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

**(Additional P&I Escrow)**

This \_\_\_\_\_\_\_\_\_\_\_\_\_ AMENDMENT TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (this “**Amendment**”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Additional Reserve 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_/100 Dollars ($\_\_\_\_\_\_\_\_\_) (the “**Mortgage Loan**”), as evidenced by that certain Multifamily Note dated as of the Effective Date, executed by Borrower and made payable to Prior Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Note**”).

B. In addition to the Loan Agreement, the Mortgage Loan 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 Effective Date (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”).

C. Fannie Mae is the successor-in-interest to the 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 establish additional reserve escrows as additional security for Borrower’s obligations under the Loan Documents as more particularly described herein.

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.**
   1. Capitalized terms used and not specifically defined herein shall 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 Reserve Effective Date**” means the date specified in the Preamble of this Amendment.

“**Coverage Test**”means the actual amortizing debt service coverage ratio of the Mortgaged Property of not less than [1.\_\_\_: 1.00] **[DRAFTING NOTE: INSERT A MINIMUM UNDERWRITTEN DEBT SERVICE COVERAGE RATIO FOR AN EQUIVALENT FIXED RATE MORTGAGE LOAN OF THE SAME TERM AND FOR THE SAME PRODUCT AND TIER (PER PART III OF THE FORM 4660)]** determined by dividing the Net Cash Flow by the annual principal and interest payments calculated at the Interest Rate if a fixed rate loan or at the comparable fixed note rate at the time of underwriting if an adjustable rate loan, as determined by Lender in accordance with the Underwriting and Servicing Requirements.

“**P&I Reserve Account**” means a custodial account established by Lender into which the P&I Reserve Deposits are deposited.

“**P&I Reserve Account Funds**” means the funds on deposit from time to time in the P&I Reserve Account.

“**P&I Reserve Account Interest Disbursement Frequency**” means the period set forth in the Summary of Loan Terms for disbursement of interest from the P&I Reserve Account.

“**P&I Reserve Deposit**” means the amount set forth on the Summary of Loan Terms to be deposited into the P&I Reserve Account.

“**P&I Shortfall**” means any amount of principal and/or interest due under the Loan Documents that cannot be funded from the operation of the Mortgaged Property.

“**Underwriting and Servicing Requirements**” means Lender’s overall requirements for the Mortgaged Property in connection with similar loans sold or anticipated to be sold to Fannie Mae, pursuant to Fannie Mae’s then current guidelines, including requirements relating to appraisals, property condition assessments, environmental site assessments, and servicing and asset management, as such requirements may be amended, modified, updated, superseded, supplemented or replaced from time to time.

1. **Additional P&I Escrow.**

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

**ARTICLE** **[\_\_\_] – ADDITIONAL P&I ESCROW**

**Section [\_\_].01** **P&I Reserve.**

**(a) Deposit to P&I Reserve Account.**

On or before the Additional Reserve Effective Date, Borrower shall pay to Lender the P&I Reserve Deposit for deposit into the P&I Reserve Account. The P&I Reserve Account will provide Lender with a contingent source of funding in the event of a P&I Shortfall.

**(b)** **Administrative Fees and Expenses; Costs of Collection.**

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 the P&I Reserve Account Funds pursuant to this Section[\_\_].01 (P&I Reserve); and (2) all costs and expenses incurred by Lender (including 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 P&I Reserve Account Funds.

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

**(1) Custodial Account.**

The P&I Reserve Account shall be deemed a Collateral Account under this Loan Agreement and any P&I Reserve Account Funds shall be deemed part of the Collateral Account Funds under this Loan Agreement. The P&I Reserve Account shall be an interest-bearing account which 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 P&I Reserve Account Funds or for obtaining any specific level or percentage of earnings on such investment. All interest earned on the P&I Reserve Account Funds shall be added to and become part of such P&I 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 P&I Reserve Account not less frequently than the P&I Reserve Account Interest Disbursement Frequency. In no event shall Lender be obligated to disburse funds from the P&I Reserve Account if an Event of Default has occurred and is continuing at the time the disbursement request is made, other than an Event of Default occurring due to the failure of Borrower to make any required payment of principal and interest that would be cured by a disbursement from the P&I Reserve Account.

**(2)** **Disbursements from P&I Reserve Account.**

(A) In the event of a P&I Shortfall, upon a written request from Borrower (in accordance with the terms of Section [\_\_].01(c)(3) (Disbursement Requests) below) and satisfaction of the requirements set forth in this Section [\_\_].01(c)(2) (Disbursements from P&I Reserve Account), Lender shall disburse funds from the P&I Reserve Account to pay such P&I Shortfall.

