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

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Co-Borrowers)**

**[DRAFTING NOTE: BORROWER AND ANY PERSON CONTROLLING BORROWER MUST COMPLY WITH THE SPECIAL PURPOSE ENTITY (SPE) REPRESENTATIONS AND COVENANTS IN THIS FORM 6274 IN ACCORDANCE WITH THE FOLLOWING GUIDANCE. LENDER MUST determine WHETHER BORROWER IS REQUIRED TO BE a SINGLE PURPOSE ENTITY IN COMPLIANCE WITH THE REPRESENTATIONS AND GUIDANCE BELOW. IN ADDITION, LENDER MUST DETERMINE WHETHER BORROWER’S managing member, sole member, OR general partner (AS APPLICABLE) AND ANY OF THEIR CONTROLLING OWNERS (AS APPLICABLE) ARE REQUIRED TO BE SINGLE PURPOSE ENTITies (or maintain springing members). FOR EACH SINGLE PURPOSE ENTITY, LENDER MUST CONFIRM THAT SUCH ENTIty’s ORGANIZATIONAL DOCUMENTS INCLUDE THE SINGLE PURPOSE COVENANTS SET FORTH HEREIN. WHERE SPRINGING MEMBER(S) ARE REQUIRED, BORROWER’S LOCAL COUNSEL MUST CONFIRM THAT SUCH ENTITy’s OPERATING AGREEMENT INCLUDES APPROPRIATE “SPRINGING” MEMBER LANGUAGE AND, FOR ANY non-delaware llc, PROvIDE AN OPINION THAT THE OPERATING AGREEMENT IS ENFORCEABLE AGAINST BORROWER AND SOLE MEMBER. LENDER MUST REVIEW BORROWER’S AND ALL CONTROLLING OWNERS’ ORGANIZATIONAL DOCUMENTS TO MAKE THE DETERMINATION WHETHER THIS MODIFICATION MAY BE USED. IF BORROWER IS REQUIRED TO BE AN SPE FOLLOW THE GUIDANCE BELOW.]**

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| --- | --- |
| If any Borrower is a corporation or multi-member LLC | The shareholders/members of such Borrower are not required to be SPEs. |
| If any Borrower is an LP | The GP of such Borrower must also be an SPE. GPs may not be individuals or trusts.  If such Borrower’s GP is also an LP, the GP of that LP must also be an SPE (SPE requirement continues up the chain for each GP that is an LP until a GP is a multi-member LLC or a corporation).  If Borrower’s GP is a single member LLC, follow the rules below. |
| If any Borrower is a single member LLC | The sole member of such Borrower is required to be an SPE unless:  (A)(i) Borrower maintains a springing member (two, if any springing member is an individual), **AND** (ii) Borrower’s LLC operating agreement contains language to prevent premature dissolution/liquidation, **AND** (iii) for non-Delaware single-member LLCs only, Borrower’s counsel provides an opinion (acceptable to Lender and Fannie Mae counsel) that the LLC operating agreement relating to the springing member and dissolution is sufficient to prevent dissolution after the sole member ceases to be a member under applicable law and is enforceable against Borrower and its sole member; **OR** (B) the sole member is an individual and Borrower maintains a springing member (two, if any springing member is an individual).  Note that Borrower may, alternatively, add an additional regular member and become a multi-member LLC. Controlling Trusts are not required to be SPEs. |

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 amending and restating the following definitions in their entirety:

“**Mortgaged Property**” individually means each Multifamily Project identified on the Summary of Loan Terms (and further defined in the Security Instrument) and collectively means all Multifamily Projects.

“**Security Instrument**” means one or more multifamily mortgages, deeds of trust or deeds to secure debt executed and delivered by Borrower as security for the Mortgage Loan and encumbering the Mortgaged Property, including all riders or schedules attached thereto, as the same 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 Agent**” means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]. **[DRAFTING NOTE**: **Insert the entity appointed by Borrower TO SERVE AS BORROWER AGENT.]**

“C**ontribution Agreement**” means an agreement entered into by each Borrower that allocates the risks and burdens associated with the Loan Agreement to minimize the likelihood that any Borrower will be rendered insolvent solely due to Borrower’s entering into this Loan Agreement, which Contribution Agreement shall include (1) the allocable Loan Amount and loan percentage attributed to each Borrower as of the Effective Date as determined by Borrower, (2) an agreement by each Borrower to reimburse any payment made under the Loan Agreement by any other Borrower in excess of the allocable Loan Amount (or commensurate percentage of the outstanding Loan Amount as the Mortgage Loan is repaid) attributed to such Borrower, (3) any other provisions required by applicable law for enforceability against each Borrower, and (4) any other provisions that may be required by Lender.

“**Fraudulent Transfer Laws**” has the meaning set forth in Section [\_\_].10.

“**Hedging Arrangement**” means any interest rate swap, interest rate cap or other arrangement, contractual or otherwise, which has the effect of an interest rate swap or interest rate cap or which otherwise (directly or indirectly, derivatively, or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

“**Other Borrower Secured Obligation**” has the meaning set forth in Section [\_\_].05.

“**Rescinded Payment**” has the meaning set forth in Section [\_\_].09(b).

“**Security Documents**” means the Security Instruments and any other documents executed by Borrower or Guarantor from time to time to secure any of Borrower’s or Guarantor’s obligations under the Loan Documents, as the same may be amended, restated, modified, or supplemented from time to time.

“**Subordinated Obligations**” has the meaning set forth in Section [\_\_].08(a).

“**Waiving Borrower**” has the meaning set forth in Section [\_\_].05.

