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

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Phased Properties – One-Way Cross)**

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 deleting the definition of “Loan Documents” and adding the following in lieu thereof:

“**Loan Documents**” means the Note, the Loan Agreement, the Security Instrument, the Environmental Indemnity Agreement, the Guaranty, all guaranties, all indemnity agreements, all Collateral Agreements, all O&M Plans, the Other Loan Documents, each Other Security Instrument, and any other documents now or in the future executed by Borrower, Future Borrower, Guarantor, Key Principal, any guarantor, or any other person in connection with the Mortgage Loan or any Other Loan, as such documents may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

1. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

“**Borrower Projects**” means all of the properties owned by Borrower or Future Borrower, as described on Exhibit [ ], attached hereto, together with the Mortgaged Property.

“**Future Borrower**” means Borrower Affiliate or a Person Controlled by Key Principal.

“**Other Loan Documents**” means each Other Security Instrument and any other loan documents, including any loan agreement or note evidencing any Other Loan.

“**Other Loan**” means, individually and collectively, each additional loan extended from Lender to Borrower or Future Borrower, as described on Exhibit [ ], attached hereto.

“**Other Security Instrument**” means, individually and collectively, each multifamily mortgage, deed of trust or deed to secure debt encumbering each of the Borrower Projects (other than the Mortgaged Property) securing each Other Loan.

**[NOTE TO DRAFTER: INCLUDE IF APPLICABLE, AND SPECIFICALLY TAILOR DEFINITION TO RECIPROCAL EASEMENT AGREEMENT, COVENANTS, ETC. IN PLACE RELATED TO PHASED PROPERTIES]** [“**Reciprocal Easement Agreement**” means that certain [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] dated [\_\_\_\_\_\_\_\_\_\_\_] and recorded [\_\_\_\_\_\_\_\_\_\_\_] among the land records of the Property Jurisdiction.]

1. Section 14.01(a) (Automatic Events of Default) is hereby amended to add the following new section to the end thereof:

[(\_\_)] any “Event of Default” (as defined in the Other Loan Documents) under any Other Loan Document.

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

**ARTICLE [\_\_\_] – PHASED PROPERTIES CROSS PROVISIONS**

**Section [\_\_].01 Prohibition of Individual Releases.**

The Mortgaged Property may not be released from the cross-default provisions of this Loan Agreement and the Security Instrument except upon payment in full of the Indebtedness.

**Section [\_\_].02 Transfers and Assumptions; Due on Sale**

There shall be no Transfer of any Borrower Projects and no assumption of the Mortgage Loan or any Other Loan except for simultaneous (a) Transfers of all Borrower Projects to either one new borrower or multiple borrowers under common Control and (b) assumptions of the Mortgage Loan and the Other Loan by either one Borrower or multiple borrowers under common Control, all in compliance with the terms of the Loan Documents and Other Loan Documents. In the event of a breach of this Section [\_\_].02 (Transfers and Assumptions; Due on Sale), Lender may declare the entire Indebtedness immediately due and payable.

**Section [\_\_].03 [NOTE TO DRAFTER: INCLUDE IF APPLICABLE][Reciprocal Easement Agreement.][Intentionally Deleted.]**

[Borrower shall not amend, restate, terminate, or otherwise modify the Reciprocal Easement Agreement without the prior written consent of Lender.]

**[NOTE TO DRAFTER: INCLUDE THE FOLLOWING ONLY IF ANY CROSSED PROPERTY IS LOCATED IN CALIFORNIA:]**

**Section [\_\_].04 California Specific Provisions.**

To the extent that any Security Instrument secures the obligations of a Borrower that is not a party to such Security Instrument (the “**Other Borrower Secured Obligation**”), or to the extent that a Borrower has guaranteed the debt of another Borrower pursuant to Article 3 (Personal Liability) of this Loan Agreement, the Borrower who executed such Security Instrument or guaranteed such debt (the “**Waiving Borrower**”) hereby agrees, to the extent permitted by law, to the provisions of this Section [\_\_].04 (California Specific Provisions). The references to the California statutes below shall apply to any Security Instrument securing or encumbering a Mortgaged Property located in California:

