**EXHIBIT [\_\_]**

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Rehabilitation Reserve – Substantial Rehabilitation)**

The foregoing Loan Agreement is hereby modified as follows:

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

“**Additional Lender Rehabilitation Work**” means rehabilitation work not listed on the Rehabilitation Work Schedule determined advisable by Lender to keep the Mortgaged Property in good order and repair and in a good marketable condition, or to prevent deterioration of the Mortgaged Property.

“**Borrower Requested Rehabilitation Work**” means rehabilitation work not listed on the Rehabilitation Work Schedule requested by Borrower to be reimbursed from the RehabilitationReserve Account and determined advisable by Lender to keep the Mortgaged Property in good order and repair and in a good and marketable condition, or to prevent deterioration of the Mortgaged Property.

“**Maximum Rehabilitation Reserve Disbursement Interval**” has the meaning set forth on the Summary of Loan Terms.

“**Minimum Rehabilitation Reserve Disbursement Amount**” has the meaning set forth on the Summary of Loan Terms.

“**Permitted Rehabilitation Disbursement Amount**” means the amount equal to the Rehabilitation Completion Percentage multiplied by the original amount of the Rehabilitation Reserve Deposit.

“**Rehabilitation Completion Percentage**” means the percentage of the Rehabilitation Work completed as of the date of the disbursement request.

“**Rehabilitation Completion Period**” has the meaning set forth on the Summary of Loan Terms.

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

“**Rehabilitation Reserve Account Administrative Fee**” has the meaning set forth on the Summary of Loan Terms.

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

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

“**Rehabilitation Reserve** **Deposit**” has the meaning set forth on the Summary of Loan Terms.

“**Rehabilitation Work**” means, individually and collectively, the Required Rehabilitation Work, Borrower Requested Rehabilitation Work and Additional Lender Rehabilitation Work.

“**Rehabilitation Work Item**” means any portion of the Rehabilitation Work.

“**Rehabilitation Work Item Cost Threshold**” has the meaning set forth on the Summary of Loan Terms.

“**Rehabilitation Work Schedule**” means that certain Schedule [\_\_\_] (Rehabilitation Work Schedule) to the Loan Agreement which is attached hereto and hereby made a part of the Loan Agreement.

“**Required Rehabilitation Work**” means the repairs and improvements to the Mortgaged Property listed on the Rehabilitation Work Schedule.

“**Stabilized Effective Gross Income Target**” has the meaning set forth on the Summary of Loan Terms.

“**Three Month Period**” means each of the three (3) consecutive full calendar months immediately preceding the month in which Borrower requests final disbursement of Rehabilitation Reserve Account Funds.

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

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

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

### (a) Initial Deposit to Rehabilitation Reserve Account.

On the Effective Date, Borrower shall pay to Lender the Rehabilitation Reserve Deposit for deposit into the Rehabilitation Reserve Account, which deposit shall be in an amount equal to the total estimated cost in accordance with the Rehabilitation Work Schedule.

### (b) Agreement to Complete Work.

### Borrower shall commence the Rehabilitation Work as follows:

### (1) with respect to any Required Rehabilitation Work, immediately following the Effective Date (or as soon thereafter as weather reasonably shall permit) and shall at all times thereafter diligently pursue the completion of all Rehabilitation Work. Borrower shall complete all Required Rehabilitation Work within the Rehabilitation Completion Period;

### (2) with respect to Additional Lender Rehabilitation Work, promptly following Lender’s notice of such Additional Lender Rehabilitation Work (subject to weather conditions, if applicable), commence any such Additional Lender Rehabilitation Work in accordance with Lender’s timelines, or if no timelines are provided, as soon as practical.

### (c) Conditions Precedent to Rehabilitation Work.

Prior to commencing the Rehabilitation Work, Borrower shall have provided Lender with:

(1) copies of all contracts, plans, budgets, permits, and agreements related to the Rehabilitation Work, in a form acceptable to Lender;

(2) an assignment to Lender of all contracts, plans, agreements, and insurance policies or certificates related to the Rehabilitation Work, in a form acceptable to Lender;

(3) a completion and performance guaranty in a form acceptable to Lender from one or more individuals or entities acceptable to Lender as guarantors with respect to such Rehabilitation Work; and

(4) payment and performance bonds related to the Rehabilitation Work in a form acceptable to Lender, issued by a surety acceptable to Lender.