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

[(\_\_)] failure to comply with each of the single purpose requirements of Section 4.02(d)(3), (4), (7)-(12), and (14)-(16) **[DRAFTING NOTE: INSERT “and (18)” IF SPRINGING MEMBERS OR MULTI-MEMBERS ARE REQUIRED]** of this Loan Agreement (subject to possible full recourse liability as set forth in Section 3.02(b)(1)); provided, however, no such recourse liability shall arise until the expiration of the cure periods set forth in this Section 3.02(a)[(\_\_)] (Personal Liability Based on Lender’s Loss). Borrower must deliver on an annual basis or upon Lender’s written request, a certification as to compliance with the covenants set forth in Section 4.02(d). If Borrower breaches a covenant set forth in Section 4.02(d), then, if such breach can be cured, Borrower shall have thirty (30) days from the earliest of (A) the date of delivery of the annual certification delivered pursuant to Section 8.02(b) indicating such breach, (B) the date Lender notices Borrower of such breach, or (C) the date Borrower discovers such breach, to cure such breach, provided that if such breach can be cured but cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such breach within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such breach, it being agreed that no such extension shall be for a period in excess of sixty (60) days for any individual breach.

1. Section 3.02(b) (Full Personal Liability for Mortgage Loan) of the Loan Agreement is amended by replacing Section 3.02(b)(1) thereof with the following:

(1) failure to comply with each of the single purpose requirements of:

(A) Section 4.02(d)(1), (2), (5), (6), (13), and (17) of this Loan Agreement; and

(B) Section 4.02(d)(3), (4), (7)-(12), [and] (14)-(16) **[DRAFTING NOTE: INSERT “and (18)” IF SPRINGING MEMBERS OR MULTI-MEMBERS ARE REQUIRED]** of this Loan Agreement and, pursuant to a final non-appealable court order, a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of Borrower with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

1. Section 4.01(a) (Due Organization and Qualification; Organizational Agreements) of the Loan Agreement is amended by adding the following provision to the end thereof:

[(\_\_)] The organizational documents of Borrower **[and Borrower’s]** **[managing member] [sole member] [general partner] [**and**] [insert other entities controlling Borrower] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES IN ACCORDANCE WITH THE SPE GUIDANCE ABOVE]** require Borrower **[and Borrower’s]** **[managing member] [sole member] [general partner] [**and**] [insert other entities controlling Borrower] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES IN ACCORDANCE WITH THE SPE GUIDANCE ABOVE]** to comply with the provisions of Section 4.02(d) of this Loan Agreement.

1. Section 4.01(h) (Borrower Status – Representations and Warranties – Borrower Single Asset Status) of the Loan Agreement is deleted in its entirety and replaced with the following:

**(h) Single Purpose Status.**

Each Borrower and its **[managing member] [sole member] [general partner] [other controlling entities] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES IN ACCORDANCE WITH THE SPE GUIDANCE ABOVE]** at all times since its formation:

* + - 1. has not acquired, held, owned, leased, developed, or improved, and does not own or lease any real property, personal property, or assets other than the Mortgaged Property or equity interests in a Person that owns the Mortgaged Property;
      2. has not acquired or owned and does not own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property or equity interests in a Person that owns the Mortgaged Property;
      3. has no material financial obligation under or secured by any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, or other agreement or instrument to which Borrower is a party, or by which Borrower is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:
         1. with respect to each Mortgaged Property, Permitted Equipment Financing **[DRAFTING NOTE: IN THE SUMMARY OF LOAN TERMS LIMIT “MAXIMUM PERMITTED EQUIPMENT FINANCING” TO 2% OF THE ALLOCABLE LOAN AMOUNT FOR EACH MORTGAGED PROPERTY]** and unsecured trade payables incurred in the ordinary course of the operation of such Mortgaged Property (exclusive of amounts for rehabilitation, restoration, repairs, or replacements of such Mortgaged Property) that are not evidenced by a promissory note, are payable within sixty (60) days of the date incurred, and as of the Effective Date, do not exceed, in the aggregate, four percent (4%) of the allocable Loan Amount attributed to such Mortgaged Property;
         2. if the Security Instrument grants a lien on a leasehold estate, Borrower’s obligations as lessee under the ground lease creating such leasehold estate;
         3. obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents; and
         4. obligations under the Permitted Encumbrances;
      4. has maintained its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person and has not listed its assets on the financial statement of any other Person (unless Borrower’s assets have been included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);
      5. has not commingled its assets or funds with those of any other Person (other than with other Borrowers in connection with the Mortgage Loan), and has held all its assets or funds under its own name, unless such assets or funds can easily be segregated and identified in the ordinary course of business and in such a manner that it will not be costly or difficult to segregate, ascertain, or identify its individual assets from those of any other Person;
      6. has been adequately capitalized in light of its contemplated business operations;
      7. has not assumed, guaranteed, or become obligated for the liabilities or obligations of any other Person or pledged its assets for the benefit of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement (for Mortgaged Properties in New York) or similar instrument), or held out its credit as being available to satisfy the obligations of any other Person;
      8. has not made loans or advances to any other Person;
      9. has not entered into, and is not a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm’s-length transaction with an unrelated third party;
      10. has not sought and has no plans to Divide at any time during the Loan Term;
      11. has not acquired obligations or securities of any other Person;
      12. has paid its own liabilities, including the salaries of its own employees, if any, from its own funds and maintained a sufficient number of employees in light of its contemplated business operations;
      13. has not failed to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or failed to correct any known misunderstanding regarding its separate identity;
      14. has allocated fairly and reasonably any overhead for shared expenses;
      15. has maintained its existence as an entity duly organized, validly existing, and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and has done all things necessary to observe organizational formalities;
      16. has not, other than the **[managing member’s] [sole member’s] [general partner’s] [other controlling entities’] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES IN ACCORDANCE WITH THE SPE GUIDANCE ABOVE]** ownership interest in Borrower, owned any subsidiary or made any investment in any Person without the prior written consent of Lender; and
      17. without the prior written consent of Lender, or unless otherwise required or permitted by an interest rate cap security agreement approved by Lender, has not entered into, or guaranteed, provided security for, or otherwise undertaken any form of contingent obligation with respect to any Hedging Arrangement.

