**[DRAFTING NOTE: this document cannot be modified
TO substitute cash for the letter of credit
without consent from Fannie Mae Legal]**

**ACHIEVEMENT AGREEMENT**

This ACHIEVEMENT AGREEMENT (this “**Agreement**”) is dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

**RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower in the original principal amount of $\_\_\_\_\_\_\_\_\_ (the “**Mortgage Loan**”), as evidenced by, among other things, that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to Lender in the amount of the MortgageLoan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”).

B. In addition to the Loan Agreement, the MortgageLoan and the Note are also secured by, among other things, a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”).

C. As a condition of Lender’s making the Mortgage Loan to Borrower in an amount greater than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Base Mortgage Loan Amount**”), Borrower must deliver to Lender a letter of credit as additional collateral for the Mortgage Loan in accordance with the terms of this Agreement.

**AGREEMENTS:**

NOW THEREFORE, in consideration of the mutual covenants in this Agreement and for other valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower and Lender agree as follows:

1. **Recitals.**

The recitals set forth above are incorporated herein by reference.

1. **Defined Terms.**

Capitalized terms used and not specifically defined herein shall have the meanings given to such terms in the Loan Agreement. In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Issuer**” means the bank issuing the Letter of Credit.

“**Letter of Credit**” means the letter of credit delivered to Lender in connection with Lender’s making the Mortgage Loan to Borrower, any replacement letter of credit and any amendment or renewal of the letter of credit or the replacement letter of credit. If Borrower at any time provides a confirming letter of credit, a replacement confirming letter of credit or an amendment or renewal of the confirming letter of credit or the replacement letter of credit, then the term “Letter of Credit” shall also mean the confirming letter of credit as so amended, renewed or replaced.

“**Letter of Credit Servicing Fee**” means an annual fee of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

“**Required Deposit**” means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. **[DRAFTING NOTE: INSERT REQUIRED LETTER OF CREDIT AMOUNT]**

“**Statement Period**” means the twelve (12) month period shown on the most recent financial statement submitted by Borrower to Lender pursuant to Section 7.

1. **Delivery of Letter of Credit.**

Upon the execution of this Agreement, Borrower shall deliver to Lender a clean, irrevocable Letter of Credit in form and content satisfactory to Lender, naming Fannie Mae as beneficiary, a copy of which is attached to this Agreement as Exhibit A. The Letter of Credit must be issued by an issuer that meets Lender’s requirements for issuers of acceptable Letters of Credit. The initial Letter of Credit provided under this Agreement is in the amount of the Required Deposit.

1. **Letter of Credit as Additional Collateral.**

Borrower agrees that the Letter of Credit provides collateral for the Mortgage Loan in addition to the lien of the Security Instrument on the Mortgaged Property and, in the event of a default under any of the Loan Documents, Lender shall be entitled to take any action permitted under Section 9 of this Agreement, in addition to pursuing any other remedy Lender may have with respect to any other collateral or secured property, including the Mortgaged Property.

1. **Legal Opinion.**

Upon the execution of this Agreement, Borrower shall deliver to Lender an opinion of counsel for Issuer (which opinion may be given by Issuer’s in-house counsel) that is satisfactory to, and made for reliance by Lender, which states that the Letter of Credit has been duly authorized, executed and delivered and is the legal, valid and binding obligation of the Issuer. A copy of the executed opinion is attached to this Agreement as Exhibit B.

1. **Conditions for Providing and Holding Letter of Credit.**
	1. **Period During Which Borrower Must Provide Letter of Credit.**

Until the earliest of (1) payment in full of the Indebtedness and release by Lender of the lien of the Security Instrument, (2) satisfaction of all of the conditions set forth in Section 7 for return of the Letter of Credit for cancellation as determined by Lender, or (3) the date that Lender fully draws on the Letter of Credit as permitted by this Agreement, Borrower shall renew, amend or replace the Letter of Credit in accordance with the terms of this Agreement to ensure that the Letter of Credit remains in effect and does not expire.