### (d) Payment for Rehabilitation Work.

Borrower shall:

(1) pay all invoices for the Rehabilitation Work, regardless of whether funds on deposit in the Rehabilitation Reserve Account are sufficient, prior to any request for disbursement from the Rehabilitation Reserve Account (unless Lender has agreed to issue joint checks in connection with a particular Rehabilitation Work Item);

(2) pay all applicable fees and charges of any Governmental Authority on account of the Rehabilitation Work; and

(3) provide evidence satisfactory to Lender of completion of (A) the Required Rehabilitation Work within the Rehabilitation Completion Period, and (B) any Borrower Requested Rehabilitation Work or Additional Lender Rehabilitation Work by the date specified by Lender for any such Borrower Requested Rehabilitation Work or Additional Lender Rehabilitation Work.

### (e) Assignment of Contracts for Rehabilitation Work.

In addition to any other assignment of contracts required hereunder, Borrower shall collaterally assign to Lender as additional security any contract or subcontract for Rehabilitation Work, upon Lender’s written request, on a form of assignment approved by Lender.

### (f) Indemnification.

If Lender elects to exercise its rights under Section 14.03 due to Borrower’s failure to timely commence or complete any Rehabilitation Work, Borrower shall indemnify and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs or expenses, including litigation costs and reasonable attorneys’ fees, arising from or in any way connected with the performance by Lender of the Rehabilitation Work or the investment of the Rehabilitation Reserve Account Funds; provided that Borrower shall have no indemnity obligation if such actions, suits, claims, demands, liabilities, losses, damages, obligations and costs or expenses, including litigation costs and reasonable attorneys’ fees, arise as a result of the willful misconduct or gross negligence of Lender, Lender’s agents, employees or representatives as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

### (g) Amendments to Loan Documents.

Subject to Section 5.02, Borrower shall execute and deliver to Lender, upon written request, an amendment to this Loan Agreement, the Security Instrument, and any other Loan Document deemed necessary or desirable to perfect Lender’s lien upon any portion of the Mortgaged Property for which Rehabilitation Reserve Account Funds were expended.

### (h) Administrative Fees and Expenses.

Borrower shall pay to Lender:

(1) by the date specified in the applicable invoice, the Rehabilitation Reserve Account Administrative Fee for Lender’s services in administering the Rehabilitation Reserve Account and investing the funds on deposit in the Rehabilitation Reserve Account;

(2) upon demand, a reasonable inspection fee, not exceeding the Maximum Inspection Fee, for each inspection of the Mortgaged Property by Lender in connection with a Rehabilitation Work Item, plus all other reasonable costs and out-of-pocket expenses relating to such inspections; and

(3) upon demand, all reasonable fees charged by any engineer, architect, inspector or other person inspecting the Mortgaged Property on behalf of Lender for each inspection of the Mortgaged Property in connection with a Rehabilitation Work Item, plus all other reasonable costs and out-of-pocket expenses relating to such inspections.

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

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

### (1) Custodial Account.

The Rehabilitation Reserve Account shall be deemed a Collateral Account under this Loan Agreement and any Rehabilitation Reserve Account Funds shall be deemed part of the Collateral Account Funds under this Loan Agreement. The Rehabilitation Reserve Account 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 Rehabilitation Reserve Account Funds or for obtaining any specific level or percentage of earnings on such investment. All interest earned on the Rehabilitation Reserve Account Funds shall be added to and become part of such Rehabilitation 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 Rehabilitation Reserve Account not less frequently than the Rehabilitation Reserve Account Interest Disbursement Frequency. In no event shall Lender be obligated to disburse funds from the Rehabilitation Reserve Account if an Event of Default has occurred and is continuing.

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

Only Lender or a designated representative of Lender may make disbursements from the Rehabilitation Reserve Account. Except as provided in Section [\_\_].02(a)(8) (Joint Checks for Periodic Disbursements), disbursements shall only be made upon Borrower request and after satisfaction of all conditions for disbursement.

