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Prepared by, and after recording
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SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 3-15-2022)

Freddie Mac Loan Number: 510660630
Property Name: L'Octaine Urban Apartments

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 3-15-2022)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2023, 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) the **CITY OF LAS VEGAS**, a municipal corporation organized and existing under the laws of the State of Nevada (“**Subordinate Lender**”).

RECITALS

- A. **L'OCTAINE LIMITED PARTNERSHIP**, a limited partnership organized under the laws of the State of Nevada (“**Borrower**”) is the owner of certain land located in Clark County, Nevada, 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 **not to exceed \$3,594,000** of \$_____ (“**Senior Loan**”) upon the terms and conditions of a Multifamily Loan and Security Agreement dated as of _____, 2023 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, Assignments 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.**” **The Senior Loan shall be used to pay off the existing senior debt on the Mortgaged Property in the original principal amount of \$2,100,000.00 in favor of Alden Affordable Holdings, LLC, a Delaware limited liability company.**
- C. Pursuant to an Agreement to Loan Redevelopment Set Aside Housing Funds and Home Program Funds to L'Octaine Limited Partnership dated May 16, 2001 between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender made a loan to Borrower in the original principal amount of **(i) \$850,000.00 (the “Subordinate RSAF Loan”) and (ii) \$1,650,000.00 (the “Subordinate HOME Loan,” and together with the Subordinate RSAF Loan, the “Subordinate Loan”)**. The Subordinate Loan is secured by **two** Short Form Deeds of Trust, each dated December 1, 2003 (**collectively**, the “**Subordinate Mortgage**”) encumbering all or a portion of the Mortgaged Property.
- D. The Senior Mortgage will be recorded in the land records of Clark County, Nevada (“**Recording Office**”) immediately prior to the recording of this Agreement. The Subordinate Mortgage is recorded in the Recording Office at (i) Book 20031217, as Instrument No. 01158, and (ii) Book 20031217, as Instrument No. 01157.
- 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.

“Affordability Requirements” means the income, rent, and/or affordability restrictions set forth in the Subordinate Loan Documents with respect to the 22 units at the Mortgaged Property that are subject to 24 CFR Part 92 as amended of the HOME Program.

“**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 Not Applicable.

“**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~~ **(excluding the Affordability Requirements)** 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~~(s)~~ 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) **To Subordinate Lender's actual knowledge upon due inquiry, no** ~~No~~ Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$3,429,636 **as of July 1, 2023.**
 - (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; **provided, however, that such prior consent of Senior Lender shall not be unreasonably withheld, conditioned or delayed with respect to assignments to a governmental or quasi-governmental entity or agency.**
 - (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. **Notwithstanding the foregoing, if such action is required by HUD, the State of Nevada and/or any applicable federal statutes or regulations, the consent of Senior Lender shall not be unreasonably withheld, conditioned or delayed.**
 - (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. **Notwithstanding the foregoing, the Affordability Requirements shall not be subordinate to the Senior Indebtedness and shall survive foreclosure or other disposition of the Senior Mortgage. Subordinate Lender will be entitled to seek specific performance of these Affordability Requirements following foreclosure of the Senior Mortgage.**

- (b) Subordination of Subrogation Rights. **Except for sewer liens, tax liens, or other municipal liens in favor of the City of Las Vegas in its capacity as a municipal corporation and not in its capacity as a subordinate lender under the Subordinate Loan Documents, if** ~~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. **For the avoidance of doubt, sewer liens, tax liens, or other municipal liens in favor of the City of Las Vegas in its capacity as a municipal corporation and not in its capacity as a subordinate lender under the Subordinate Loan Documents shall have the priority they would otherwise have under applicable law in the absence of the existence of 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 ~~40~~ **15** 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; **provided, however, the Subordinate Lender shall not be required to vote affirmatively in favor of any plan of reorganization or liquidation that would result in a modification, amendment, waiver or termination of the Affordability Requirements.**

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~~ **60** 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 ~~60-day~~ ~~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 **(but in no event more than an additional 90 days)** 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~~ **60** days after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice. During such ~~60-day~~ ~~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 **Affordability**

Requirements ~~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 **60-day** ~~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 **60-day** ~~90-day~~ 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 Loan 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 Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. **Default Under Senior Loan Documents.**

- (a) Notice of Senior Loan 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 ~~60~~ 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such ~~60-day~~ 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 ~~60-day~~ 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 **(excluding the Affordability Requirements)** 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, 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 Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of 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, **unless the Subordinate Loan Document requirements exceed the requirements under the Senior Loan Documents, in which case Borrower shall comply with both requirements.**
- (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 **commercially reasonable** 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, **provided, however, that the foregoing shall not be construed to restrain Subordinate Lender's right to seek specific performance of the Affordability Requirements.** 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 ~~40~~ **15** days after request by Senior Lender (**which Senior Lender shall not require more than three times per calendar year**), 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 **reasonably** 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~~ **outstanding principal balance due on the Senior Loan** (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~~). **Notwithstanding the immediately preceding sentence, Subordinate Lender shall not unreasonably delay, condition, or withhold its consent to subordinate to any new mortgage debt which is for the purpose of increasing proceeds for rehabilitation in the context of a preservation transaction. Senior Lender will endeavor to notify Subordinate Lender in writing within ninety (90) days of the closing of any refinance of the Senior Loan, but Senior Lender's failure to do so will not invalidate any refinance.** 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 **without limitation** 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:

Berkadia Commercial Mortgage LLC
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002,
Attn: Servicing - Executive Vice President

Notices intended for Subordinate Lender will be addressed to:

City of Las Vegas
City Hall, Third Floor
495 South Main Street
Las Vegas, Nevada 89101-2986
Attention: Director of the Office of Neighborhood Services

- (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. 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. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (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 **reasonably** 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. This Agreement will be governed by the laws of the State in which the Land is located.
- (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, 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.