* 1. **Return of the Letter of Credit or the Proceeds Thereof.**

Lender shall return the Letter of Credit, or the proceeds of any draws on such Letter of Credit (less all amounts which have been applied by Lender pursuant to the terms of this Agreement) to Borrower upon the earlier of (1) ten (10) days after the date on which Lender releases the lien of the Security Instrument following payment in full of the Indebtedness, or (2) ten (10) days after the satisfaction of all of the conditions for return of the Letter of Credit (or the proceeds of any draws on the Letter of Credit) pursuant to Section 7 as determined by Lender.

* 1. **Application for Prepayment.**

If Lender for any reason, shall permit the proceeds of the Letter of Credit to be applied to payment of a portion of the principal amount of the Mortgage Loan, a prepayment premium attributable to such prepaid principal amount shall be due to Lender as provided in the Loan Agreement. Any determination by Lender as to whether to permit a partial prepayment shall be made in Lender’s discretion.

1. **Cancellation or Reduction of the Letter of Credit.**
	1. **Request by Borrower for Determination.**

Borrower may request that Lender make a determination whether the Letter of Credit shall continue to be required (or, in the event Lender has drawn on the Letter of Credit, whether Lender shall continue to require that it hold the proceeds of any draws of the Letter of Credit), and if required, whether the amount of the Letter of Credit (or, the amount of any proceeds of the Letter of Credit that Lender is holding) may be reduced. Lender shall make this determination in accordance with Section 7(b) through (g) below. Any such request shall be made in writing and may be made by Borrower (1) within the thirty (30) day period following each anniversary date of the Effective Date, or (2) within ten (10) days following submission of Borrower’s financial statements to Lender for Borrower’s most recent fiscal year (which fiscal year must commence after the date of this Agreement), provided in all events Borrower may not make a request for determination more than once in any twelve (12) month period. Each request for determination shall include (A) a complete certified rent roll from no earlier than the last month of the income period being reviewed (which submitted rent roll may require updating during the determination process in order for it to remain current within one (1) month) and (B) a financial statement that complies with the requirements of Section 7(f) below.

* 1. **Determination by Lender.**

Lender shall make its determination as set forth in this Section 7 after receipt of a request by Borrower made in accordance with Section 7(a). In addition to the calculations to be made pursuant to Sections 7(c) and (d) below, Lender’s determination of any reduction or cancellation of the Letter of Credit (or any full or partial return of the proceeds of any Letter of Credit) shall be subject to a satisfactory review by Lender of the following: (1) the certified rent roll; (2) a physical inspection of the Mortgaged Property; (3) the general management and operations of the Mortgaged Property; and (4) such other information, due diligence or inspections that Lender shall require in order to determine or verify income, expenses, vacancies, collection loss and concession information. Borrower shall cooperate with Lender and shall supply all financial and other information required by Lender for Lender to make its determination under this Section 7.

* 1. **Calculation of Revised Base Mortgage Loan Amount.**

Lender shall calculate a revised base Mortgage Loan amount (the “**Revised Base Mortgage Loan Amount**”) as follows:

* + 1. Lender shall divide the Net Cash Flow by \_\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_%) **[DRAFTING NOTE: Insert the debt service coverage factor used by Lender in underwriting the Base Mortgage Loan Amount, but not less than one hundred fifteen percent (115%)].**
		2. Lender shall divide the amount calculated in Section 7(c)(1) by \_\_\_\_\_\_\_\_ **[DRAFTING NOTE: Insert the original debt service constant of the Mortgage Loan]** to determine the Revised Base Mortgage Loan Amount.
	1. **Reduction or Elimination of Letter of Credit.**

If Lender is satisfied with respect to all of the matters described in Section 7(b), and