**(3) Adjustment to Deposits.**

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

### (4) Insufficient Funds.

Lender may, upon thirty (30) days prior written notice to Borrower, require an additional deposit(s) to the Rehabilitation Reserve Account if Lender determines that the amounts on deposit in the Rehabilitation Reserve Account are not sufficient to cover the costs for the Required Rehabilitation Work, or, pursuant to the terms of Section [\_\_].02(a)(9) (Disbursements for Other than Required Rehabilitation Work; Excess Costs), are not sufficient to cover the costs for Borrower Requested Rehabilitation Work, or Additional Lender Rehabilitation Work. Borrower’s agreement to complete the Rehabilitation Work as required by this Loan Agreement shall not be affected by the insufficiency of any balance in the Rehabilitation Reserve Account.

### (5) Disbursements for Rehabilitation Work.

Disbursement requests may only be made after completion of the applicable Rehabilitation Work and only to reimburse Borrower for the actual approved costs of the Rehabilitation Work. Lender shall not be required to disburse any amounts which would: (A) cause the total amount disbursed to date to exceed the Permitted Rehabilitation Disbursement Amount; or (B) cause the amount of funds remaining in the Rehabilitation Reserve Account after any disbursement (other than with respect to the final disbursement) to be less than the then current estimated cost of completing all remaining Rehabilitation Work. Further, in no event shall Lender be obligated to disburse Rehabilitation Reserve Account Funds if: (i) all equity contributions have not been received by Borrower from its investors/partners and properly invested in the Mortgaged Property as of the date of the first requested disbursement hereunder; or (ii) an Event of Default has occurred and is continuing. Lender shall not disburse from the Replacement Reserve Account or the Repairs Escrow Account for costs of Rehabilitation Work. Lender shall not disburse from the Rehabilitation Reserve Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from any Reserve/Escrow Account. Disbursement from the Rehabilitation Reserve Account shall not be made more frequently than the Maximum Rehabilitation Reserve Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Rehabilitation Reserve Account shall not be less than the Minimum Rehabilitation Reserve Disbursement Amount.

### (6) Disbursement Requests.

Each request by Borrower for disbursement from the Rehabilitation Reserve Account must be in writing and must:

(A) specify the Rehabilitation Work for which reimbursement is requested; provided that for any Borrower Requested Rehabilitation Work and Additional Lender Rehabilitation Work, Lender shall have approved the use of the Rehabilitation Reserve Account Funds for such replacements or repairs pursuant to the terms of Section [\_\_].02(a)(9) (Disbursements for Other than Rehabilitation Work; Excess Costs);

(B) if applicable, specify the quantity and price of the items or materials purchased, grouped by type or category;

(C) if applicable, specify the cost of all contracted labor or other services, including architectural services, involved in the Rehabilitation Work for which such request for disbursement is made;

(D) if applicable, include copies of invoices for all items or materials purchased and all contracted labor or services provided;

(E) include evidence of payment of such Rehabilitation Work satisfactory to Lender (unless Lender has agreed to issue joint checks in connection with a particular Rehabilitation Work Item as provided in this Loan Agreement);

(F) if applicable, contain a certification by Borrower that the Rehabilitation Work has been completed lien free and in a good and workmanlike manner, in accordance with any plans and specifications previously approved by Lender (if applicable) and in compliance with all applicable laws, ordinances, rules and regulations of any Governmental Authority having jurisdiction over the Mortgaged Property, and otherwise in accordance with the provisions of this Loan Agreement; and

(G) if applicable, include evidence that any certificates of occupancy required by local law or authorities have been issued.

### (7) Conditions to Disbursement.

Lender may require any or all of the following at the expense of Borrower as a condition to disbursement of funds from the Rehabilitation Reserve Account; provided that for any Borrower Requested Rehabilitation Work and Additional Lender Rehabilitation Work, Lender shall have approved the use of the Rehabilitation Reserve Account Funds for such replacements or repairs pursuant to the terms of Section [\_\_].02(a)(9) (Disbursements for Other than Required Rehabilitation Work; Excess Costs):

(A) an inspection by Lender of the Mortgaged Property and the applicable Rehabilitation Work Item;

(B) an inspection or certificate of completion by an appropriate independent qualified professional (such as an architect, engineer or property inspector, depending on the nature of the Rehabilitation Work) selected by Lender;

(C) either:

(i) a search of title to the Mortgaged Property effective to the date of disbursement; or

(ii) a “date-down” endorsement to Lender’s Title Policy extending the effective date of such policy to the date of disbursement, and showing no Liens other than (1) Permitted Encumbrances, (2) liens which Borrower is diligently contesting in good faith that have been bonded off to the satisfaction of Lender, or (3) mechanics’ or materialmen’s liens which attach automatically under the laws of the Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property but for which Borrower is not delinquent in the payment for any such services or materials;