[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: _____
Megan Mather
Authorized Representative

STATE OF PENNSYLVANIA, COUNTY OF MONTGOMERY ss:

On this ____ day of _____, 2023, personally appeared before me, a Notary Public in and for the County and State aforesaid, Megan Mather, Authorized Representative of Berkadia Commercial Mortgage LLC, a Delaware limited liability company, who acknowledged that he/she executed the foregoing instrument on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of _____, the day and year in this Certificate first above written.

My Commission Expires: _____

Notary Public

County of _____, State of _____

SUBORDINATE LENDER:

CITY OF LAS VEGAS, a Nevada municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

Luann D. Holmes

By: _____
Name: Luann D. Holmes
Title: MMC, City Clerk

APPROVED AS TO FORM ONLY:

City of Las Vegas, Deputy City Attorney

John S. Ridilla
Chief Deputy City Attorney

By: John S. Ridilla 7/5/23
Title: Deputy City Attorney Date

APPROVED AS TO CONTENT:

City of Las Vegas, Department of Neighborhood Services

By: _____
Name: Kathi Thomas Date
Title: Director

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 2023, personally appeared before me, a Notary Public in and for the County and State aforesaid, _____, Authorized Signatory of the City of Las Vegas, a Nevada municipal corporation who acknowledged that he/she executed the foregoing instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of _____, the day and year in this Certificate first above written.

My Commission Expires: _____

Notary Public
County of _____, State of _____

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 2023, by and between **BERKADIA COMMERCIAL MORTGAGE LLC** and the **CITY OF LAS VEGAS** and consents to the agreement of the parties set forth in this Agreement.

L'OCTAINE LIMITED PARTNERSHIP, a
Nevada limited partnership

By: Timberline L'Octaine GP LLC, a Nevada
limited liability company, its General Partner

By: _____
Adam Stein
Authorized Signatory

STATE OF _____, _____ County ss:

On this ____ day of _____, 2023, personally appeared before me, a Notary Public in and for the County and State aforesaid, Adam Stein, Authorized Signatory of Timberline L'Octaine GP LLC, a Nevada limited liability company, the General Partner of L'Octaine Limited Partnership, a Nevada limited partnership, who acknowledged that he/she executed the foregoing instrument on behalf of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of _____, the day and year in this Certificate first above written.

My Commission Expires: _____

Notary Public

County of _____, State of _____

EXHIBIT A

LEGAL DESCRIPTION

The Land referred to herein below is situated in the County of Clark, State of Nevada, and is described as follows:

THAT PORTION OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$) OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF LAS VEGAS BOULEVARD SOUTH AND GASS AVENUE AS SHOWN ON FILE 125, PAGE 48 OF SURVEYS, CLARK COUNTY, NEVADA OFFICIAL RECORDS; THENCE SOUTH 62°03'48" EAST ALONG THE CENTERLINE OF GASS AVENUE (80 FEET WIDE), 180.11 FEET;

THENCE SOUTH 27°54'36" WEST, 40.00 FEET TO THE TRUE POINT OF BEGINNING.

ALSO BEING THE INTERSECTION OF THE SOUTHERLY LINE OF SAID GASS AVENUE AND THE WESTERLY LINE OF A 20.00 FOOT WIDE ALLEY AS SHOWN ON BOOK 1 OF PLATS, PAGE 51, CLARK COUNTY, NEVADA OFFICIAL RECORDS;

THENCE CONTINUING SOUTH 27°54'36" WEST ALONG SAID WESTERLY LINE, 224.34 FEET TO THE ADJUSTED BOUNDARY LINE AS SHOWN ON SAID FILE 125, PAGE 48 OF SURVEYS;

THENCE NORTH 62°04'19" WEST ALONG SAID ADJUSTED BOUNDARY LINE, 135.11 FEET TO A POINT ON THE EASTERLY LINE OF SAID LAS VEGAS BOULEVARD SOUTH;

THENCE NORTH 27°54'36" EAST ALONG SAID EASTERLY LINE, 214.35 FEET TO A POINT OF CURVE, SAID CURVE BEING CONCAVE SOUTHERLY HAVING A RADIUS OF 10.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 90°01'36";

THENCE CURVING TO THE RIGHT AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE, 15.71 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 62°03'48" EAST ALONG SAID SOUTHERLY LINE OF GASS AVENUE, 125.11 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS THE SAME AS THAT SHOWN ON THE CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY RECORDED IN FILE 125, PAGE 48 OF SURVEYS, CLARK COUNTY, NEVADA OFFICIAL RECORDS.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED DECEMBER 17, 2003, IN BOOK 20031217 AS INSTRUMENT NO. 01151 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.