

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF THE SUBORDINATION AGREEMENT OF THE LAND USE RESTRICTION AGREEMENT FOR THE LAKES AT SAN MARCOS APARTMENTS; PROVIDING FOR OTHER MATTERS RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida (the "State") has enacted the Florida Housing Finance Authority Law, Sections 159.601 through 159.623, Florida Statutes, as amended (the "Act"), pursuant to which the State has empowered each county in the State to create by ordinance a separate public body corporate and politic to be known as a housing finance authority of the county for the purpose of alleviating a shortage of housing and creating capital for investment in housing in the area of operation of such housing finance authority; and

**WHEREAS**, the Housing Finance Authority of Leon County, Florida (the "Issuer") is empowered to issue its revenue bonds, notes, or other evidences of indebtedness to finance the acquisition, construction, and development of multifamily rental housing for persons of low, middle, or moderate income at prices or rentals they can afford; and

**WHEREAS**, the Issuer authorized, approved, and issued its \$16,800,000 Housing Finance Authority of Leon County, Florida Multifamily Housing Revenue Bonds (Lakes at San Marcos Apartments), Series 2005 (the "Bonds"), pursuant to the Trust Indenture, dated as of February 1, 2005 (the "Indenture"), by and between the Issuer and U.S. Bank Trust Company, National Association, as successor trustee (the "Trustee"), the proceeds of which Bonds were loaned to the Borrower (the "Loan") for the purpose of providing funds to construct a multifamily residential development within Leon County, Florida (the "County") commonly known as the Lakes at San Marcos Apartments (the "Project"); and

**WHEREAS**, CMP CHP San Marcos, Ltd., a Florida limited partnership (the "Borrower"), is the current owner of the Project; and

**WHEREAS**, the Borrower has advised the Issuer that the Borrower intends to refinance the Project with a conventional loan made by Berkadia Commercial Mortgage LLC (the "Lender"), the proceeds of which will be used to redeem the Bonds in full; and

**WHEREAS**, as a condition to the Issuer making the Loan to the Borrower, and pursuant to the requirements of the Loan and Financing Agreement, dated as of February 1, 2005, by and between the Issuer and the Borrower (the "Financing Agreement"), the Issuer, the Borrower, and the Trustee executed the Land Use Restriction Agreement, recorded March 1, 2005, in Official Records Book 3246, Page 1130 of the Public Records of Leon County, Florida (the "LURA"), in which the Borrower covenanted that the Project would be occupied partially by individuals of low or moderate income as required by Section 142(d) of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, pursuant to the terms of the Land Use Restriction Agreement, the Land Use Restriction Agreement will continue to remain in effect during the Qualified Project Period (as defined therein); and

**WHEREAS**, the Lender requires as a condition to making its conventional loan to the Borrower that the lien and covenants of the Land Use Restriction Agreement be subordinated to the lien, covenants, and enforcement of the Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from the Borrower in favor of the Lender (the "Lender Mortgage"); and

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA:**

**SECTION 1. APPROVAL OF SUBORDINATION AGREEMENT.** The Issuer hereby approves the form and content of the Subordination Agreement – Regulatory Agreement (the "Subordination Agreement") among the Issuer, the Borrower, and the Lender, attached hereto as **EXHIBIT A**. The Chair, Vice Chair, or any member of the Issuer is hereby authorized to execute and deliver the Subordination Agreement on behalf of the Issuer, and the Secretary or the Assistant Secretary of the Issuer is authorized to attest thereto, in substantially the form attached hereto as **EXHIBIT A**, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Issuer may deem necessary, and with such changes as Bond Counsel and Issuer Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Issuer.

**SECTION 2. WAIVER OF NOTICE.** The Issuer hereby agrees to waive its right to the 30-day prior notice required by Section 3.3(e) of the Indenture with respect to the proposed optional redemption of the Bonds and in lieu thereof agrees to two business days prior notice to the proposed optional redemption of the Bonds.