(D) an acknowledgement of payment, waiver of claims and release of lien for work performed and materials supplied from each contractor, subcontractor, or materialman in accordance with the requirements of applicable law and covering all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor or materialman through the date covered by the disbursement request (or, in the event that payment to such contractor, subcontractor or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous disbursement);

(E) any new or updated certificate of occupancy required by applicable law following completion of the Rehabilitation Work;

(F) an updated as-built survey of the Mortgaged Property in a form acceptable to Lender;

(G) such other reports or information required by Lender; and

(H) a written certification from Borrower or, if required by Lender, any architect or contractor that performed the Rehabilitation Work, certifying that:

(i) the Rehabilitation Work was completed in accordance with contracts, plans, budgets, permits, and agreements approved by Lender prior to commencing the Rehabilitation Work, subject to any modifications thereto approved by Lender; and

(ii) the Mortgaged Property meets all zoning, building, and other governmental requirements under applicable law.

### (8) Joint Checks for Periodic Disbursements.

Lender may issue joint checks, payable to Borrower and the applicable supplier, materialman, mechanic, contractor, subcontractor or other similar party, if:

(A) the cost of the Rehabilitation Work Item exceeds the Rehabilitation Work Item Cost Threshold, and the contractor performing such Rehabilitation Work requires periodic payments pursuant to the terms of the applicable written contract;

(B) the contract for such Rehabilitation Work requires payment upon completion of the applicable portion of the work;

(C) Borrower makes the disbursement request after completion of the applicable portion of the work required to be completed under such contract;

(D) the materials for which the request for disbursement has been made are on site at the Mortgaged Property and are properly secured or installed;

(E) Lender determines that the remaining funds in the Rehabilitation Reserve Account designated for such Required Rehabilitation Work are sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Rehabilitation Work and, as applicable, any other Borrower Requested Rehabilitation Work or Additional Lender Rehabilitation Work that has been previously approved by Lender;

(F) each supplier, materialman, mechanic, contractor, subcontractor or other similar party receiving payments shall have provided, if requested in writing by Lender, a waiver of liens with respect to amounts which have been previously paid to them; and

(G) all other conditions for disbursement have been satisfied.

### (9) Disbursements for Other than Required Rehabilitation Work; Excess Costs.

#### (A) Borrower Requested Rehabilitation Work.

In the event Borrower requests a disbursement from the Rehabilitation Reserve Account to reimburse Borrower for any Borrower Requested Rehabilitation Work, such request shall be in writing and explain the reason for the request. Lender shall make disbursements for Borrower Requested Rehabilitation Work, if:

(i) it is of the type intended to be covered by the Rehabilitation Reserve Account;

(ii) the costs are commercially reasonable;

(iii) the amount of funds in the Rehabilitation Reserve Account is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Rehabilitation Work and, as applicable, any other Borrower Requested Rehabilitation Work or Additional Lender Rehabilitation Work that has been previously approved by Lender; and

(iv) all conditions for disbursement from the Rehabilitation Reserve Account have been satisfied.

Nothing in this Loan Agreement shall limit Lender’s right to require an additional deposit to the Rehabilitation Reserve Account in connection with any such Borrower Requested Rehabilitation Work.

#### (B) Additional Lender Rehabilitation Work.

Lender may from time to time require that Borrower complete Additional Lender Rehabilitation Work, which Additional Lender Rehabilitation Work shall be commenced and completed in accordance with Section [\_\_].01(b) (Agreement to Complete Work). Lender shall make disbursements from the Rehabilitation Reserve Account for Additional Lender Rehabilitation Work if:

(i) the costs are commercially reasonable;

(ii) the amount of funds in the Rehabilitation Reserve Account is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Rehabilitation Work and, as applicable, and any other Borrower Requested Rehabilitation Work or Additional Lender Rehabilitation Work that has been previously approved by Lender; and

(iii) all conditions for disbursement from the Rehabilitation Reserve Account have been satisfied.

Nothing in this Loan Agreement shall limit Lender’s right to require an additional deposit to the Rehabilitation Reserve Account for any such Additional Lender Rehabilitation Work.

