**\_\_\_\_\_\_\_\_\_\_\_\_ AMENDMENT TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Medicaid Transition Reserve)**

This \_\_\_\_\_\_\_\_\_\_\_\_\_ AMENDMENT TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (this “**Amendment**”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Amendment Effective Date**”), is executed by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”) and **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States (“**Fannie Mae**”).

**RECITALS**:

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the Effective Date, executed by and between Borrower and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Prior Lender**”) (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Loan Agreement**”), Prior Lender made a loan to Borrower in the original principal amount of $\_\_\_\_\_\_\_\_\_, as evidenced by the Note.

B. In addition to the Loan Agreement, the Mortgage Loan and the Note are also secured by, among other things, the Security Instrument.

C. Fannie Mae is the successor-in-interest to Prior Lender under the Loan Agreement, the holder of the Note and the mortgagee or beneficiary under the Security Instrument.

D. [Prior Lender][\_\_\_\_\_\_\_\_\_\_\_] services the Mortgage Loan on behalf of Fannie Mae.

E. The parties are executing this Amendment pursuant to the Loan Agreement to mitigate the risk associated with withholding, termination, or delay in the receipt of any funding under the Medicaid Program.

NOW, THEREFORE, in consideration of the mutual promises contained in this Amendment and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Fannie Mae agree as follows:

**AGREEMENTS:**

1. **Recitals.**

The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Amendment.

1. **Defined Terms.**

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

“**Action**” means, individually and collectively, (a) an assumption of the Mortgage Loan, (b) any Transfer requiring Lender’s consent under the Loan Agreement, or (c) any action under Section 6.02(g)(2)(D) (Medicaid Provider Agreement) of the Loan Agreement.

“**Amendment Effective Date**” means the date of the \_\_\_\_\_ Amendment to Multifamily Loan and Security Agreement.

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

“**Medicaid Transition Reserve Account**” means an interest-bearing account which meets the standards for custodial accounts as required by Lender from time to time.

“**Medicaid Transition Reserve Account Interest Disbursement Frequency**” means an amount set forth on the Summary of Loan Terms.

“**Minimum Medicaid Transition Reserve Deposit**” means an amount equal to the Initial Medicaid Transition Reserve Deposit unless otherwise changed by Lender pursuant to the provisions of Section [\_\_].02(a)(3) (Adjustment to Medicaid Transition Reserve Deposit) below.

**[DRAFTING NOTE: INCLUDE IF DEFINITION IS NOT IN THE ORIGINAL LOAN AGREEMENT -** “**Net Cash Flow**” means, for any specified period, the total of (a) the net rental income for the Mortgaged Property, plus (b) other allowable income for the Mortgaged Property, if any, minus (c) operating expenses for the Mortgaged Property, minus (d) the full amount underwritten for the Replacement Reserve Account (regardless of whether deposits have been or will be waived or reduced), and as adjusted for economic vacancy and other factors by Lender for the specific asset class or loan type.**]**

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

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

1. **Medicaid Transition Reserve.**

The Loan Agreement is hereby amended by adding the following Article to the end thereof:

**ARTICLE** **[\_\_\_] – MEDICAID TRANSITION RESERVE**

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

**(a) Initial Deposit to Medicaid Transition Reserve Account.**

On the Amendment Effective Date, in order to mitigate the risk associated with withholding, termination, or delay in the receipt of any funding under the Medicaid Program prior to the maturity date of the Mortgage Loan, Borrower shall pay to Lender the Initial Medicaid Transition Reserve Deposit for deposit into the Medicaid Transition Reserve Account.

**(b)** **Administrative Fees and Expenses.**

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

**Section** **[\_\_].02 Mortgage Loan Administration Matters Regarding Medicaid Transition Reserve Account.**

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

**(1) Custodial Account.**

The Medicaid Transition Reserve Account shall be deemed a Collateral Account under this Loan Agreement and shall be an interest-bearing account that meets the standards for custodial accounts as required by Lender from time to time. Lender shall not be responsible for any losses resulting from the investment of the funds on deposit in the Medicaid Transition Reserve Account or for obtaining any specific level or percentage of earnings on such investment. All interest earned on funds in the Medicaid Transition Reserve Account shall be added to and become part of such Medicaid Transition Reserve Account; provided, however, if applicable law requires, and so long as no Event of Default has occurred and is continuing under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Medicaid Transition Reserve Account not less frequently than the Medicaid Transition Reserve Account Interest Disbursement Frequency.

**(2) Disbursements by Lender Only.**

Only Lender or a designated representative of Lender may make disbursements from the Medicaid Transition Reserve Account. Disbursements shall only be made upon Borrower request and after satisfaction of all conditions for disbursement**.**

**(3) Adjustment to Medicaid Transition Reserve Deposits.**

If an Action shall occur or be contemplated, Lender may review the amounts on deposit in the Medicaid Transition Reserve Account. Based upon that review, Lender may increase the Minimum Medicaid Transition Reserve Deposit and require an additional deposit to the Medicaid Transition Reserve Account as a condition to Lender’s consent to such Action. Within five (5) Business Days of receipt of written notice from Lender, Borrower shall pay to Lender such additional deposit for deposit into the Medicaid Transition Reserve Account.