**SECTION 3. AUTHORIZATIONS AND FURTHER ACTIONS.** The Chair, Vice Chair, Secretary, assistant Secretary, or any other member of the Issuer, the administrator of the Issuer, and such other officers and employees or agents of the Issuer as may be designated by the Chair, are each designated as agents of the Issuer in connection with the issuance and delivery of the Subordination Agreement and are authorized and empowered, collectively or individually, to take all actions and steps, to approve, execute, and deliver, if appropriate, all contracts, agreements, and such other instruments, to approve the form of and approve such changes and complete all omissions and blank spaces in such instruments, documents, and contracts, including the exhibits thereto, and to take such other and further actions as they may deem necessary or desirable to accomplish the intent thereof, including the sale, issuance, and delivery of the Subordination Agreement, including, but not limited to, in consultation with the administrator of the Issuer, Bond Counsel, and Issuer Counsel, executing and delivering certain additional documents as may be necessary; provided, however, that such terms and conditions set forth in such additional documents shall not be inconsistent with the provisions of this Resolution.

**SECTION 4. SEVERABILITY.** If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause, or provision.

**SECTION 5. REPEALING CLAUSE.** All resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

[Remainder of page intentionally left blank]

**SECTION 6. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

**ADOPTED** this 9th day of February, 2023.

**HOUSING FINANCE AUTHORITY  
OF LEON COUNTY, FLORIDA**

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

ATTEST:

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

**EXHIBIT A**

**FORM OF SUBORDINATION AGREEMENT**

**PREPARED BY, RECORDED AND  
RETURN TO:**

Katelyn Squicciarini, Esq.  
Cassin & Cassin LLP  
2900 Westchester Avenue, Suite 402  
Purchase, NY 10577  
Attention: Recording Department

(Reserved)

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**SUBORDINATION AGREEMENT – REGULATORY AGREEMENT  
GOVERNMENTAL ENTITY**

**Lakes at San Marcos  
4768 Woodville Hwy, Tallahassee, Florida 32305**

**County: Leon**

**SUBORDINATION AGREEMENT GOVERNMENTAL ENTITY FOR REGULATORY  
AGREEMENT  
REGULATORY AGREEMENT ONLY/NO SUBORDINATE DEBT**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (this “**Agreement**”) is effective as of the \_\_\_ day of \_\_\_\_\_, 2023, by the **HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA**, a public corporation and public body corporate and politic organized under the laws of the State of Florida (“**Governmental Entity**”), and **CMP CHP SAN MARCOS, LTD.**, a Florida limited partnership (“**Borrower**”), for the benefit of **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company, its successors and assigns (“**Lender**”).

**RECITALS:**

A. Simultaneously herewith Lender is making a loan to Borrower in the original principal amount of \$ \_\_\_\_\_ (“**Loan**”) pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured by a Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing that will be recorded among the records of **Leon County, Florida** (“**Official Records**”) (as supplemented or amended from time to time, the “**Mortgage**”) of certain improved real property located in **Leon County, Florida**, commonly known as Lakes at San Marcos Apartments, as more particularly described on Exhibit A attached hereto (“**Property**”). The Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”.

B. In connection with the construction and development of the Property, Governmental Entity made a loan to Borrower in the original principal amount of \$16,800,000 (“**Governmental Entity Loan**”), which said loan was conditioned on Borrower entering into a certain Land Use Restriction Agreement dated as of February 1, 2005 (“**Regulatory Agreement**”) among Governmental Entity, Borrower and U.S. Bank Trust Company, National Association, as successor trustee (“**Trustee**”), which was recorded in Book 3246, Page 1130 of the Official Records, pursuant to which the Property was subjected to certain restrictions by Governmental Entity.

C. As a condition to making the Loan, Lender requires that the lien of the Mortgage be superior to the lien of the Regulatory Agreement, except as expressly provided herein, Lender will not make the Loan unless Governmental Entity and Borrower agree to subordinate certain rights and obligations under the Regulatory Agreement.

E. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

2. Subordination. The Governmental Entity hereby agrees that the Regulatory Agreement, other than Paragraphs 2, 3, 4, 13, and 16 thereof, is and shall at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that, subject to the limitations in this Paragraph 2, the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief at any time in the event of a default under or breach of the terms of the Regulatory Agreement.

3. Financing, Encumbrance and Approval. Governmental Entity hereby acknowledges the financing evidenced by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure of the Mortgage or a deed in lieu thereof shall not require Governmental Entity's consent but shall require notice to Governmental Entity.

