**EXHIBIT [\_\_]**

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Restabilization Reserve)**

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:

“**Debt Service Coverage Ratio**” means the debt service coverage ratio of the Mortgaged Property determined in accordance with Section [\_\_].02(a)(6)(C) (Determination of Sustaining Occupancy).

“**HAP Contract**” means that certain Housing Assistance Payments Contract by and between Borrower and HUD more particularly identified on the Summary of Loan Terms, and as collaterally assigned to Lender and Fannie Mae pursuant to the Assignment of HAP Contract.

“**HAP Contract Delay**” means the HAP Contract Expiration Date is not extended through the Maturity Date, there is a delay by HUD in entering into renewal contracts resulting in a temporary gap following the HAP Contract Expiration Date, or there is a withholding, termination, or delay in funding by HUD of the payments due under the HAP Contract as the result of a withholding, termination, or delay in the HUD appropriations, allotment, or budget process.

“**HAP Contract Expiration Date**” has the meaning set forth on the Summary of Loan Terms, as such expiration date may be extended from time to time.

“**HUD**” means the United States Department of Housing and Urban Development.

“**Initial Restabilization Reserve** **Deposit**” means an amount set forth on the Summary of Loan Terms.

“**P/I Shortfall**” means any Shortfall relating to the payment of principal and/or interest due under the Loan Documents.

“**Rent Roll**” means a certified rent schedule dated no earlier than the last month of the income period being reviewed (which submitted rent roll may require updating during the determination process in order for it to remain current within one month) for the Mortgaged Property showing the name of each tenant and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid and any related information requested by Lender.

“**Restabilization Reserve Account**” means a custodial account as required by Lender from time to time.

“**Restabilization Reserve Account Funds**” means, collectively, the Initial Restabilization Reserve Deposit and all other funds from time to time held in the Restabilization Reserve Account.

“**Restabilization Reserve Account Interest Disbursement Frequency**” has the meaning set forth on the Summary of Loan Terms.

“**Shortfall**” means operating expenses or amounts payable under the Note or other Loan Documents that cannot be funded from the operation of the Mortgaged Property.

“**Stabilized Debt Service Coverage Ratio**” has the meaning set forth on the Summary of Loan Terms.

“**Statement Period**” means the twelve (12) month period shown on the most recent financial statement submitted by Borrower to Lender.

“**Sustaining Occupancy**” means that:

(a) at least three (3) calendar months must have elapsed since the HAP Contract Expiration Date;

(b) for the three (3) month period immediately preceding the date of Borrower’s request for release of the Restabilization Reserve Account, the Mortgaged Property must have maintained a minimum physical occupancy rate equal to at least ninety percent (90%) of the total units in the Mortgaged Property under legally valid, binding and enforceable written lease agreements with bona fide residents; providing for initial lease terms of no less than six (6) months (or such other term as may be permitted under the Loan Documents); at then current rents or at such current rents required under any use agreement, land use restriction agreement, regulatory agreement or restrictive covenants encumbering the Mortgaged Property (and assuming no delinquencies nor concessions); and otherwise complying with all applicable laws; and

(c) the Mortgaged Property must have achieved the Stabilized Debt Service Coverage Ratio for the immediately preceding consecutive six (6) month period.

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

**ARTICLE** **[\_\_\_] –** RESTABILIZATION RESERVE

## **Section [\_\_].01** Covenants.

### **(a) Initial Deposit to Restabilization Reserve Account.**

On the Effective Date, in order to mitigate the risk associated with termination or delay in renewal or funding of the HAP Contract prior to the Maturity Date, Borrower shall pay to Lender the Initial Restabilization Reserve Deposit for deposit into the Restabilization Reserve Account. The Restabilization Reserve Account will provide Lender with a contingent source of funding of a Shortfall in the event of a HAP Contract Delay.

**(b)** **Administrative Fees and Expenses; Costs of Collection.**

Borrower shall pay within ten (10) days of request from Lender (1) all reasonable costs and expenses incurred by Lender in connection with collecting, holding and disbursing the Restabilization Reserve Account Funds pursuant to this Article [\_\_] (Restabilization Reserve); and (2) all reasonable fees, charges, costs and expenses incurred by Lender in connection with any inspections made by Lender or Lender’s representatives in carrying out Lender’s responsibility to make certain determinations under this Article [\_\_] (Restabilization Reserve). In addition, Borrower agrees to pay, within ten (10) days of request from Lender, all costs and expenses incurred by Lender (including but not limited to court costs and attorneys’ fees and expenses) in exercising any of Lender’s rights or obligations pursuant to the terms of this Loan Agreement or holding the Restabilization Reserve Account Funds.