#### **(10) Excess Costs.**

In the event any Rehabilitation Work Item exceeds the approved cost set forth on the Rehabilitation Work Schedule for such Rehabilitation Work Item, Borrower may submit a disbursement request to reimburse Borrower for such excess cost. The disbursement request must be in writing and include an explanation for such request. Lender shall make disbursements from the Rehabilitation Reserve Account if:

(A) the excess cost is commercially reasonable;

(B) the amount of funds in the Rehabilitation Reserve Account is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Rehabilitation Work and, as applicable, any other Borrower Requested Rehabilitation Work or Additional Lender Rehabilitation Work that has been previously approved by Lender; and

(C) all conditions for disbursement from the Rehabilitation Reserve Account have been satisfied.

#### (11) Final Disbursements.

(A) Upon completion of all Rehabilitation Work in accordance with this Loan Agreement on or before the expiration of the Rehabilitation Completion Period and so long as no Event of Default has occurred and is continuing, Lender shall disburse to Borrower any amounts then remaining in the Rehabilitation Reserve Account if:

(i) all conditions for disbursements set forth in Section [\_\_].02(a)(7) (Conditions to Disbursement) have been satisfied;

(ii) Borrower shall have provided to Lender a certified rent roll, in such form as Lender may require, demonstrating that in the Three Month Period not less than ninety percent (90%) of the units of the Mortgaged Property were physically occupied under Residential Leases that comply with the terms of this Loan Agreement; and

(iii) the Mortgaged Property shall have achieved and maintained during each month of the Three Month Period the Stabilized Effective Gross Income Target.

(B) 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 Rehabilitation Reserve Account (if not previously released).

### (b) Approvals of Contracts; Assignment of Claims.

Lender retains the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Rehabilitation Work. Notwithstanding Borrower’s assignment (in the Security Instrument) of its rights and claims against all persons or entities supplying labor or materials in connection with the Rehabilitation Work, Lender will not pursue any such right or claim unless an Event of Default has occurred and is continuing or as otherwise provided in Section 14.03.

### (c) Delays and Workmanship.

If any Rehabilitation Work Item has not timely commenced, has not been timely performed in a workmanlike manner, or has not been timely completed in a workmanlike manner, Lender may, without notice to Borrower:

(1) withhold disbursements from the Rehabilitation Reserve Account for such unsatisfactory Rehabilitation Work Item;

(2) proceed under existing contracts or contract with third parties to make or complete such Rehabilitation Work Item;

(3) apply the funds in the Rehabilitation Reserve Account toward the labor and materials necessary to make or complete such Rehabilitation Work Item; or

(4) exercise any and all other remedies available to Lender under this Loan Agreement or any other Loan Document, including any remedies otherwise available upon the occurrence of an Event of Default.

To facilitate Lender’s completion or making of such Rehabilitation Work Item, Lender shall have the right to enter onto the Mortgaged Property and perform any and all work and labor necessary to make or complete the Rehabilitation Work Item and employ watchmen to protect the Mortgaged Property from damage. All funds so expended by Lender shall be deemed to have been advanced to Borrower shall be part of the Indebtedness and shall be secured by the Security Instrument and this Loan Agreement.

### (d) 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).

### (e) No Lender Obligation.

Nothing in this Loan Agreement shall:

(1) make Lender responsible for making or completing the Rehabilitation Work;

(2) require Lender to expend funds from the Rehabilitation Reserve Account to make or complete any Rehabilitation Work;

(3) obligate Lender to proceed with the Rehabilitation Work; or

(4) obligate Lender to demand from Borrower additional sums to make or complete any Rehabilitation Work.

### (f) No Lender Warranty.

Lender’s approval of any plans for any Rehabilitation Work, release of funds from the Rehabilitation Reserve Account, inspection of the Mortgaged Property by Lender or Lender’s agents, or other acknowledgment of completion of any Rehabilitation Work in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any person that the Rehabilitation Work has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental agency, such responsibility being at all times exclusively that of Borrower.

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

Borrower Initials

**SCHEDULE [\_\_\_] TO Multifamily Loan and Security Agreement**

**Rehabilitation Work Schedule**

*[Attach a list of Required Rehabilitation Work, estimated cost of Required Rehabilitation Work and the completion date of any Required Rehabilitation Work with a completion date other than by the end of the Rehabilitation Completion Period.]*

|  |  |  |
| --- | --- | --- |
| **Work** | **Estimated Cost** | **Completion Date** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

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

Borrower Initials