1. Section 4.02(a)(1) (Maintenance of Existence; Organizational Documents) of the Loan Agreement is deleted in its entirety and replaced with the following:

(1) make or allow any material change to the organizational documents or organizational structure of Borrower, including changes relating to the Control of Borrower or changes relating to compliance with the provisions of Section 4.02(d), or

1. Section 4.02(d) (Borrower Status – Covenants – Borrower Single Asset Status) of the Loan Agreement is deleted in its entirety and replaced with the following:

**(d) Single Purpose Status.**

Each Borrower **[and its]** **[managing member] [sole member] [general partner] [**and**] [insert other entities controlling Borrower] [DRAFTING NOTE: REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES IN ACCORDANCE WITH THE SPE GUIDANCE ABOVE]**:

* + - 1. shall not acquire, hold, develop, lease, or improve any real property, personal property, or assets other than the Mortgaged Property, or equity interests in a Person that owns the Mortgaged Property;
      2. shall not acquire, own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property or equity interests in a Person that owns the Mortgaged Property;
      3. shall not commingle its assets or funds with those of any other Person (other than with other Borrowers in connection with the Mortgage Loan), unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;
      4. shall maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless Borrower’s assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);
      5. shall have no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, other agreement or instrument to which Borrower is a party or by which Borrower is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:
         1. with respect to each Mortgaged Property, Permitted Equipment Financing or unsecured trade payables incurred in the ordinary course of the operation of such Mortgaged Property (exclusive of amounts to be paid out of the Replacement Reserve Account or Repairs Escrow Account, or for rehabilitation, restoration, repairs, or replacements of such Mortgaged Property or otherwise approved by Lender) so long as such trade payables are not evidenced by a promissory note, are payable within sixty (60) days of the date incurred, and as of any date, do not exceed, in the aggregate, two percent (2%) of the allocable Loan Amount attributed to such Mortgaged Property; provided, however, that otherwise compliant outstanding trade payables may exceed two percent (2%) up to an aggregate amount of four percent (4%) of the allocable Loan Amount attributed to such Mortgaged Property for a period (beginning on or after the Effective Date) not to exceed ninety (90) consecutive days;
         2. if the Security Instrument grants a lien on a leasehold estate, Borrower’s obligations as lessee under the ground lease creating such leasehold estate;
         3. obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents; and
         4. obligations under the Permitted Encumbrances;
      6. shall not assume, guaranty, or become obligated for the liabilities or obligations of any other Person, or pledge its assets for the benefit of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement (for Mortgaged Properties in New York) or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;
      7. shall not make loans or advances to any other Person;
      8. shall not enter into or become a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm’s‑length transaction with an unrelated third party;
      9. shall not acquire obligations or securities of any other Person;
      10. shall pay (or shall cause the property manager on behalf of Borrower from Borrower’s own funds to pay) its own liabilities, including the salaries of its own employees, if any, from its own funds and maintain a sufficient number of employees in light of its contemplated business operations;
      11. shall not fail to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;
      12. shall allocate fairly and reasonably any overhead for shared expenses;
      13. shall maintain its existence as an entity duly organized and validly existing, under the laws of the jurisdiction of its formation;
      14. shall be in good standing (if applicable) under the laws of the jurisdiction of its formation or organization;
      15. shall not**[, other than** **[managing member’s] [sole member’s] [general partner’s] [other controlling entities’] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES IN ACCORDANCE WITH THE SPE GUIDANCE ABOVE]** **ownership interest in Borrower,]** own any subsidiary or make any investment in any Person without the prior written consent of Lender;
      16. without the prior written consent of Lender, or unless otherwise required or permitted by an interest rate cap security agreement approved by Lender, shall not enter into or guarantee, provide security for, or otherwise undertake any form of contingent obligation with respect to any Hedging Arrangement;
      17. shall not Divide; and
      18. **[DRAFTING NOTE: INSERT THIS SUBSECTION (18) IF AN LLC BORROWER OR ANY CONTROLLING LLC ENTITY IS REQUIRED TO HAVE ONE OR MORE SPRINGING MEMBERS]** if **[Borrower,]** **[Borrower’s]** **[managing member] [sole member] [**and**] [insert other LLC entities controlling Borrower] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES]** has [have] only one member as of the Effective Date, **[Borrower]** **[Borrower’s]** **[managing member] [sole member] [**and**] [insert other LLC entities controlling Borrower] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITY(IES)]** shall maintain organizational documents which provide that upon the occurrence of any event that causes its sole member to cease to be a member while the Mortgage Loan is outstanding, (A) at least one of two special members will automatically be admitted as the sole member of **[Borrower] [such entity]** and (B) such admittance will preserve and continue the existence of **[Borrower] [such entity]** without dissolution.

**OR**

**[DRAFTING NOTE: INSERT THIS SUBSECTION (18) IF AN LLC BORROWER OR ANY CONTROLLING LLC ENTITY IS REQUIRED TO MAINTAIN TWO OR MORE MEMBERS TO COMPLY WITH THE SPE GUIDANCE]** if **[Borrower]** **[Borrower’s]** **[managing member] [sole member] [**and**] [insert other LLC entities controlling Borrower] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITIES]** has two or more members as of the Effective Date, **[Borrower]** **[managing member] [sole member] [other controlling entities] [DRAFTING NOTE:** **REVIEW ORGANIZATIONAL STRUCTURE AND INSERT APPROPRIATE ENTITY(IES)]** shall maintain at least two members at all times and at no time shall become a single-member limited liability company.

