**EXHIBIT [\_\_\_]**

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Shared Use of Essential Elements)**

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.
2. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

“**Essential Elements**” means \_\_\_\_\_\_\_\_\_\_\_\_\_ **[DRAFTING NOTE: DESCRIBE ESSENTIAL ELEMENTS]**.

“**Shared Use Documents**” means [individually and collectively] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[DRAFTING NOTE: INSERT NAME(S) OF DOCUMENT(S)]**.

1. **[DRAFTING NOTE: INSERT THE FOLLOWING IF THE SHARED USE DOCUMENTS DO NOT REQUIRE THAT ALL ESSENTIAL ELEMENTS MUST BE REBUILT OR REPAIRED AFTER ANY CASUALTY OR ANY CONDEMNATION (THAT IS SUBJECT TO REPAIR OR REBUILDING), AND LENDER DETERMINES THAT ANY SUCH FAILURE TO REPAIR OR REBUILD COULD HAVE A MATERIAL ADVERSE EFFECT ON LEASING, MARKETABILITY, COMPLIANCE WITH ZONING LAW, OR REFINANCING OF THE MORTGAGED PROPERTY:** Section 3.02(a)(3) (Personal Liability Based on Lender’s Loss) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

(3) failure to apply all insurance proceeds, or all awards or proceeds in a Condemnation Action, received by any party in connection with the Mortgaged Property, as required by the Loan Documents;**]**

1. Section 3.02(a) (Personal Liability Based on Lender’s Loss) of the Loan Agreement is hereby amended by adding the following provisions to the end thereof:

[(\_\_)] the Mortgaged Property is no longer able to access or use the Essential Elements; and

[(\_\_)] a dispute related to the Shared Use Documents.

1. Section 14.01(a) (Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended by adding the following provisions to the end thereof:

[(\_\_)] Borrower terminates or revokes or attempts to terminate or revoke the appointment of Lender as Borrower’s proxy or attorney-in-fact either permanently or as to any election in the Shared Use Documents;

[(\_\_)] the Mortgaged Property is no longer able to access or use the Essential Elements;

[(\_\_\_)] Borrower fails to pay assessments or other amounts due under the Shared Used Documents when due and payable (after the expiration of any notice and cure period set other in the Shared Use Documents); or

[(\_\_)] any modification of or amendment to the Shared Use Documents that could have a material adverse effect on leasing, marketability, compliance with zoning law, or refinancing of the Mortgaged Property.

1. Section 14.03(c) (Appointment of Lender as Attorney-in-Fact) of the Loan Agreement is hereby amended by adding the following provision to the end thereof:

[(\_\_)] perform all of the obligations and exercise all of the rights and powers of Borrower under the Shared Use Documents.

1. The following article is hereby added to the Loan Agreement as Article [\_\_\_] (Shared Use Provisions):

**ARTICLE [\_\_\_] – SHARED USE PROVISIONS**

**Section [\_\_].01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section [\_\_].01 are made as of the Effective Date.

(a) The Shared Use Documents are in full force and effect and the Mortgaged Property has access to and the use of the Essential Elements.

(b) There are no fees, assessments or other payments due and payable by Borrower under the Shared Use Documents.

**Section [\_\_].02 Covenants.**

**(a) No Material Changes to Shared Use Documents.**

Borrower shall not:

(1) terminate or revoke or attempt to terminate or revoke the appointment of Lender as Borrower’s proxy or attorney-in-fact either permanently or as to any election in the Shared Use Documents,

(2) modify, attempt to modify, or consent to any modification of the Shared Use Documents in any way that could have a material adverse effect on the leasing, marketability, compliance with zoning law, or refinancing of the Mortgaged Property without the prior written consent of Lender.

**(b) Compliance with Shared Use Documents; Mortgage Loan Escrows.**

(1) Borrower hereby covenants and agrees to comply with all terms, conditions, and obligations imposed pursuant to the Shared Use Documents, including the payment when due and payable of all annual assessments or special assessments levied under the Shared Use Documents. To the extent permitted by law, all present and future assessments and associated liens due and payable by Borrower are and shall be subordinate to the Mortgage Loan.

(2) Notwithstanding Borrower’s payment of annual assessments or special assessments levied against Borrower under the terms of the Shared Use Documents to provide any repairs to or maintenance of any of the Essential Elements, Borrower shall deposit any Initial Replacement Reserve Deposit, Repairs Deposit and Monthly Replacement Reserve Deposit required pursuant to the terms of this Loan Agreement.

**(c) Insurance.**

Borrower shall (1) maintain insurance (or the Shared Use Documents provide that insurance shall be maintained by a third party) with respect to the Essential Elements on or benefiting the Mortgaged Property in accordance with Lender’s guidelines, and (2) send to Lender copies of all notices received by Borrower related to such insurance in accordance with the Loan Agreement.

