

Project: **Durham Hosiery Mill Apartments**
City of Durham, Durham County, North Carolina

FHA Project Nos.: 1. **Original Loan: 053-35525**
2. **Refinance Loan: _____**

SUBORDINATION AGREEMENT

This Subordination Agreement ("Subordination Agreement"), dated _____, 2013, is entered into by **THE CITY OF DURHAM**, a North Carolina municipal corporation ("The City"), in favor of **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company with a principal place of business at 118 Welsh Road, Horsham, Pennsylvania 19044 ("Berkadia"), and the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT ACTING BY AND THROUGH THE ASSISTANT SECRETARY FOR HOUSING – FEDERAL HOUSING COMMISSIONER** ("HUD") and **DURHAM HOSIERY MILL LIMITED PARTNERSHIP**, a North Carolina limited partnership having a principal place of business at 320 Norwood Park South, Norwood, Massachusetts ("Borrower").

WITNESSETH

WHEREAS, the Borrower currently holds fee title to a certain multifamily housing project identified as Durham Hosiery Mill Apartments, all as more particularly described in Schedule "A" attached hereto and made a part hereof (hereinafter referred to as the "Project"); and

WHEREAS, the Borrower has executed and delivered its certain Deed of Trust Note, dated March 30, 1987, in favor of NCNB National Bank of North Carolina ("NCNB"), which Deed of Trust Note stated an indebtedness of \$5,370,800.00 ("Original Note"), which Original Note was secured by that certain Deed of Trust given by Borrower in favor of NCNB and dated March 30, 1987, and recorded March 30, 1987 in the County Registry of Durham County, North Carolina, in Book 1358, Page 134 ("Original "Deed of Trust")

WHEREAS, Borrower has also executed and delivered: (a) a Supplemental Deed of Trust Note, dated August 29, 1986 in the amount of \$550,000.00 and payable to The City (the "1986 Note"), which 1986 Note is secured by that certain Supplemental Deed of Trust given by Borrower to the City of Durham dated August 29, 1986 and recorded August 29, 1986 in the County Registry of Durham County, North Carolina, in Book 1307, Page 466; and (b) a Supplemental Deed of Trust Note, dated April 24, 1987 in the amount of \$2,265,000.00 and payable to The City (the "UDAG Note" and with the 1986 Note, the "City Notes"), which UDAG Note is secured by that certain Supplemental Deed of Trust given by Borrower to The City dated April 24, 1987 and recorded April 24, 1987 in the County Registry of Durham County, North Carolina, in Book 1365, Page 90; (c) an Assignment of Lessor's Interest in Lease from Borrower to The City, dated April 24, 1987 and recorded April 24, 1987 in the County Registry of Durham County, North Carolina, in Book 1365, Page 155; and (d) a Regulatory and Land Use Restriction Agreement dated March 1, 1987 and filed for record in the County

Registry of Durham County, North Carolina on March 30, 1987 in Book 1358, Page 146 (the foregoing collectively being the "Subordinate Liens"), which Subordinate Liens were subordinated in lien and right of the Original Deed of Trust, Original Note and the Original Deed of Trust according to their own terms, and by virtue of their execution, delivery and recordation after the Original Deed of Trust; and

WHEREAS, Borrower and HUD entered into a Mortgage Restructuring transaction ("Mortgage Restructuring Loan") according to which HUD approved of a reduction of principal indebtedness of the Original Deed of Trust and Original Deed of Trust Note, reducing same to the principal balance of \$2,281,627.52, in exchange for the Borrower's execution and delivery of a Mortgage Restructuring Deed of Trust Note in the amount of \$2,627,583.42 in favor of HUD, dated March 12, 2002, which Mortgage Restructuring Deed of Trust Note was secured by that certain Mortgage Restructuring Deed of Trust given by Borrower in favor of HUD, dated March 12, 2002, and recorded March 20, 2002 in the County Registry of Durham County North Carolina, in Book 3390, Page 159, together with a Mortgage Restructuring Use Agreement dated March 20, 2002 and recorded March 20, 2002 in the County Registry of Durham County, North Carolina, in Book 3390, Page 101, together with a Mortgage Restructuring Regulatory Agreement for Insured Multi-Family Housing Projects (HUD referring to Deed of Trust in the amount of \$2,281,627.52) recorded March 20, 2002 in the County Registry of Durham County, North Carolina, in Book 3390, Page 175, together with Rider to Regulatory Agreement 62465 for Insured Multi-Family Housing Projects recorded in the County Registry of Durham County, North Carolina, in Book 3390, Page 175 (hereinafter collectively the "Mortgage Restructuring Lien Documents"); and