## **Section [\_\_].02 Mortgage Loan Administration Matters Regarding Restabilization Reserve Account.**

### **(a) Accounts, Deposits and Disbursements.**

### **(1) Custodial Account.**

The Restabilization Reserve Account shall be deemed a Collateral Account under this Loan Agreement and any Restabilization Reserve Account Funds shall be deemed part of the Collateral Account Funds under this Loan Agreement. The Restabilization Reserve Account shall be an interest-bearing account which meets the standards for custodial accounts as required by Lender from time to time. Lender shall not be responsible for any losses resulting from the investment of the Restabilization Reserve Account Funds or for obtaining any specific level or percentage of earnings on such investment. All interest earned on the Restabilization Reserve Account Funds shall be added to and become part of such Restabilization Reserve Account; provided, however, if applicable law requires, and so long as no Event of Default has occurred and is continuing under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Restabilization Reserve Account not less frequently than the Restabilization Reserve Account Interest Disbursement Frequency. In no event shall Lender be obligated to disburse funds from the Restabilization Reserve Account if (A) an Event of Default has occurred and is continuing at the time the disbursement request is made or (B) an Event of Default has occurred at any time during the applicable Statement Period, or during the period between the end of the Statement Period and the date of Lender’s determination under Section [\_\_].02(a)(6) (Determination of Sustaining Occupancy).

**(2)** **Disbursements from Restabilization Reserve Account.**

(A) In the event of a HAP Contract Delay, upon a written request from Borrower (in accordance with the terms of Section [\_\_].02(a)(3) (Disbursement Requests) below) and satisfaction of the requirements set forth in this Section [\_\_].02(a)(2) (Disbursements from Restabilization Reserve Account), Lender shall disburse funds from the Restabilization Reserve Account to pay a Shortfall or for the payment of any other expenses that Lender deems necessary or desirable to be incurred in connection with the Mortgaged Property. Subject to conditions set forth in Section [\_\_].02(a)(3) (Disbursement Requests) below with respect to any P/I Shortfall, Lender shall make a Shortfall disbursement from the Restabilization Reserve Account and apply it to such P/I Shortfall. As for any other Shortfall, and subject to the conditions set forth in Section [\_\_].02(a)(3) (Disbursement Requests) below, Lender shall make a disbursement from the Restabilization Reserve Account to either (i) apply such disbursement against Borrower’s obligations under the Loan Documents, or (ii) forward such disbursement to Borrower to be applied toward such Shortfall.

(B) Nothing in this Loan Agreement shall obligate Lender to apply all or any portion of the Restabilization Reserve Account Funds to cure any Event of Default or to reduce the Indebtedness.

(C) Lender shall not disburse funds from the Restabilization Reserve Account for any costs which are to be reimbursed from any Reserve/Escrow Account or other Collateral Account. Disbursement from the Restabilization Reserve Account shall not be made more frequently than once a month.

### **(3) Disbursement Requests.**

(A) Each request for disbursement from the Restabilization Reserve Account shall be in writing and must be received by Lender no later than ten (10) Business Days before the requested date of disbursement (or with respect to any P/I Shortfall, ten (10) Business Days before the next Monthly Debt Service Payment date). Each request shall:

(i) specify the amount of the disbursement that Borrower requires to cover the Shortfall;

(ii) unless already delivered to Lender, include certified current financial statements from Borrower’s operation of the Mortgaged Property, for the prior month, and reconciled bank statements for the three (3) months preceding such request;

(iii) a written explanation of the circumstances causing such Shortfall, together with Borrower’s written plans, to the extent available, to correct such circumstances;

(iv) a certification by Borrower that no Event of Default has occurred and is continuing under the Loan Documents (other than an Event of Default that would be cured with the disbursement to fund the Shortfall); and

(v) such other information regarding the Mortgaged Property as Lender reasonably requests (collectively, the “**Disbursement Request Supporting Information**”).

(B) Lender shall review the Disbursement Request Supporting Information to verify the amount of the Shortfall. Lender may adjust the requested amount of the disbursement from the Restabilization Reserve Account if Borrower’s calculation of the amount of the Shortfall or the required disbursement is incorrect.