* + 1. The Waiving Borrower hereby waives any right it may now or hereafter have to require the beneficiary, assignee or other secured party under any Loan Document, as a condition to the exercise of any remedy or other right against it thereunder or under any other Loan Document executed by the Waiving Borrower in connection with the Other Borrower Secured Obligation: to proceed against any other Borrower or any other Person, or against any other collateral assigned to Lender by any Borrower or any other Person; to pursue any other right or remedy in Lender’s power; to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Lender by any other Borrower or any other Person, or otherwise to comply with Section 9615 of the California Commercial Code (as modified or recodified from time to time) with respect to any such personal property collateral located in the State of California; or to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with the Other Borrower Secured Obligation or any collateral for the Other Borrower Secured Obligation.
    2. The Waiving Borrower hereby waives any defense it may now or hereafter have that relates to: any disability or other defense of any other Borrower or any other Person; the cessation, from any cause other than full performance, of the Other Borrower Secured Obligation; the application of the proceeds of the Other Borrower Secured Obligation, by any other Borrower or any other Person, for purposes other than the purposes represented to the Waiving Borrower by any other Borrower or any other Person, or otherwise intended or understood by the Waiving Borrower or any other Borrower; any act or omission by Lender which directly or indirectly results in or contributes to the release of any other Borrower or any other Person or any collateral for any Other Borrower Secured Obligation; the unenforceability or invalidity of any Loan Document (other than the Security Instrument executed by the Waiving Borrower that secures the Other Borrower Secured Obligation) or guaranty with respect to any Other Borrower Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any Lien (other than the Lien of the Security Instrument executed by the Waiving Borrower that secures the Other Borrower Secured Obligation) which secures any Other Borrower Secured Obligation; any failure of Lender to marshal assets in favor of the Waiving Borrower or any other Person; any modification of any Other Borrower Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; any and all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Waiving Borrower’s rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety’s or guarantor’s obligation in proportion to the principal obligation; any failure of Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person; the election by Lender, in any bankruptcy proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code; any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code; any use of cash collateral under Section 363 of the Bankruptcy Code; or any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person.
    3. The Waiving Borrower further waives any and all rights and defenses that it may have because the Other Borrower Secured Obligation is secured by real property including: Lender may collect from the Waiving Borrower without first foreclosing on any real or personal property collateral pledged by any other Borrower; if Lender forecloses on any real property collateral pledged by any other Borrower, then the amount of the Other Borrower Secured Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and Lender may foreclose on the real property encumbered by the Security Instrument executed by the Waiving Borrower and securing the Other Borrower Secured Obligation, or otherwise collect from the waiving Borrower, even if Lender, by foreclosing on the real property collateral of any one or more of the other Borrowers, has destroyed any right the Waiving Borrower may have to collect from such other Borrowers.
    4. The foregoing is an unconditional and irrevocable waiver of any rights and defenses the Waiving Borrower may have because the Other Borrower Secured Obligation is secured by real property. These rights and defenses being waived by the Waiving Borrower include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Waiving Borrower further expressly waives, except as provided in Section [\_\_].04(g) (California Specific Provisions) below, any and all rights and defenses that might otherwise be available to it under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections;
    5. The Waiving Borrower hereby waives any and all benefits and defenses under California Civil Code Section 2810 and agrees that by doing so the Security Instrument executed by the Waiving Borrower and securing the Other Borrower Secured Obligation shall be and remain in full force and effect even if one or more of the other Borrowers had no liability at the time of incurring the Other Borrower Secured Obligation, or thereafter ceases to be liable. The Waiving Borrower hereby waives any and all benefits and defenses under California Civil Code Section 2809 and agrees that by doing so the Waiving Borrower’s liability may be larger in amount and more burdensome than that of any one or more of the other Borrowers. The Waiving Borrower hereby waives the benefit of all laws that are or might be in conflict with the terms of any of its waivers, and agrees that the Waiving Borrower’s waivers shall not be affected by any circumstances that might otherwise constitute a legal or equitable discharge of a surety or a guarantor. The Waiving Borrower hereby waives the benefits of any right of discharge and all other rights and defenses under any and all statutes or other laws relating to guarantors or sureties, to the fullest extent permitted by law, diligence in collecting the Other Borrower Secured Obligation, presentment, demand for payment, protest, all notices with respect to the Other Borrower Secured Obligation that may be required by statute, rule of law or otherwise to preserve Lender’s rights against the Waiving Borrower hereunder, including notice of acceptance, notice of any amendment of the Loan Documents evidencing the Other Borrower Secured Obligation, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, notice of the incurring by any of the other Borrowers of any obligation or indebtedness and all rights to require Lender to proceed against any of the other Borrowers, proceed against any general partner of any of the other Borrowers, proceed against or exhaust any collateral held by Lender to secure the Other Borrower Secured Obligation, or if any of the other Borrowers is a partnership, pursue any other remedy it may have against any of the other Borrowers, or any general partner of the other Borrower, including any and all benefits under California Civil Code Sections 2845, 2849 and 2850;