WHEREAS, as a result of the Mortgage Restructuring Loan, Borrower and NNCB's successor entered into that certain Modification of Deed of Trust Note and Deed of Trust dated March 12, 2002 and recorded in the County Registry of Durham County, North Carolina in Book 3390 at Page 124-134 acknowledging, consenting and restating the principal indebtedness secured by the original Deed of Trust in the amount of \$2,281,627.52; and

WHEREAS, as a result of the Mortgage Restructuring Loan, Borrower asked and The City agreed to continue subordination of the Subordinate Liens by virtue of a Subordination Agreement made by The City dated March 13, 2002, and recorded in the County Registry of Durham County, North Carolina, in Book 3390 at Page 204-208, according to which The City agreed to continue subordination of the Subordinate Liens until the indebtedness under the original Deed of Trust and the Mortgage Restructuring Lien Documents, and all renewals, modifications and amendments thereof, is paid and satisfied in full, and the obligations and conditions of the Use Agreement and Regulatory Agreement associated therewith are satisfied; and

WHEREAS, pursuant to a firm commitment for mortgage insurance issued by HUD under Section 223(a)(7) of the National Housing Act, dated December 7, 2012, as amended, Borrower and Berkadia have entered into a Refinance Deed of Trust loan in the principal amount of \$2,274,700.00 (the "First Mortgage Refinance Loan"), as evidenced by a Deed of Trust Note executed by Borrower and delivered to Berkadia, as insured by HUD and dated the date hereof (the "First Mortgage Refinance Note"), which First Mortgage Refinance Note, among other

things, has a maturity date of approximately 26 years and 7 months from the date hereof (the "First Mortgage Revised Maturity Date"), and which is secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement from Borrower to Berkadia dated the date hereof and given to secure the sum of \$2,274,700.00 ("Security Instrument"), together with that certain Regulatory Agreement for Multifamily Housing Projects by and between Borrower and HUD dated the date hereof, and UCC-1 Financing Statements authorized by Borrower in favor of Berkadia and given as additional security for the above referenced loan (hereinafter collectively referred to as the "Refinance Deed of Trust Documents"); and

WHEREAS, in consideration of the foregoing, Borrower and HUD have requested that (i) The City acknowledge and consent that the Subordinate Liens are subject and subordinate to the Refinance Deed of Trust Documents, for the benefit of Borrower, Berkadia and HUD, and (ii) that the term of the City Notes be extended so as to be coterminous with the First Mortgage Refinance Note, and The City has agreed to such request.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The City hereby acknowledges and agrees as follows:

1. The foregoing recitals are incorporated herein as if set forth at length.
2. The City hereby acknowledges, confirms and agrees that the Subordinate Liens are and shall remain subject and subordinate to the Refinance Deed of Trust Documents, and that said Subordinate Liens shall be subject and subordinate to the Security Instrument, the UCC-1 financing statements authorized for filing thereunder, and the Regulatory Agreement for Multifamily Housing Projects issued by Borrower to HUD dated the date hereof and submitted for recording contemporaneously herewith as part of the Refinance Deed of Trust Loan transaction.
3. In addition, the City further agrees that the maturity date for each of the City Notes is hereby extended, to a date of not less than one month after the First Mortgage Revised Maturity Date set forth above, and the City agrees that, if requested by HUD, it will execute Allonges to each City Note, substantially in the form of Exhibits A-1 and A-2 hereof, to reflect the extension of the term of the City Notes (and to add certain HUD required language to the 1986 Note that specifies that payments on such 1986 Note are geared to the availability of surplus cash).
4. The City agrees to cooperate reasonably with Borrower, Berkadia and HUD to effect the subordination of the Subordinate Liens, and the extension of the City Notes loan terms, as set forth herein, including by executing and delivering such additional documents and other instruments as HUD may reasonably require from time to time.