4. Satisfaction of Prior Indebtedness. Based upon the certification of Trustee, Governmental Entity acknowledges and agrees that the "Loan" associated with and defined in the Regulatory Agreement, has been paid in full and all fees due and payable under the Loan to Governmental Entity have been paid.

5. Lender Notice of Default. In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity shall be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.

6. Governmental Entity Notice of Default. Governmental Entity shall give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, shall have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf provided that Governmental Entity shall not be liable to Lender in any respect in the event it fails to deliver such notices.

7. Governmental Entity's Rights. Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may be released but it may not be modified, amended, changed or otherwise altered without the prior written consent of Lender so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) the collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) the application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) the removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.

8. Foreclosure by Lender In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent shall be required from Governmental Entity. If, at any time subsequent to the termination of the provisions of the Regulatory Agreement as the result of the foreclosure or the delivery of a deed in lieu of foreclosure, or similar disposition of the Property by Lender, the Borrower or any related person obtains an ownership interest in the Property for federal income tax purposes, the restrictions contained in the Regulatory Agreement shall be reinstated.

9. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the subordination of the Regulatory Agreement to the lien or charge of the Loan Documents, and shall supersede and cancel any prior agreements with regard to this subject matter.

10. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

12. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Notices. All notices required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand and the party giving such notice has received a signed receipt thereof, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

**If to Governmental Entity:**

**HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA**

615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair  
Telephone: 850-606-1900

**With a copy to:**

**BRYANT MILER OLIVE P.A.**

1545 Raymond Diehl Road, Suite 300  
Tallahassee, Florida 32308  
Attn: Jason M. Breth, Esq.

**If to Lender:**

**BERKADIA COMMERCIAL MORTGAGE LLC, a**

Delaware limited liability company  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002

**With a copy to:**

**FANNIE MAE**

1100 15th St, NW  
Washington, DC 20005  
Attn: Multifamily Asset Management, Drawer AM

**With a copy to:**

**CASSIN & CASSIN LLP**

711 Third Avenue, 20<sup>th</sup> Floor  
New York, New York 10017  
Attention: Jordan E. Hersch, Esq.  
Email: [jhersch@cassinllp.com](mailto:jhersch@cassinllp.com)  
Phone: 212-798-0108

**If to Borrower:**

**CMP CHP SAN MARCOS, LTD., a**

Florida limited partnership  
501 N. Magnolia Avenue  
Orlando, Florida 32801  
Attention: Louis E. Vogt, Manager

14. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

15. Valid Authorization. Each person executing this Agreement on behalf of a party hereto 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 hereunder.

16. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together constitute one and the same instrument, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

NOTICE: EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

**[Remainder of Page Intentionally Blank]**

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

**HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA** a public corporation and public body corporate and politic organized under the laws of the State of Florida

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

ACKNOWLEDGEMENT

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence or \_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by **JEFFREY SHARKEY**, as Chair, and **by CHARLES A. WHITE**, as Secretary, of the **HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA**, a legal entity duly created and a public agency duly organized and existing under the laws of the State of Florida, on behalf of the Issuer. They are personally known to me or have each produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

Witnesses:

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

**BORROWER:**

**CMP CHP SAN MARCOS, LTD.,**  
a Florida limited partnership

By: **FL SAN MARCOS GP, LLC,**  
a Florida limited liability company,  
its General Partner

By: \_\_\_\_\_  
Louis E. Vogt  
Manager

STATE OF \_\_\_\_\_ )  
 ): ss.:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ( ) physical presence or ( ) online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by **LOUIS E. VOGT, MANAGER** of **FL SAN MARCOS GP, LLC**, a Florida limited liability company, **GENERAL PARTNER** of **CMP CHP SAN MARCOS, LTD.**, a Florida limited partnership who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_

Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Commission # \_\_\_\_\_

**[SIGNATURE APPEARS ON FOLLOWING PAGE]**

Witnesses:

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

**LENDER:**

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

By: \_\_\_\_\_ (SEAL)

Name:

Title: Authorized Representative

STATE OF \_\_\_\_\_)

): ss.:

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of ( ) physical presence or ( ) online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, **AUTHORIZED REPRESENTATIVE** of **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_

Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Commission # \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**