* + 1. if the Revised Base Mortgage Loan Amount calculated in Section 7(c) is equal to or greater than the then outstanding principal balance of the Note, Lender shall return the Letter of Credit to Issuer for cancellation, (or, return to Borrower the proceeds of any draws on the Letter of Credit which Lender is then holding); provided in all events, that no default exists under this Agreement or any of the other Loan Documents; or
		2. if the Revised Base Mortgage Loan Amount calculated in Section 7(c) is less than the then outstanding principal balance of the Note, Lender shall determine whether the amount of the Letter of Credit may be reduced (or, whether a portion of the proceeds of any draws on the Letter of Credit that Lender is holding may be returned to Borrower), as follows:
			1. Lender shall subtract the Revised Base Mortgage Loan Amount so calculated from the unpaid principal balance of the Note;
			2. Lender shall subtract the amount calculated in Section 7(d)(2)(A) from the amount of the Letter of Credit (or from the proceeds of any draws on the Letter of Credit Lender is holding) to determine the excess amount; and
			3. Lender shall permit Borrower to obtain and deliver to Lender an amendment to the Letter of Credit that complies with all of the requirements of Section 8(a) below, which reduces the amount of the Letter of Credit by an amount equal to the excess amount calculated in Section 7(d)(2)(B) (or Lender shall return to Borrower such excess amount), provided in all events that no default exists under this Agreement or any of the other Loan Documents.
	1. **Default Under Loan Documents.**

Notwithstanding any provision in this Agreement to the contrary, Lender shall not be required to approve any request for any cancellation or reduction of the Letter of Credit (or a full or partial return of the proceeds of any draws on the Letter of Credit that Lender is holding), if a default has occurred under any of the Loan Documents at any time during the applicable Statement Period or during the period between the end of the Statement Period and the date of Lender’s determination under Sections 7(b) and (c) regardless of whether such default was cured.

* 1. **Financial Statements.**

Any financial statement to be delivered by Borrower to Lender pursuant to this Agreement shall be for a period of twelve (12) consecutive months (1) prepared in a manner consistent with the annual financial statements (if any) previously delivered by Borrower and consistent with the provisions of Section 8.02(b) (Books and Records; Financial Reporting – Covenants – Items to Furnish to Lender) of the Loan Agreement, and (2) delivered to Lender no later than one hundred twenty (120) days after the end of the Statement Period. If Borrower owns any asset other than the Mortgaged Property (including all accounts and assets related to the Mortgaged Property as part of the Mortgaged Property), the financial statement also must provide separate data with respect to the Mortgaged Property.

* 1. **Payment of Fees, Costs and Expenses.**

No cancellation, reduction or return of the Letter of Credit shall be permitted under this Agreement unless Borrower has paid all fees, costs and expenses then due and payable under this Agreement, the Loan Agreement and any other Loan Documents.

* 1. **Lender’s Discretion.**

Borrower agrees that Lender may use its discretion in making its determination as to any matters set forth in this Section 7 or in determining any of the adjustments to income or expenses to be made in making the calculations described in this Section 7, and that all determinations and calculations in this Section 7 necessarily involve Lender’s use of Lender’s business judgment.

1. **Renewal or Replacement of Letter of Credit.**
	1. **Renewal or Replacement.**

At least thirty (30) days prior to the expiration date of the Letter of Credit, Borrower shall either (1) cause the Letter of Credit to be amended to extend its expiration date, or (2) furnish a replacement Letter of Credit. In either case, the amended Letter of Credit or the replacement Letter of Credit must (A) be in a form and content satisfactory to Lender and be from an Issuer which meets Lender’s requirements for issuers of acceptable letters of credit, (B) have a term not less than one (1) year (unless a shorter term is approved in writing by Lender), and (C) be in the amount of the outstanding Letter of Credit, reduced as permitted pursuant to Section 7 above. In connection with providing any amended or replacement Letter of Credit, Borrower shall concurrently provide an opinion of counsel to the Issuer as described in Section 5 above (unless the Letter of Credit is being amended solely to reduce the amount pursuant to Section 7 above).

* 1. **Review of Rating of Issuer; Replacement of Letter of Credit.**

From time to time, Lender shall review the rating of the Issuer of the then outstanding Letter of Credit. If Lender notifies Borrower that at the time of any such review the Issuer does not meet Lender’s requirements for issuers of acceptable letters of credit, Borrower shall replace the outstanding Letter of Credit with a Letter of Credit that complies with all of the requirements set forth in Section 8(a), no later than thirty (30) days after Lender’s notice to Borrower, unless the outstanding Letter of Credit would expire prior to such thirty (30) day period, in which case Borrower shall provide a replacement Letter of Credit no later than five (5) Business Days prior to the expiration date of the outstanding Letter of Credit. Concurrent with the delivery of any replacement Letter of Credit pursuant to this Section 8(b), Borrower shall also furnish to Lender a legal opinion of counsel to the Issuer with respect to the replacement Letter of Credit in accordance with Section 5.