    6. The Waiving Borrower understands that the exercise by Lender of certain rights and remedies contained in a Security Instrument executed by any other Borrower (such as a non-judicial foreclosure sale) may affect or eliminate the Waiving Borrower’s right of subrogation against such other Borrower and that the Waiving Borrower may therefore incur a partially or totally non-reimbursable liability. Nevertheless, the Waiving Borrower hereby authorizes and empowers Lender to exercise, in its sole and absolute discretion, any right or remedy, or any combination thereof, that may then be available, since it is the intent and purpose of the Waiving Borrower that its waivers shall be absolute, independent and unconditional under any and all circumstances;
    7. In accordance with Section 2856 of the California Civil Code, the Waiving Borrower also waives any right or defense based upon an election of remedies by Lender, even though such election (e.g., non-judicial foreclosure with respect to any collateral held by Lender to secure repayment of the Other Borrower Secured Obligation) destroys or otherwise impairs the subrogation rights of the Waiving Borrower to any right to proceed against one or more of the other Borrowers for reimbursement, or both, by operation of Section 580d of the California Code of Civil Procedure or otherwise;
    8. In accordance with Section 2856 of the California Civil Code, the Waiving Borrower waives any and all other rights and defenses available to the Waiving Borrower by reason of Sections 2787 through 2855, inclusive, of the California Civil Code, including any and all rights or defenses the Waiving Borrower may have by reason of protection afforded to one or more of the other Borrowers with respect to the applicable Other Borrower Secured Obligation pursuant to the anti-deficiency or other laws of the State of California limiting or discharging such Other Borrower Secured Obligation, including Sections 580a, 580b, 580d, and 726 of the California Code of Civil Procedure;
    9. In accordance with Section 2856 of the California Civil Code and pursuant to any other applicable law, the Waiving Borrower agrees to withhold the exercise of any and all subrogation, contribution and reimbursement rights against all other Borrowers, against any other Person, and against any collateral or security for the Other Borrower Secured Obligation, including any such rights pursuant to Sections 2847 and 2848 of the California Civil Code, until the Other Borrower Secured Obligation has been indefeasibly paid and satisfied in full, all obligations owed to Lender under the Loan Documents have been fully performed, and Lender has released, transferred or disposed of all of its right, title and interest in such collateral or security;
    10. Each Borrower hereby irrevocably and unconditionally agrees that, notwithstanding Section [\_\_].04(g) (California Specific Provisions) hereof, in the event, and to the extent, that its agreement and waiver set forth in Section [\_\_].04(g) (California Specific Provisions) is found by a court of competent jurisdiction to be void or voidable for any reason and such Borrower has any subrogation or other rights against any other Borrower, any such claims, direct or indirect, that such Borrower may have by subrogation rights or other form of reimbursement, contribution or indemnity, against any other Borrower or to any security or any such Borrower, shall be, and such rights, claims and indebtedness are hereby, deferred, postponed and fully subordinated in time and right of payment to the prior payment, performance and satisfaction in full of the Indebtedness. Until payment and performance in full with interest (including post-petition interest in any case under any chapter of the Bankruptcy Code) of the Indebtedness, each Borrower agrees not to accept any payment or satisfaction of any kind of indebtedness of any other Borrower in respect of any such subrogation rights arising by virtue of payments made pursuant to Article 3 (Personal Liability) of this Loan Agreement, and hereby assigns such rights or indebtedness to Lender, including the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code and the right to vote on any plan of reorganization. In the event that any payment on account of any such subrogation rights shall be received by any Borrower in violation of the foregoing, such payment shall be held in trust for the benefit of Lender, and any amount so collected must be turned over to Lender for, at Lender’s option, application to the Indebtedness;
    11. At any time without notice to the Waiving Borrower, and without affecting or prejudicing the right of Lender to proceed against the collateral described in any Loan Document executed by the Waiving Borrower and securing the Other Borrower Secured Obligation, the time for payment of the principal of or interest on, or the performance of, the Other Borrower Secured Obligation may be extended or the Other Borrower Secured Obligation may be renewed in whole or in part; the time for any other Borrower’s performance of or compliance with any covenant or agreement contained in the Loan Documents evidencing the Other Borrower Secured Obligation, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; the maturity of the Other Borrower Secured Obligation may be accelerated as provided in the Loan Documents; the Loan Documents may be modified or amended by Lender and each Borrower in any respect, including an increase in the principal amount; and any security for the Other Borrower Secured Obligation may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Other Borrower Secured Obligation; and
    12. It is agreed among each Borrower and Lender that all of the foregoing waivers are of the essence of the transaction contemplated by the Loan Documents and that, but for the provisions of Article 3 (Personal Liability) of this Loan Agreement and such waivers, Lender would decline to enter into the Loan Documents.

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

Borrower Initials

**EXHIBIT [\_\_]**

**TO**

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Phased Properties – One-Way Cross)**

**[Borrower Projects and Other Loan]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Property Name and Address** | **Borrower Name** | **Loan Amount** | **Effective Date** |
| **[\_\_\_\_\_\_\_]** | **[\_\_\_\_\_\_\_]** | **[\_\_\_\_\_\_\_]** | **[\_\_\_\_\_\_\_]** |
| **[\_\_\_\_\_\_\_]** | **[\_\_\_\_\_\_\_]** | **[\_\_\_\_\_\_\_]** | **[\_\_\_\_\_\_\_]** |