**(4)** **Disbursements from Medicaid Transition Reserve Account.**

**(A) Disbursement for Shortfall.**

Upon a written request from Borrower and satisfaction of the terms of Section [\_\_].02(a)(4)(B) (Disbursement Requests) below, Lender shall disburse funds from the Medicaid Transition Reserve Account to pay a Shortfall or for the payment of any other expenses that Lender deems necessary or desirable to be incurred in connection with the Mortgaged Property. Subject to conditions set forth in Section [\_\_].02(a)(4)(B) (Disbursement Requests) below with respect to any P/I Shortfall, Lender shall make a Shortfall disbursement from the Medicaid Transition Reserve Account and apply it to such P/I Shortfall. For any other Shortfall, and subject to the conditions set forth in Section [\_\_].02(a)(4)(B) (Disbursement Requests) below, Lender shall make a disbursement from the Medicaid Transition Reserve Account to either (i) apply such disbursement against Borrower’s obligations under the Loan Documents, or (ii) forward such disbursement to Borrower to be applied toward such Shortfall.

Nothing in this Loan Agreement shall obligate Lender to apply all or any portion of the funds in the Medicaid Transition Reserve Account to cure any Event of Default or to reduce the Indebtedness. If Lender shall permit the funds from the Medicaid Transition Reserve Account to be applied to payment of a portion of the principal amount of the Note, 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.

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

**(B) Disbursement Requests.**

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

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

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

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

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

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

(2) Lender shall review the Disbursement Request Supporting Information to verify the amount of the Shortfall. Lender may adjust the requested amount of the disbursement from the Medicaid Transition Reserve Account based upon Lender’s review of the Disbursement Request Supporting Information if Lender determines that Borrower’s calculation of the amount of the Shortfall or the required disbursement is incorrect.

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

**(5) Replenishment of Medicaid Transition Reserve Account.**

If the amounts held in the Medicaid Transition Reserve Account are less than the Minimum Medicaid Transition Reserve Deposit and there is no Shortfall, Borrower shall make an additional deposit to the Medicaid Transition Reserve Account on a monthly basis equal to the lesser of (i) the amount needed to restore the Medicaid Transition Reserve Account to the amount of the Minimum Medicaid Transition Reserve Deposit or (ii) the amount by which the Net Cash Flow exceeds the total of the Monthly Debt Service Payment and other amounts and monthly deposits payable under the Loan Documents.

**(6) Final Disbursements.**

Upon payment in full of the Indebtedness and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower any and all amounts then remaining in the Medicaid Transition Reserve Account (if not previously released).

**(b) Lender as Attorney-in-Fact.**

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c) (Appointment of Lender as Attorney-In-Fact).

1. **Modification of Summary of Loan Terms.**

The Summary of Loan Terms is hereby amended by adding a new Part [\_\_] as set forth on Exhibit A attached hereto.

1. **Authorization.**

Borrower represents and warrants that Borrower is duly authorized to execute and deliver this Amendment and is and will continue to be duly authorized to perform its obligations under the Loan Agreement, as amended hereby.

1. **Compliance with Loan Documents.**

The representations and warranties set forth in the Loan Documents, as amended hereby, are true and correct with the same effect as if such representations and warranties had been made on the date hereof, except for such changes as are specifically permitted under the Loan Documents. In addition, Borrower has complied with and is in compliance with all of the covenants set forth in the Loan Documents, as amended hereby.

1. **No Event of Default.**

Borrower represents and warrants that, as of the date hereof, no Event of Default under the Loan Documents, as amended hereby, or event or condition which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing.

1. **Costs.**

Borrower agrees to pay all fees and costs (including attorneys’ fees) incurred by Fannie Mae and any Loan Servicer in connection with this Amendment.

1. **Continuing Force and Effect of Loan Documents.**

Except as specifically modified or amended by the terms of this Amendment, all other terms and provisions of the Loan Agreement and the other Loan Documents are incorporated by reference herein and in all respects shall continue in full force and effect. Borrower, by execution of this Amendment, hereby reaffirms, assumes and binds itself to all of the obligations, duties, rights, covenants, terms and conditions that are contained in the Loan Agreement and the other Loan Documents, including Section 15.01 (Governing Law; Consent to Jurisdiction and Venue), Section 15.04 (Counterparts), Section 15.07 (Severability; Entire Agreement; Amendments) and Section 15.08 (Construction) of the Loan Agreement.

1. **Counterparts.**

This Amendment 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 instrument.

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Borrower and Fannie Mae have signed and delivered this Amendment under seal (where applicable) or have caused this Amendment to be signed and delivered under seal (where applicable) by their duly authorized representatives. Where applicable law so provides, Borrower and Fannie Mae intend that this Amendment shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER**

By: (seal)

Name:

Title:

**FANNIE MAE**

[By: (seal)

Name:

Title: ]

[LOAN SERVICER MAY ONLY USE THE FOLLOWING SIGNATURE BLOCK in connection with approved actions where LOAN SERVICER HAS SIGNATORY AUTHORITY VIA LIMITED POWER OF ATTORNEY. Otherwise, use the signature block above.]

[By: [LOAN SERVICER], a [\_\_\_\_\_\_\_\_\_\_\_\_\_], its Attorney-in-Fact

By: (seal)

Name:

Title: ]

**EXHIBIT** **A TO \_\_\_\_\_\_\_\_\_\_\_\_ AMENDMENT TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS**

**(Medicaid Transition Reserve)**

[**DRAFTING NOTE**: **INSERT FORM 6102.21.SRS (ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS (Medicaid Transition Reserve))]**