**(d) Indemnification.**

Borrower agrees to indemnify and hold Lender harmless from and against any and all losses, costs, liabilities, or damages (including reasonable attorneys’ fees and disbursements) arising out of (1) any claim of any unit owner or tenant of any unit owner as a result of any violation, breach, misrepresentation, fraud, act, or omission of any obligation of Borrower as set forth in the Shared Use Documents, (2) the performance by Lender of any of the rights and powers of Borrower under the Shared Use Documents, or (3) a determination that the Mortgaged Property does not have access to or use of the Essential Elements; provided that Borrower shall have no indemnity obligation if such losses, costs, liabilities, or damages arise as a result of the willful misconduct or gross negligence of Lender, Lender’s agents, employees or representatives as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

**(e) Power of Attorney.**

Borrower acknowledges and consents to the exercise by Lender of the power of attorney and proxy granted by Borrower to Lender with respect to rights of Borrower in connection with the Essential Elements and the Shared Use Documents.

**[Remainder of Page Intentionally Blank]**

**SCHEDULE 1 TO**

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Shared Use of Essential Elements)**

**ESTOPPEL CERTIFICATE**

**(Shared Use)**

[HOA ASSOCIATION] [DECLARANT] [OWNER]

NAME AND ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(include county) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(the “**Certifying Party**”)

PROPERTY NAME:

AND ADDRESS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(include county) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(the “**Property**”)

BORROWER NAME

AND ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Certifying Party acknowledges that (a) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”) has agreed, subject to the satisfaction of certain terms and conditions, to make a loan (the “**Mortgage Loan**”) to Borrower and affiliates of Borrower, which Mortgage Loan will be assigned and transferred to Fannie Mae and is or will be secured by, among other things, that certain Multifamily [Deed of Trust][Mortgage][Deed to Secure Debt], Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “**Security Instrument**”, and together with any other document or instrument evidencing or securing the Mortgage Loan, the “**Loan Documents**”) encumbering the Property, together with all improvements thereon and appurtenances thereto, and (b) Lender is requiring this Estoppel Certificate (this “**Estoppel**”) as a condition to its making the Mortgage Loan. Accordingly, Certifying Party hereby certifies, confirms, covenants and agrees to Lender and its transferees, successors and assigns, as follows:

1. The undersigned is the [President] of Certifying Party, has personal knowledge of the information provided in this Estoppel and is authorized to enter into this Estoppel.
2. **[INSERT IF CERTIFYING PARTY IS AN HOA:** Certifying Party is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation and is currently the governing association for the Property Owners Association. The owner of the Property is subject to the Association. The undersigned is unaware of and has received no notice of any alternative association or similar organization with respect to all or any portion of the Property.**]**
3. Attached hereto as Exhibit A and made a part hereof for all purposes are **[DESCRIBE ALL SHARED USE DOCUMENTS]** (collectively, the “**Documents**”). The undersigned hereby certifies that the attached Documents are true, correct and complete and there have been no amendments to same other than as attached hereto.
4. There are no delinquent assessments, expenses, charges or fees payable by Borrower under the Documents. Furthermore, all assessments or other outstanding expenses and charges against the Property payable by any party under the Documents, if any, have been paid current.
5. The Documents are valid and in full force and effect, there is no existing default or unfulfilled obligation on the part of Borrower in any of the terms and conditions of the Documents, and no event has occurred or condition exists which, with the passing of time or giving of notice or both, would constitute an event of default under the Documents.
6. There are no unresolved violations or disputes by, against, or affecting Borrower under the Documents.
7. There is no defense, offset, claim or counterclaim by or in favor of Certifying Party against Borrower under the Documents.
8. There is no suit, action, proceeding or audit pending or threatened against or affecting Certifying Party under the Documents, at law, or in equity or before or by any court, administrative agency, or other governmental authority which brings into question the validity of the Documents or which, if determined adversely against Certifying Party, might result in any adverse impact on the Property.
9. The Documents permit the owner of the Property to (or do not prohibit the owner from), (a) conveying, transferring, and assigning its right, title, and interest in the Property, (b) the leasing of all or any part of the Property, and (c) otherwise encumbering its right, title and interest in the Property.
10. Lender will rely on the representations and agreements made by Certifying Party herein in connection with Lender’s agreement to make the Mortgage Loan and Certifying Party agrees that Lender may so rely on such representations and agreements.
11. As long as Lender holds any Security Instrument on the Property, Certifying Party **[DRAFTING NOTE: INSERT IF APPLICABLE AND MODIFY AS NECESSARY:** recognizes Lender as an [“Approved Mortgagee”] [“Permitted Mortgage”] [“Eligible Mortgagee”] under the Documents and] will deliver to Lender, at the address set forth below in this Section 10 (or to such other address as Lender may hereafter specify by written notice to Certifying Party), copies of any notice from Certifying Party to Borrower under the Documents simultaneously with transmittal of same to Borrower:

Lender: **[DRAFTING NOTE: INSERT LENDER NOTICE ADDRESS]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Remainder of Page Intentionally Blank]**

EXECUTED to be effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

**[Certifying Party]**:

By:

Name:

Title:

**EXHIBIT A**

**TO**

**ESTOPPEL CERTIFICATE**

**(Shared Use)**

**SHARED USE DOCUMENTS**

**(Property Name)**

(To be attached)