1. Section 8.02(b) (Items to Furnish to Lender) of the Loan Agreement is hereby amended by adding the following provision to the end thereof:

[(\_\_)] Borrower shall furnish to Lender within one hundred twenty (120) days after the end of each Calendar Year, or upon Lender’s written request, a certification stating whether or not Borrower **[and DRAFTING NOTE: INSERT ANY CONTROLLING ENTITIES REQUIRED TO COMPLY WITH THE SPE GUIDANCE ABOVE]** is **[are]** in compliance with the covenants set forth in Section 4.02(d) and, if not in compliance, setting forth the particulars of such noncompliance and the steps that Borrower **[and DRAFTING NOTE: INSERT ANY CONTROLLING ENTITIES REQUIRED TO COMPLY WITH THE SPE GUIDANCE ABOVE]** has **[have]** taken, are taking or intend to take to cure such noncompliance.

1. Section 11.02(b)(2) (Interests in Borrower, Key Principal, or Guarantor) of the Loan Agreement is deleted in its entirety and replaced with the following:
   * + 1. **Interests in Borrower, Key Principal, or Guarantor.**

Other than a Transfer to which Lender has consented in writing, Borrower shall not Transfer, or cause or permit to be Transferred:

* + - * 1. any direct or indirect ownership interest in any Borrower;
        2. any direct or indirect ownership interest in Key Principal, or Guarantor (if applicable) if such Transfer would cause a change in Control;
        3. a direct or indirect Restricted Ownership Interest in Borrower, Key Principal, or Guarantor (if applicable);
        4. any direct or indirect ownership interest in Key Principal or Guarantor (if applicable) if such Transfer would result in a violation of Section 4.02(b); or
        5. the economic benefits or rights to cash flows attributable to any ownership interest in Borrower, Key Principal, or Guarantor (if applicable) separate from the Transfer of the underlying ownership interest if the Transfer of the underlying ownership interest is prohibited by this Loan Agreement.

Notwithstanding the foregoing, if a Publicly-Held Corporation or a Publicly-Held Trust Controls Borrower, Key Principal, or Guarantor, or owns a direct or indirect Restricted Ownership Interest in Borrower, Key Principal, or Guarantor, a Transfer of any ownership interest in such Publicly-Held Corporation or Publicly-Held Trust shall not be prohibited under this Loan Agreement as long as such Transfer does not result in a conversion of such Publicly-Held Corporation or Publicly-Held Trust to a privately held entity, and Borrower provides written notice to Lender not later than thirty (30) days thereafter of any such Transfer that results in any Person owning ten percent (10%) or more of the ownership interests in such Publicly-Held Corporation or Publicly-Held Trust.

1. Section 11.02(b)(3) (Transfers of Non-Controlling Interests) of the Loan Agreement is deleted in its entirety.
2. **[DRAFTING NOTE: INSERT THE FOLLOWING IF THERE IS MORE THAN ONE SECURITY INSTRUMENT -** Section 14.02(a) (Acceleration; Foreclosure) of the Loan Agreement is hereby designated as subsection (1) and the following is added as a new subsection:

[(\_\_)] In the exercise of its rights and remedies under the Loan Documents, Lender may, except as provided in this Loan Agreement, exercise and perfect any and all of its rights in and under the Loan Documents with regard to any Mortgaged Property without the obligation (but with the right) to exercise and perfect its rights and remedies with respect to any other Mortgaged Property. Any such exercise shall be without regard to any allocable Loan Amount that may be assigned to such Mortgaged Property. Lender may recover an amount equal to the full amount outstanding in respect of the Note in connection with such exercise. Any such amount shall be applied to the Indebtedness as determined by Lender.**]**

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

**ARTICLE [\_\_] – CO-BORROWERS**

**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 and are true and correct.

(a) Each Borrower is obligated under the Note and Loan Documents and is deemed a “Co-Borrower” hereunder. Subject to the terms of this Article [\_\_], each Borrower hereby agrees and consents that the Note and each Security Document shall be cross-defaulted (i.e., a default under the Note, each Security Document or this Loan Agreement shall constitute a default under the Note, each Security Document and under this Loan Agreement) and cross-collateralized (i.e., each Security Instrument shall secure all of Borrower’s obligations under the Note, this Loan Agreement, and the other Loan Documents). Each Borrower further agrees and consents that upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, in its sole and absolute discretion, to exercise any and all rights and remedies in and under any of the Loan Documents, including the right to proceed, at the same or at different times, to foreclose any or all Liens against such collateral (or sell such collateral under power of sale) in accordance with the terms of the Loan Documents, by any proceedings appropriate in the jurisdictions where such collateral is located, and that no enforcement action taking place in any jurisdiction shall preclude or bar enforcement in any other jurisdiction. Any Foreclosure Event brought in any jurisdiction in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that a Foreclosure Event has not been instituted elsewhere on any other part of the collateral for the Indebtedness. No notice, except as may be expressly required by the Loan Documents or by applicable law, shall be required to be given to Borrower in connection with (1) the occurrence of such Event of Default, or (2) Lender’s exercise of any and all of its rights or remedies after the occurrence of such Event of Default. Any such exercise shall be without regard to any allocated loan amount assigned to such Mortgaged Property pursuant to the Contribution Agreement or any other document. Lender may recover an amount equal to the full amount outstanding in respect of the Note in connection with such exercise and any such amount shall be applied to the Indebtedness as determined by Lender pursuant to the terms of the Loan Documents.