5. Except as set forth herein, nothing contained in this Subordination Agreement shall in any way impair the City Notes or the Subordinate Liens, or alter, waive, annul, vary or affect any provision, condition or covenant therein, nor affect or impair any rights, powers or remedies of The City under the Subordinate Lien documents.
6. The City Notes and the Subordinate Liens, as extended and as subordinated to the Refinance Deed of Trust Documents hereby, may not be further modified except by an instrument in writing executed by The City.
7. This Subordination Agreement shall be binding upon and inure to the benefit of the parties identified herein, and their respective successors and/or assigns.

IN WITNESS WHEREOF, this Subordination Agreement has been duly executed by the City of Durham, by its duly authorized representative as of the date first set forth above.

THE CITY OF DURHAM

By: _____
 Name:
 Title:

STATE OF NORTH CAROLINA)
 COUNTY OF DURHAM) ss.:

The foregoing instrument was duly acknowledged before me this ____ day of _____, 2012, by _____ as _____ of the City of Durham, North Carolina.

 Notary Public

My commission expires: _____

Exhibit A-1

UDAG Note Allonge

ALLONGE TO AND AMENDMENT OF NOTE

Reference is hereby made to a certain UDAG Interim/Permanent Loan Promissory Note dated April 24, 1987, in the original principal amount of Two Million Two Hundred and Sixty Five Thousand (\$2,265,000.00) Dollars (the "**Note**") executed and delivered by Durham Hosiery Mill Limited Partnership, a North Carolina limited partnership (the "**Borrower**"), payable to the order of the City of Durham, North Carolina (the "**Lender**"), which Note was given to secure Borrower's loan obligation to Lender pursuant to an Urban Development Action Grant (the "**UDAG Loan**").

WHEREAS, the Lender had previously executed and delivered that certain Subordination Agreement dated as of _____, 2013 (the "**Subordination Agreement**"), whereby Lender agreed to (i) subordinate the UDAG Loan mortgage lien to the Borrower's First Mortgage Refinance Loan mortgage lien, and (ii) extend the loan term of the UDAG Loan to be roughly coterminous with the First Mortgage Refinanced Note; and

WHEREAS, pursuant to the Subordination Agreement, HUD has requested that Lender execute and deliver this Allonge to reflect the extension of the UDAG Loan term as provided therein;

NOW, THEREFORE, the parties agree as follows::

1. The Note is hereby amended to provide that the maturity date is extended to _____, [2039], so as to be roughly coterminous with, and not to mature prior to, the First Mortgage Refinance Loan.
2. In all other respects, the Note is ratified and confirmed as being in full force and effect, as modified by the Subordination Agreement, and remains secured by such collateral as secured the Note, as supplemented by the Subordination Agreement.
3. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed in the Subordination Agreement.

Signed as a sealed instrument as of the ____ day of _____, 2013.

BORROWER:

DURHAM HOSIERY MILLS LIMITED PARTNERSHIP

By: Allen and Company, Inc., its general partner

By: _____

Name: _____

Title: _____

LENDER:

THE CITY OF DURHAM

By: _____

Name:

Title:

Exhibit A-2

1986 Note Allonge

ALLONGE TO AND AMENDMENT OF NOTE

Reference is hereby made to a certain Promissory Note dated as of August 29, 1986, in the original principal amount of Five Hundred Fifty Thousand (\$550,000.00) Dollars (the "Note") executed and delivered by Durham Hosiery Mill Limited Partnership, a North Carolina limited partnership (the "**Borrower**"), payable to the order of the City of Durham, North Carolina (the "**Lender**"), which Note was given to secure Borrower's loan obligation to Lender pursuant to a Contract for Private Redevelopment between the Lender and Borrower dated as of July 28, 1986 (the "**Redevelopment Loan**").

WHEREAS, the Lender had previously executed and delivered that certain Subordination Agreement dated as of _____, 2013 (the "**Subordination Agreement**"), whereby Lender agreed to (i) subordinate the Redevelopment Loan mortgage lien to the Borrower's First Mortgage Refinanced Loan mortgage lien, and (ii) extend the loan term of the Redevelopment Loan to be roughly coterminous with the First Mortgage Refinance Note; and

WHEREAS, pursuant to the Subordination Agreement, HUD has requested that Lender execute and deliver this Allonge to (i) reflect the extension of the Redevelopment Loan term as provided therein, and (ii) to add certain HUD required language to the Note that specifies that payments on such Note are geared to the availability of surplus cash;

NOW, THEREFORE, the parties agree as follows::

1. The Note is hereby amended to provide that the maturity date is extended to _____, [2039], so as to be roughly coterminous with, and not to mature prior to, the First Mortgage Refinance Loan.