(C) Borrower hereby acknowledges and agrees that any disbursement from the Restabilization Reserve Account by Lender shall be in accordance with the terms set forth in this Section [\_\_].02(a) (Accounts, Deposits and Disbursements). Borrower authorizes and directs Lender to make disbursements from the Restabilization Reserve Account and to apply such disbursements against Shortfalls. All disbursements shall be expressly conditioned upon no Event of Default (other than an Event of Default that would be cured with the requested disbursement) or event or condition which, with the giving of notice or the passage of time, or both, would give rise to an Event of Default (other than any resulting Event of Default that would be cured with the requested disbursement), existing at either the time Borrower requests a disbursement from the Restabilization Reserve Account or the time of such disbursement. Borrower is and shall remain obligated and responsible for the payment of all amounts due under the Loan Documents regardless of whether any disbursements from the Restabilization Reserve Account are made by Lender pursuant to the terms of this Loan Agreement.

**(4) Replenishment of Restabilization Reserve Account.**

Upon determination by Lender that (A) the balance in the Restabilization Reserve Account is insufficient, and (B) the Mortgaged Property is generating sufficient cash flow from operations, following a disbursement by Lender pursuant to Section [\_\_].02(a)(3) (Disbursement Requests) above or pursuant to Section [\_\_].02(a)(7) (Review of Funding Requirement) below, Borrower shall pay to Lender an additional deposit into the Restabilization Reserve Account, as determined by Lender.

#### **(5) Final Disbursements.**

(A) Unless previously released or applied by Lender pursuant to the terms of this Article [\_\_] (Restabilization Reserve), Lender shall disburse to Borrower any and all amounts then remaining in the Restabilization Reserve Account within ten (10) days following the earliest to occur of:

(i) Lender’s receipt of written evidence that the HAP Contract has been extended by HUD through the Maturity Date, and so long as no Event of Default has occurred and is continuing;

(ii) Lender’s determination that the Mortgaged Property has achieved Sustaining Occupancy in accordance with Section [\_\_].02(a)(6) (Determination of Sustaining Occupancy), and so long as no Event of Default has occurred and is continuing; or

(iii) Borrower’s payment in full of the Indebtedness and release by Lender of the Lien of the Security Instrument.

**(6) Determination of Sustaining Occupancy.**

(A) Borrower’s request for final disbursement from the Restabilization Reserve Account must be delivered in writing and must be accompanied by:

(i) a Rent Roll;

(ii) financial statements from Borrower’s operation of the Mortgaged Property for the most recent calendar year prepared in a manner consistent with the annual financial statements (if any) previously delivered by Borrower, and delivered to Lender no later than one hundred twenty (120) days after the end of such calendar year; and

(iii) at Lender’s request, any other information prepared or used by Borrower in connection with the operation of the Mortgaged Property.

(B) Lender’s decision to release the Restabilization Reserve Account Funds shall be subject to a satisfactory review by Lender of (i) the Rent Roll; (ii) a physical inspection of the Mortgaged Property; (iii) the general management and operations of the Mortgaged Property; and (iv) such other information, due diligence or inspections that Lender shall require in order to determine or verify income, expenses, vacancies, collection loss and concession information. Borrower shall cooperate with Lender and shall supply all financial and other information required by Lender for Lender to make its determination under this Section [\_\_].02(a)(6) (Determination of Sustaining Occupancy).

(C) For purposes of determining whether the Mortgaged Property has complied with clause (c) of the definition of Sustaining Occupancy, Lender shall calculate the Debt Service Coverage Ratio by dividing the Net Cash Flow by the annual principal and interest payments calculated at the Interest Rate if a fixed rate loan or at the underwritten interest rate if an adjustable rate loan.

**(7) Review of Funding Requirement.**

(A) If the HAP Contract is replaced or renewed with another project-based housing assistance payment contract, Lender may review the amounts on deposit, if any, in the Restabilization Reserve Account and the related contingencies which may arise during the remaining Loan Term. Based upon that review, Lender may require an additional deposit to the Restabilization Reserve Account.

(B) In connection with any Transfer of the Mortgaged Property, or any Transfer of an ownership interest in Borrower, Guarantor or Key Principal that requires Lender’s consent, Lender may review the amounts on deposit, if any, in the Restabilization Reserve Account and the related contingencies which may arise during the remaining Loan Term. Based upon that review, Lender may require an additional deposit to the Restabilization Reserve Account as a condition to Lender’s consent to such Transfer. In all events, the transferee shall be required to assume Borrower’s duties and obligations under this Loan Agreement.

### **(b) Lender as Attorney-In-Fact.**

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

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