(b) The direct and indirect ownership and Control of each Borrower is identical with respect to (1) the identity of each owner, (2) the ownership percentage and/or economic interests of each owner, and (3) the Person(s) that Control Borrower (except that intervening entities may differ across Borrowers provided each such intervening entity is wholly-owned and Controlled by the same ultimate beneficial owners).

(c) [Intentionally Omitted.]

(d) **[DRAFTING NOTE: IF ALL OF THE MORTGAGED PROPERTIES ARE OPERATED AS A SINGLE MULTIFAMILY PROJECT, INSERT THE FOLLOWING:** All Multifamily Projects comprising the Mortgaged Property are operated as a single, integrated multifamily residential property.**]**

**Section [\_\_].02 Covenants Regarding Property Operation**

* 1. If the Mortgaged Property is currently encumbered by reciprocal easements or covenants (between or among any parcels comprising the Mortgaged Property and one or more Borrowers owning each parcel or property) pertaining to the ownership, maintenance, or operation of the Mortgaged Property and/or Improvements, all such reciprocal easements and covenants shall be subject and subordinate to the Lien of the Security Instrument; provided that in the event of a Foreclosure Event, Lender may subordinate the Lien of the Security Instrument to any or all such reciprocal easements or covenants.
  2. If the Mortgaged Property is comprised of more than one parcel or property, each Borrower acknowledges that no individual parcel or property comprising the Mortgaged Property may be separately released from the Lien of the Security Instrument. **[DRAFTING NOTE: IF ALL OF THE MORTGAGED PROPERTIES ARE OPERATED AS A SINGLE MULTIFAMILY PROJECT, INSERT THE FOLLOWING:** The Mortgaged Property shall be operated as a single, integrated multifamily residential project.**]**

**Section [\_\_].03 Borrower Agency Provisions.**

(a) Each Borrower shall irrevocably designate Borrower Agent to be its agent and in such capacity to receive on behalf of Borrower all proceeds, receive all notices on behalf of Borrower under this Loan Agreement, make all requests under this Loan Agreement, and execute, deliver, and receive all instruments, certificates, requests, documents, amendments, writings, and further assurances now or hereafter required hereunder, on behalf of such Borrower, and hereby authorizes Lender to pay over all proceeds hereunder in accordance with the request of Borrower Agent. Each Borrower hereby acknowledges that all notices required to be delivered by Lender to any Borrower shall be delivered to Borrower Agent and thereby shall be deemed to have been received by such Borrower.

(b) The handling of this Loan Agreement as a co-borrowing loan with a Borrower Agent in the manner set forth in this Loan Agreement is solely as an accommodation to each Borrower and Guarantor and is at their mutual request. Lender shall not incur liability to Borrower or Guarantor as a result thereof. To induce Lender to do so and in consideration thereof, each Borrower hereby indemnifies Lender and holds Lender harmless from and against any and all liabilities, expenses, losses, damages, and claims of damage or injury asserted against Lender by any Person arising from or incurred by reason of Borrower Agent handling of the financing arrangements of Borrower as provided herein, reliance by Lender on any request or instruction from Borrower Agent or any other action taken by Lender with respect to this Section [\_\_].03(b) except due to willful misconduct or gross negligence of the indemnified party as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order.

**Section [\_\_].04 Joint and Several Obligation; Cross-Guaranty.**

Notwithstanding anything contained in this Loan Agreement or the other Loan Documents to the contrary (but subject to the provisions of Section 3.01, Section 3.02(a) and Section 3.02(b)), the last sentence of this Section [\_\_].04, and the provisions of Section [\_\_].11 and Section 15.05, each Borrower shall have joint and several liability for the Indebtedness. Each Borrower, on a joint and several basis, hereby irrevocably guarantees on a non-recourse basis, subject to the exceptions to non-recourse provisions of Section 3.01, Section 3.02(a) and Section 3.02(b), to Lender and its successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Indebtedness owed or hereafter owing to Lender by each other Borrower. Each Borrower agrees that its non-recourse guaranty obligation hereunder is an unconditional guaranty of payment and performance and not merely a guaranty of collection. The Indebtedness of each Borrower under this Loan Agreement shall not be subject to any counterclaim, set-off, recoupment, deduction, cross-claim, or defense based upon any claim any Borrower may have against Lender or any other Borrower.

**Section [\_\_].05 Waivers With Respect to Other Borrower Secured Obligation.**

**[DRAFTING NOTE: IF THE MORTGAGED PROPERTY IS LOCATED IN CALIFORNIA, INSERT THE LANGUAGE SET FORTH IN SCHEDULE I ATTACHED HERETO.] [DRAFTING NOTE: IF THE MORTGAGED PROPERTY IS NOT LOCATED IN CALIFORNIA, INSERT THE FOLLOWING:** To the extent that a Security Instrument or any other Loan Document executed by one Borrower secures an obligation of another Borrower (the “**Other Borrower Secured Obligation**”), or to the extent that a Borrower has guaranteed the debt of another Borrower pursuant to this Article [\_\_], each Borrower who executed such Loan Document or guaranteed such debt (the “**Waiving Borrower**”) hereby agrees to the extent permitted by law, to the provisions of this Section [\_\_].05. To the maximum extent permitted by applicable law:

