Regulatory Agreement 2**”).

“**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 Agreement**” means each individually and collectively the Subordinate Loan Agreement 1 and Subordinate Loan Agreement 2.

“**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**” means each individually and collectively the Subordinate Mortgage 1 and the Subordinate Mortgage 2.

“**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 each individually and collectively the promissory notes 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 Reserve 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 \$_____.
 - (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 Mortgage 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 Mortgage 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 this Section 3(d) 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 Mortgage 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 10 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 Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have

actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Mortgage Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Mortgage Default under the Senior Loan Documents arising solely from such Subordinate Mortgage Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

(a) Notice of Senior Mortgage Default and Cure Rights.

- (i) Senior Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.
- (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
- (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien,

operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:

- (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) 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.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or 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 Senior Lender determines.
- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:
- (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
 - (B) Modify or amend in any respect any provision of the Senior Loan Documents.
 - (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.
- (c) Termination Upon Foreclosure. The lien of the Subordinate Loan Documents will automatically terminate upon the acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure by a person other than a Related Person (as that term is defined in IRC Section 42) to the Borrower, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.

- 6. Conflicts.** If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Mortgage Default or Subordinate Mortgage Default.
- (b) Give Borrower the right to receive notice of any Senior Mortgage Default or Subordinate Mortgage Default, other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

(a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender.
- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender 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 Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (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, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.

- (ii) All Loss Proceeds will 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 Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
 - (iii) If Senior Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
 - (iv) If Senior Lender 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 Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent, then such amendment or assignment will be void ab initio and of no effect whatsoever.
- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.

- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
 - (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
 - (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
 - (h) Certification. Within 15 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.
8. **Refinancing.** Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.
9. **Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.
10. **Notices.**

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will 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 will 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 will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

[Name]
[Address]
Attention:

Notices intended for Subordinate Lender will be addressed to:

Clackamas County Housing and Community Development Division
2051 Kaen Road #245, Oregon City, OR 97045
Attention: HOME Program Manager

- (b) Any party, by Notice given pursuant to this Section 10, 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 will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Restrictive Covenant Enforcement. Subordinate Lender may, at any time and without notice to Senior Lender, enforce specific performance or injunctive relief of any affordability restriction or other requirement to comply with the terms set forth in 24 CFR Part 570 and the Loan Documents. Such enforcement will not be a breach of any term or condition of this Agreement.

12. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Without prior notice to or the consent of the Subordinate Lender or the Borrower, the Senior Lender may freely transfer or assign the Senior Loan and the Senior Loan Documents, including this Agreement, in whole or in part, and the Subordinate Lender acknowledges and agrees that any future legal holder of the Senior Note will automatically be a legal successor and permitted assignee of Senior Lender hereunder, without the necessity of any further action or instrument.

No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise.

- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law; Consent to Jurisdiction and Venue. This Agreement will be governed by the laws of the State in which the Land is located (the “Property Jurisdiction”). Subordinate Lender agrees that any controversy arising under or in relation to this Agreement may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to this Agreement. Subordinate Lender irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
 - (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure by a person other than a Related Person (as that term is defined

in IRC Section 42) to the Borrower, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.

- (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section 4(b)(iv), the acquisition by Subordinate Lender of title to the Mortgaged Property 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 under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will 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.

13. Attached Riders. The following Riders are attached to this Agreement:

14. Attached Exhibits. The following Exhibits, if marked with an "X" in the space provided, are attached to this Agreement:

- | | | |
|--|-----------|--|
| ☒ | Exhibit A | Description of the Land (required) |
| ☐ | Exhibit B | Ground Lease Description (if applicable) |

[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 LENDER:

**BERKADIA COMMERCIAL MORTGAGE LLC, a
Delaware limited liability company**

By:_____

Name:

Title:

[Notary Block for recordation]

SUBORDINATE LENDER:

CLACKAMAS COUNTY, a political subdivision organized
and existing under the laws of the State of Oregon,

By: _____ (SEAL)

Name:

Title:

[Notary Block for recordation]

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 20__, by and between **BERKADIA COMMERCIAL MORTGAGE LLC, a Delaware limited liability company** **CLACKAMAS COUNTY**, a political subdivision organized and existing under the laws of the State of Oregon, and consents to the agreement of the parties set forth in this Agreement.

SWC ACADIA LLC, an Oregon limited liability company

By: _____

Name: _____

Title: _____

Date: _____

SWC TOWN CENTER LLC, an Oregon limited liability company

By: _____

Name: _____

Title: _____

Date: _____

[Notary Block for recordation]

EXHIBIT A
LEGAL DESCRIPTION

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