* 1. **Draw on Letter of Credit.**

If Borrower does not provide an amendment to, or replacement of, the Letter of Credit when required pursuant to Sections 8(a) or (b), which amended or replacement Letter of Credit satisfies all of the requirements of Sections 8(a) or (b) above [including the delivery of the legal opinion of counsel to Issuer of the Letter of Credit that is to be delivered under Section 8(b)], Lender shall draw the full amount of the Letter of Credit and hold and apply the proceeds as permitted by the terms of Section 11 of this Agreement.

1. **Default Under this Agreement.**

Borrower shall be in default under this Agreement if it fails to comply with any provision of this Agreement within the time period specified in such provision. Borrower understands that a default under this Agreement shall be deemed to be an Event of Default under the terms of the other Loan Documents and that, in addition to the remedies specified in this Agreement, Lender shall be able to exercise all of its rights and remedies under the other Loan Documents.

1. **Default Under the Loan Documents.**
	1. **Remedies**.

Upon the occurrence of an Event of Default under any of the Loan Documents (including any default by Borrower under this Agreement), Lender shall be entitled, in its sole discretion, to:

* + 1. draw on the Letter of Credit and hold the proceeds of the Letter of Credit in accordance with the terms of this Agreement;
		2. draw on the Letter of Credit and apply all or any portion of the proceeds of the Letter of Credit to payment of the unpaid principal amount of the Note and the prepayment premium (calculated as provided in the Loan Agreement) on the principal amount prepaid; provided, however, that such application of proceeds shall not cure or be deemed to cure any default or Event of Default;
		3. draw on the Letter of Credit and apply all or any portion of the proceeds of the Letter of Credit to reimburse Lender for any losses or expenses (including without limitation, legal fees) suffered or incurred by Lender as a result of such default or Event of Default; or
		4. exercise all rights and remedies available to Lender at law or in equity or under any of the Loan Documents (including the Loan Agreement and this Agreement).
	1. **No obligation to Apply Proceeds; No Cure.**

Nothing in this Agreement shall obligate Lender to apply all or any portion of the proceeds of the Letter of Credit to cure any default or Event of Default under the Loan Documents or to reduce the indebtedness evidenced by the Note. No application of proceeds of the Letter of Credit by Lender shall be deemed to cure any default or Event of Default.

1. **Proceeds of the Letter of Credit.**
	1. **Providing Replacement Letter of Credit after a Draw.**

Provided that Borrower is not otherwise in default under any of the Loan Documents (including this Agreement), after Lender has drawn on the Letter of Credit, but prior to application of proceeds, Lender may, but is not obligated to, permit Borrower to provide a replacement Letter of Credit that meets all the requirements of Section 8(a) (including the opinion of counsel to the Issuer specified in Section 5) in which case, Lender shall return the proceeds of the draw to Borrower, less Lender’s costs and expenses (including attorneys’ fees and expenses and allocable costs for time spent by officers, employees, contractors and agents of Lender).

* 1. **Proceeds Held in Corporate Account; No Interest.**

If Lender draws on the Letter of Credit and holds the proceeds under this Agreement, such funds shall be held by Lender in a general corporate account of its choice. In no event shall any interest or other earnings on the proceeds of a draw be payable or credited to Borrower.

* 1. **No Obligation to Draw or to Apply Proceeds.**

Lender shall not be obligated to draw on the Letter of Credit upon any default or Event of Default under any of the Loan Documents or apply the proceeds of any draw on the Letter of Credit to cure a default or Event of Default under the Mortgage Loan. Lender may hold the Letter of Credit or the proceeds of any Letter of Credit until the date for return as determined pursuant to Section 6(b), or apply all or any portion of the proceeds as permitted by this Agreement and hold the remaining proceeds until the date for return determined under Section 6(b).

1. **Remedies Cumulative.**

None of the rights and remedies conferred upon or reserved to Lender under this Agreement are intended to be exclusive of any other rights Lender may have under this Agreement or under any of the Loan Documents. Each and every such right shall be cumulative and concurrent and may be enforced separately, successively or together, and exercised from time to time as often as may be deemed necessary by Lender.