* + - 1. the Waiving Borrower hereby waives any right it may now or hereafter have to require the beneficiary, assignee, or other secured party under such 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: (A) 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; (B) to pursue any other right or remedy in Lender’s power; (C) 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 (D) to make or give (except as otherwise expressly provided in the Security 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: (A) any disability or other defense of any other Borrower or any other Person; (B) the cessation, from any cause other than full performance, of the Other Borrower Secured Obligation; (C) 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; (D) 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; (E) the unenforceability or invalidity of any Security Document or 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; (F) any failure of Lender to marshal assets in favor of the Waiving Borrower or any other Person; (G) any modification of any Other Borrower Secured Obligation, including any renewal, extension, acceleration, or increase in interest rate; (H) any and all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial 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 any applicable law; (I) 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; (J) any failure of Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person; (K) 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; (L) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code; (M) any use of cash collateral under Section 363 of the Bankruptcy Code; or (N) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person. 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; this means, among other things, that: (A) Lender may collect from the Waiving Borrower without first foreclosing on any real or personal property collateral pledged by any other Borrower; (B) if Lender forecloses on any real property collateral pledged by any other Borrower, then (i) 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 (ii) 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. Subject to the last sentence of Section [\_\_].04, the foregoing sentence 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;
      3. the Waiving Borrower hereby waives the benefit of all principles or provisions of law 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 the other Borrower of any obligation or indebtedness and all rights to require Lender to (A) proceed against the other Borrower, (B) proceed against any general partner of the other Borrower, (C) proceed against or exhaust any collateral held by Lender to secure the Other Borrower Secured Obligation, or (D) if the other Borrower is a partnership, pursue any other remedy it may have against the other Borrower, or any general partner of the other Borrower;
      4. 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 nonjudicial 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 nonreimburseable 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;
      5. each Borrower hereby irrevocably and unconditionally agrees that 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, remedies, 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 (1) 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 this Article [\_\_] or otherwise including any other type of payment Borrower may be entitled to from any other Borrower under any other agreement, arrangement, contract, or otherwise, and hereby unconditionally and irrevocably assigns all rights, remedies, actions, claims, votes, payments, and/or indebtedness to Lender, including (A) the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code, and (B) the right to vote on any plan of reorganization; and (2) to stand still with respect to the enforcement of any rights or remedies of any Borrower against any other Borrower and not to take any enforcement action or other action with respect to such rights and remedies. Each Borrower agrees that all payments or other satisfaction any Borrower may be entitled from any other Borrower shall be paid directly to and shall automatically vest in Lender for application to the Indebtedness. 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. Any right to payment of a Borrower that is required to be turned over to Lender shall be subject and subordinate in all respects to the rights and claims of Lender against Borrower under the Loan Documents;
      6. at any time without notice to the Waiving Borrower, and without affecting or prejudicing the right of Lender to proceed against the Mortgaged Property described in any Loan Document executed by the Waiving Borrower and securing the Other Borrower Secured Obligation, (A) 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; (B) 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; (C) the maturity of the Other Borrower Secured Obligation may be accelerated as provided in the related Note or any other related Loan Document; (D) the related Note or any other related Loan Document may be modified or amended by Lender and the applicable other Borrower in any respect, including an increase in the principal amount; and (E) 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;
      7. it is agreed among each Borrower and Lender that all of the foregoing waivers are of the essence of the transaction contemplated by this Loan Agreement and the Loan Documents and that but for the provisions of this Article [\_\_] and such waivers, Lender would decline to enter into this Loan Agreement; and
      8. each Borrower unconditionally and irrevocably subordinates all rights and remedies of any Borrower against any other Borrower, including rights of indemnity or otherwise that may exist under any agreement, at law or otherwise to the lien of the Security Instrument and the other terms and provisions of the Loan Documents.**]**

## **Section [\_\_].06 No Impairment.**

Each Borrower agrees that the provisions of this Article [\_\_] are for the benefit of Lender and its successors and assigns, and nothing herein contained shall impair, as between any other Borrower and Lender, the obligations of such other Borrower under the Loan Documents.

## **Section [\_\_].07 Election of Remedies.**

## (a) Lender, in its discretion, may (1) bring suit against any one or more Borrowers, jointly and severally, without any requirement that Lender first proceed against any other Borrower or any other Person; (2) compromise or settle with any one or more Borrowers, or any other Person, for such consideration as Lender may deem proper; (3) release one or more Borrowers, or any other Person, from liability; and (4) otherwise deal with any Borrower and any other Person, or any one or more of them, in any manner, or resort to any of the Mortgaged Property at any time held by it for performance of the Indebtedness or any other source or means of obtaining payment of the Indebtedness, and no such action shall impair the rights of Lender to collect from any Borrower any amount guaranteed by any Borrower under this Article [\_\_].

## (b) If, in the exercise of any of its rights and remedies, Lender shall forfeit any of its rights or remedies, including its rights to enter a deficiency judgment against any Borrower or any other Person, whether because of any applicable law pertaining to “election of remedies” or the like, each Borrower hereby consents to such action by Lender and waives any claim based upon such action, even if such action by Lender shall result in a full or partial loss of any rights of subrogation that each Borrower might otherwise have had but for such action by Lender. Any election of remedies that results in the denial or impairment of the right of Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower’s obligation to pay the full amount of the Indebtedness. In the event Lender shall bid at any foreclosure or trustee’s sale or at any private sale permitted by law or any of the Loan Documents, Lender may bid all or less than the amount of the Indebtedness and the amount of such bid need not be paid by Lender but shall be credited against the Indebtedness. The amount of the successful bid at any such sale, whether Lender or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Mortgaged Property and the difference between such bid amount and the remaining balance of the Indebtedness shall be conclusively deemed to be the amount of the Indebtedness guaranteed under this Article [\_\_], notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Lender might otherwise be entitled but for such bidding at any such sale.

## **Section [\_\_].08 Subordination of Other Obligations.**

### (a) Each Borrower hereby irrevocably and unconditionally agrees that all amounts payable from time to time to such Borrower by any other Borrower pursuant to any agreement or otherwise, whether secured or unsecured, whether of principal, interest, or otherwise, other than the amounts referred to in this Article [\_\_] (collectively, the “**Subordinated Obligations**”), 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 and to the lien of the Security Instrument and the other terms and provisions of the Loan Documents; provided, however, that payments may be received by any Borrower in accordance with, and only in accordance with, the provisions of Section [\_\_].08 hereof.