2. In addition, the Note is further amended by adding the following language to such Note:

"So long as the Secretary of Housing and Urban Development or his/her successors or assigns, are the insurers or holders of the first mortgage on Durham Hosiery Mill apartments, Project No. 053-36142, payments due under this Note shall be payable only from surplus cash of said project, as the term surplus cash is defined in the Regulatory Agreement dated [_____] between HUD and Durham Hosiery Mill Limited Partnership, a North Carolina limited partnership. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by this Note.

3. In all other respects, the Note is ratified and confirmed as being in full force and effect, as modified by the Subordination Agreement, and remains secured by such collateral as secured the Note, as supplemented by the Subordination Agreement.

4. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed in the Subordination Agreement.

Signed as a sealed instrument as of the ____ day of _____, 2013.

BORROWER:

DURHAM HOSIERY MILLS LIMITED PARTNERSHIP

By: Allen and Company, Inc., its general partner

By: _____

Name: _____

Title: _____

LENDER:

THE CITY OF DURHAM

By: _____

Name:

Title:

Schedule "A"
Legal Description

Tract 1

BEGINNING at a stake located at the intersection of the northern right-of-way of Elm Street and the western right-of-way of Angier Avenue; running thence from said point and place of beginning along and with the western existing right-of-way and western former right-of-way of Angier Avenue north 15 deg. 32 min. 45 sec. west 609.70 feet to an iron pipe in the southern right-of-way of the Norfolk & Western Railroad; running thence along and with the said right-of-way as it makes a clockwise curve having a radius of 1,083.28 feet an arc distance of 268.93 feet to a stake, thence continuing with said right-of-way north 67 deg. 34 min. 00 sec. west 63.97 feet to an iron pipe at the intersection of the southern right-of-way of said railroad and the eastern right-of-way of Walker Street running thence along and with the eastern right-of-way of Walker Street south 15 deg. 08 min. 28 sec. east 541.26 feet to an iron pipe in the northern right-of-way of Elm Street running thence along and with the northern right-of-way of Elm Street north 75 deg. 09 min. 30 sec. east 330.00 feet to a stake being the point and place of **BEGINNING** and being the westernmost tract of land shown on that plat and survey entitled Property of the Durham Hosiery Mill Company, prepared by Credle Engineering Company, Inc., dated 5-9-86 and also being that property shown on that plat and survey entitled Property of Durham Hosiery Mills as prepared by Hunter Jones dated November, 1943 and recorded in Plat Book 16 at page 157, Durham County Registry to said plats and surveys reference is hereby made for a more particular description of same.

Tract 2

BEGINNING at a stake located at the intersection of the southern right-of-way of Norfolk & Western Railroad and the western right-of-way of East Main Street; running thence from said point and place of beginning along and with the southern right-of-way of said railroad as it makes a clockwise curve having a radius of 1,083.28 feet an arc distance of 75.01 feet to a stake thence continuing with said right-of-way as it makes a clockwise curve having a radius of 1,083.28 feet an arc distance of 4.01 feet to a stake; running thence south 15 deg. 30 min. 00 sec. east 439.77 feet to a stake in the existing western right-of-way of Angier Avenue; running thence along and with the existing western right-of-way of Angier Avenue the following courses and distances; north 74 deg. 30 min. 00 sec. east 0.5 feet to a stake, along and with a clockwise curve having a radius of 538.63 feet an arc distance of 108.11 feet to a stake, along and with a counterclockwise curve having a radius of 459.43 feet an arc distance of 92.21 feet to a stake, north 15 deg. 30 min. 00 sec. west 230.24 feet to a stake, north 38 deg. 38 min. east 62.33 feet to a stake; thence along and with the western right-of-way of East Main Street north 54 deg. 29 min. 00 sec. west 2.06 feet to a stake being the point and place of **BEGINNING** and being the eastern tract of land as shown on that plat and survey entitled Property of the Durham Hosiery Mill Company prepared by Credle Engineering Company, Inc., dated 5-9-86, and a portion of that property being shown on that plat and survey entitled map showing relocation of Angier Avenue between Main Street and Elm Street dated October 10, 1955 and recorded in Plat Book 31 at page 99, Durham County Registry; to said plats and surveys reference is hereby made for a more particular description of same.