1. **Enforcement of Agreement.**

This Agreement is entered into by Borrower and Lender for the benefit of Lender. Borrower understands and agrees that, in connection with the anticipated sale of the Mortgage Loan to Fannie Mae, this Agreement will be assigned to Fannie Mae.

1. **Borrower’s Other Obligations Not Impaired.**

Nothing contained in this Agreement shall in any manner whatsoever alter, impair or affect the obligations of Borrower, or relieve Borrower of any of its obligations, to make payments and to perform all of its other obligations required under the Loan Documents.

1. **Determinations by Lender.**

In any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender or its designated representative at Lender’s discretion.

1. **Borrower’s Records.**

Borrower shall furnish such financial statements, invoices, records, papers and documents relating to the Mortgaged Property as Lender may reasonably require from time to time to make the determinations permitted or required to be made by Lender under this Agreement.

1. **Fees and Expenses.**
	1. Borrower shall pay to Lender an annual fee equal to the Letter of Credit Servicing Feefor Lender’s services in administering this Agreement. Borrower shall pay such Letter of Credit Servicing Fee no later than the date specified for payment in a bill sent to Borrower.
	2. Within ten (10) days after request for payment, Borrower agrees to pay all costs and expenses incurred by Lender (including but not limited to court costs and attorneys’ fees and expenses) in exercising any of Lender’s rights or obligations pursuant to the terms of this Agreement or holding any proceeds of any draw on the Letter of Credit.
2. **No Third Party Beneficiary.**

This Agreement is intended solely for the benefit of Borrower and Lender and their respective successors and assigns; no third party shall have any rights or interest in any provision of this Agreement or the other Loan Documents. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Agreement.

1. **No Agency or Partnership.**

Nothing contained in this Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

1. **Assumption of Mortgage Loan/Transfer of Ownership Interests in Borrower.**

If a Transfer of all or part of the Mortgaged Property or ownership interest in Borrower shall occur or be contemplated, which Transfer requires the prior written consent of Lender as set forth in the Loan Agreement, the transferee(s) shall be required to assume Borrower’s duties and obligations under this Agreement and shall be required to execute and deliver to Lender such documents as Lender requires to effectuate such assumption of duties and obligations. No transfer and assumption shall relieve the transferor of its obligations under this Agreement or any of the other Loan Documents, unless the Borrower has obtained the prior written consent of Lender.

1. **Governing Law; Consent to Jurisdiction and Venue.**

Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

1. **Notices.**

Section 15.02 (Notice) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

1. **Successors and Assigns Bound; Sale of Mortgage Loan.**

Section 15.03 (Successors and Assigns Bound; Sale of Mortgage Loan) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

1. **Counterparts.**

This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document and all such counterparts shall be construed together and shall constitute one (1) instrument.

1. **Severability; Entire Agreement; Amendments.**

Section 15.07 (Severability; Entire Agreement; Amendments) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

1. **Construction.**
	1. The captions and headings of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.
	2. Any reference in this Agreement to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Agreement or to a Section or Article of this Agreement.
	3. Any reference in this Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
	4. Use of the singular in this Agreement includes the plural and use of the plural includes the singular.
	5. As used in this Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
	6. Whenever Borrower’s knowledge is implicated in this Agreement or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Agreement, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.
	7. Unless otherwise provided in this Agreement, if Lender’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.
	8. All references in this Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
	9. “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, the parties have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by their duly authorized representative. Where applicable law so provides, the parties intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER**:

By: (SEAL)

Name:

Title:

**LENDER**:

By: (SEAL)

Name:

Title:

**EXHIBIT A**

**TO**

**ACHIEVEMENT AGREEMENT**

[ATTACH COPY OF LETTER OF CREDIT AND

FORM OF SIGHT DRAFT, AS DELIVERED TO LENDER]

**EXHIBIT B**

**TO**

**ACHIEVEMENT AGREEMENT**

[ATTACH OPINION OF COUNSEL FOR

THE ISSUER OF LETTER OF CREDIT, AS DELIVERED TO LENDER]