### (b) Until the Indebtedness has been finally paid in full or fully performed and all the Loan Documents have been terminated, each Borrower irrevocably and unconditionally agrees that it will not (1) ask, demand, sue for, take, or receive, directly or indirectly, by set-off, redemption, purchase, or in any other manner whatsoever, any payment with respect to, or any security or guaranty for, the whole or any part of the Subordinated Obligations, and in issuing documents, instruments, or agreements of any kind evidencing the Subordinated Obligations, and (2) receive any payment of any kind on account of the Subordinated Obligations, so long as any of the Indebtedness is outstanding or any of the terms and conditions of any of the Loan Documents are in effect; provided, however, that, notwithstanding anything to the contrary contained herein, if no Event of Default (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing under any of the Loan Documents, then payments may be received by such Borrower in respect of the Subordinated Obligations in accordance with the stated terms thereof. Except as aforesaid, each Borrower agrees (i) not to accept any payment or satisfaction of any kind of indebtedness of any other Borrower in respect of the Subordinated Obligations and hereby unconditionally and irrevocably assigns all rights, remedies, actions, claims, votes, payments, and/or indebtedness to Lender, including (A) the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code, and (B) the right to vote on any plan of reorganization; and (ii) to standstill with respect to the taking of any action and the enforcement of any rights or remedies of any Borrower against any other Borrower in connection with the Subordinated Obligations and not to take any enforcement action or other action with respect to such rights and remedies. Each Borrower agrees that all payments or other satisfaction any Borrower may be entitled on account of the Subordinated Obligations shall be paid directly to and automatically vest in Lender for application to the Indebtedness except as otherwise stated in this subsection [\_\_].08(b). In the event that any payment on account of Subordinated Obligations 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 shall be turned over to Lender upon demand. Any right to payment of a Borrower that is required to be turned over to Lender shall be subject and subordinate in all respects to the rights and claims of Lender against Borrower under the Loan Documents.

## **Section [\_\_].09 Insolvency and Liability of Other Borrower; Preferences, Fraudulent Conveyances, Etc.**

(a) So long as any of the Indebtedness is outstanding, if a petition under any chapter of the Bankruptcy Code is filed by or against any Borrower (the “**Subject Borrower**”), upon the written direction of Lender, each other Borrower (each, an “**Other Borrower**”) agrees to file all claims against the Subject Borrower in any bankruptcy or other proceeding in which the filing of claims is required by law in connection with indebtedness owed by the Subject Borrower and to assign or confirm the assignment to Lender made under Section [\_\_.05] and Section [\_\_.08] of all rights thereunder up to the amount of such indebtedness. In all such cases, the Person or Persons authorized to pay such claims shall pay to Lender the full amount thereof and Lender agrees to pay such Other Borrower any amounts received in excess of the amount necessary to pay the Indebtedness. Each Other Borrower hereby assigns to Lender all of such Other Borrower’s rights to all such payments to which such Other Borrower would otherwise be entitled but not to exceed the full amount of the Indebtedness. In the event that, notwithstanding the foregoing, any such payment shall be received by any Other Borrower before the Indebtedness shall have been finally paid in full, such payment shall be held in trust for the benefit of and shall be paid over to Lender upon demand. Furthermore, notwithstanding the foregoing, the liability of each Borrower hereunder shall in no way be affected by:

### (1) the release or discharge of any Other Borrower in any creditors’ receivership, bankruptcy, or other proceedings; or

### (2) the impairment, limitation, or modification of the liability of any Other Borrower or the estate of any Other Borrower in bankruptcy resulting from the operation of any present or future provisions of any chapter of the Bankruptcy Code or other statute or from the decision in any court.

(b) If Lender is required to refund, or voluntarily refunds, any payment received from any Borrower because such payment is or may be avoided, invalidated, declared fraudulent, set aside, or determined to be void or voidable as a preference, fraudulent conveyance, impermissible setoff, or a diversion of trust funds under the Insolvency Laws or for any similar reason, including, without limitation, any judgment, order, or decree of any court or administrative body having jurisdiction over any Borrower or any of its property, or upon or as a result of the appointment of a receiver, intervenor, custodian, or conservator of, or trustee or similar officer for, any Borrower or any substantial part of its property, or otherwise, or any statement or compromise of any claim effected by Lender with any Borrower or any other claimant (a “**Rescinded Payment**”), then (i) each Other Borrower’s liability to Lender shall continue in full force and effect, or each Other Borrower’s liability to Lender shall be reinstated and renewed, as the case may be, with the same effect and to the same extent as if the Rescinded Payment had not been received by Lender, notwithstanding the cancellation or termination of any of the Loan Documents and any prior cancellation, termination, release or discharge of any of the Loan Documents shall be without effect and such Loan Documents shall remain in full force and effect, and regardless of whether Lender contested the order requiring the return of such payment, and (ii) such Rescinded Payment shall become immediately due and payable by each Other Borrower without notice or demand. In addition, each Other Borrower shall pay, or reimburse Lender for, all expenses (including all reasonable attorneys’ fees, court costs, and related disbursements) incurred by Lender in the defense of any claim that a payment received by Lender in respect of all or any part of the Indebtedness must be refunded. The provisions of this Section [\_\_].09(b) shall survive the termination of the Loan Documents and any satisfaction and discharge of any Borrower by virtue of any payment, court order, or any federal or state law.

## **Section [\_\_].10 Maximum Liability of Each Borrower.**

Notwithstanding anything contained in this Loan Agreement or any other Loan Document to the contrary, if the obligations of any Borrower under this Loan Agreement or any of the other Loan Documents or any Security Instrument granted by any Borrower are determined to exceed the reasonably equivalent value received by such Borrower in exchange for such obligations or grant of any Security Instrument under any Fraudulent Transfer Law (as hereinafter defined), then the liability of such Borrower shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations under this Loan Agreement or all the other Loan Documents subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law (collectively, the “**Fraudulent Transfer Laws**”), in each case after giving effect to all other liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Borrower in respect of indebtedness to any other Borrower or any other Person that is an affiliate of the other Borrower to the extent that such indebtedness would be discharged in an amount equal to the amount paid by such Borrower in respect of the Indebtedness) and after giving effect (as assets) to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification, or contribution of such Borrower pursuant to applicable law or pursuant to the terms of any agreement including the Contribution Agreement.

## **Section [\_\_].11 Cumulative Liability of Each Borrower.**

The liability of each Borrower under this Article [\_\_] is in addition to and shall be cumulative with all liabilities of such Borrower to Lender under this Loan Agreement and all the other Loan Documents to which such Borrower is a party or in respect of any Indebtedness of any other Borrower.

**Section [\_\_].12 Contribution Agreement.**

Concurrently with the closing of the Loan, each Borrower shall enter into the Contribution Agreement. No Borrower may cancel, terminate, surrender, modify or amend any of the terms or provisions of the Contribution Agreement without the prior consent of Lender.

**[Remainder of Page Intentionally Blank]**

**Schedule I**

**[DRAFTING NOTE: AMEND AND RESTATE SECTION [\_\_].05 WITH THE LANGUAGE BELOW IF THE MORTGAGED PROPERTY IS LOCATED IN CALIFORNIA.]**

**Section [\_\_].05 Waivers With Respect to Other Borrower Secured Obligation.**

To the extent that a Security Instrument or any other Loan Document executed by one Borrower secures an obligation of another Borrower (the “**Other Borrower Secured Obligation**”), or to the extent that a Borrower has guaranteed the debt of another Borrower pursuant to this Article [\_\_], each Borrower who executed such Loan Document or guaranteed such debt (the “**Waiving Borrower**”) hereby agrees to the extent permitted by law, to the provisions of this Section [\_\_].05. To the extent that any Mortgaged Properties are located in California, and to the extent permitted by law, the references to the California statutes below shall apply to this Master Agreement and any California Security Instrument securing or encumbering a Mortgaged Property located in California; otherwise the California statutes referenced below shall have no effect on this Master Agreement or any other Loan Document. All references in this Article [\_\_] to California law are only applicable if any Mortgaged Property is located in California. To the maximum extent permitted by applicable law:

1. the Waiving Borrower hereby waives any right it may now or hereafter have to require the beneficiary, assignee, or other secured party under such 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: (1) 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; (2) to pursue any other right or remedy in Lender’s power; (3) 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 (4) to make or give (except as otherwise expressly provided in the Security 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: (1) any disability or other defense of any other Borrower or any other Person; (2) the cessation, from any cause other than full performance, of the Other Borrower Secured Obligation; (3) 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; (4) 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; (5) the unenforceability or invalidity of any Security Document or 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; (6) any failure of Lender to marshal assets in favor of the Waiving Borrower or any other Person; (7) any modification of any Other Borrower Secured Obligation, including any renewal, extension, acceleration, or increase in interest rate; (8) any and all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial 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; (9) 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; (10) any failure of Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person; (11) 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; (12) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code; (13) any use of cash collateral under Section 363 of the Bankruptcy Code; or (14) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person. 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; this means, among other things, that: (A) Lender may collect from the Waiving Borrower without first foreclosing on any real or personal property collateral pledged by any other Borrower; (B) if Lender forecloses on any real property collateral pledged by any other Borrower, then (i) 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 (ii) 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. Subject to the last sentence of Section [\_\_].04, the foregoing sentence 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 [\_\_].05(g) below, to the extent permitted by law 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;
3. 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 principles or provisions of law 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 the other Borrower of any obligation or indebtedness and all rights to require Lender to (1) proceed against the other Borrower, (2) proceed against any general partner of the other Borrower, (3) proceed against or exhaust any collateral held by Lender to secure the Other Borrower Secured Obligation, or (4) if the other Borrower is a partnership, pursue any other remedy it may have against the other Borrower, or any general partner of the other Borrower, including any and all benefits under California Civil Code Sections 2845, 2849, and 2850;
4. 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 nonjudicial 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 nonreimburseable 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;
5. 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., nonjudicial 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 by operation of Section 580d of the California Code of Civil Procedure or otherwise;
6. subject to the last sentence of Section [\_\_].04, 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 antideficiency 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;
7. 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;
8. each Borrower hereby irrevocably and unconditionally agrees that, notwithstanding Section [\_\_].05(g) hereof, in the event, and to the extent, that its agreement and waiver set forth in Section [\_\_].05(g) 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 this Article [\_\_], and hereby assigns such rights or indebtedness to Lender, including (1) the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code and (2) 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;
9. at any time without notice to the Waiving Borrower, and without affecting or prejudicing the right of Lender to proceed against the Mortgaged Property described in any Loan Document executed by the Waiving Borrower and securing the Other Borrower Secured Obligation, (1) 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; (2) 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; (3) the maturity of the Other Borrower Secured Obligation may be accelerated as provided in the related Note or any other related Loan Document; (4) the related Note or any other related Loan Document may be modified or amended by Lender and the applicable other Borrower in any respect, including an increase in the principal amount; and (5) 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
10. it is agreed among each Borrower and Lender that all of the foregoing waivers are of the essence of the transaction contemplated by this Loan Agreement and the Loan Documents and that but for the provisions of this Article [\_\_] and such waivers Lender would decline to enter into this Loan Agreement.

**[Remainder of Page Intentionally Blank]**