(B) Nothing in this Loan Agreement shall obligate Lender to apply all or any portion of the P&I Reserve Account Funds to cure any Event of Default, other than an Event of Default occurring due to a P&I Shortfall that would be cured by a disbursement from the P&I Reserve Account, or to reduce the Indebtedness.

(C) Lender shall not disburse funds from the P&I Reserve Account for any costs which are to be reimbursed from any other Reserve/Escrow Account or other Collateral Account. Disbursement from the P&I Reserve Account shall not be made more frequently than once a month.

**(3) Disbursement Requests.**

(A) Each request for disbursement from the P&I Reserve Account shall be in writing and must be received by Lender no later than 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 P&I 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 reconciled bank statements for the three (3) months preceding such request;

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

(iv) 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 P&I Shortfall); and

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

(B) Lender shall review the P&I Disbursement Request Supporting Information to verify the amount of the P&I Shortfall. Lender may adjust the requested amount of the disbursement from the P&I Reserve Account if Borrower’s calculation of the amount of the P&I Shortfall or the required disbursement is incorrect.

(C) Borrower hereby acknowledges and agrees that any disbursement from the P&I Reserve Account by Lender shall be in accordance with the terms set forth in this Section [\_\_].01(c) (Accounts, Deposits and Disbursements). Borrower authorizes and directs Lender to make disbursements from the P&I Reserve Account and to apply such disbursements against P&I Shortfalls. All disbursements shall be expressly conditioned upon no Event of Default 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 P&I 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 P&I Reserve Account are made by Lender pursuant to the terms of this Loan Agreement.

**(d)** **Final Disbursement of P&I Reserve Account Funds.**

Unless previously released or applied by Lender pursuant to the terms of this Section [\_\_].01 (P&I Reserve), Lender shall disburse to Borrower any and all remaining P&I Reserve Account Funds in the P&I Deposit Account on the earlier of:

(1) the date thirty (30) days following Borrower’s written request for such disbursement provided the following conditions are satisfied:

(A) such request is not made before the first day of the month following the date \_\_\_\_\_\_\_\_ (\_\_) months after the Additional Reserve Effective Date **[DRAFTING NOTE: INSERT THE TOTAL NUMBER OF MONTHS PROVIDED IN PART I OF FORM 4660, INCLUDING THE HOLD PERIOD PLUS TESTING PERIOD. FOR EXAMPLE, IF THE HOLD PERIOD IS “a minimum term of at least 6 months”, AND THE TESTING PERIOD IS “plus 1 additional quarter”, INSERT “9 months”.]**; and

(B) the Mortgage Loan has satisfied the Coverage Test for at least one (1) quarter immediately prior to such request (with Net Cash Flows for such quarter determined on an annualized basis); or

(2) the date that is the first day of the month following the date thirty-six (36) months after the Additional Reserve Effective Date.

**Section [\_\_].02 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. **Summary of Loan Terms.**

The Summary of Loan Terms is hereby amended by adding Addenda to Schedule 2 – Summary of Loan Terms (Additional P&I Escrow) attached hereto as Exhibit A.

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. **Servicer to Act for Fannie Mae.**

In all instances in which the consent or approval of Fannie Mae or Servicer may be given or is required, or in which any determination, judgment or decision is to be rendered by Fannie Mae or Servicer, the rendering of such consent, approval, determination, judgment, or decision shall be made or exercised by Servicer on behalf of Fannie Mae. All notices and communications to be given under this Amendment shall be given to Servicer, at the address provided in the Loan Agreement, and not to Fannie Mae. All requests for disbursement of funds shall be made to, and the disbursing of funds shall be made by Servicer and not Fannie Mae. The delegation of authority to Servicer by Fannie Mae shall continue until such time as revoked in writing by Fannie Mae, with a copy to Borrower.

1. **Miscellaneous.**
   1. **Successors and Assigns; No Third Party Beneficiaries.**

Borrower shall not assign its rights and obligations under this Amendment except in connection with an approved assignment of the Loan Documents. All covenants and agreements contained in this Amendment are for the benefit of the parties to this Amendment only, and nothing expressed or implied in this Amendment is intended to be for the benefit of any contractor, architect, or other person.

* 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 15.02 (Notice), Section 15.04 (Counterparts), Section 15.07 (Severability; Entire Agreement; Amendments), Section 15.08 (Construction), Section 15.11 (Waiver; Conflict), and Section 15.18 (Waiver of Trial by Jury) 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.

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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**

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

**(Additional P&I Escrow)**

|  |  |
| --- | --- |
| **[\_\_]. ADDITIONAL P&I ESCROW** | |
| **P&I Reserve Deposit** | $\_\_\_\_\_\_\_\_\_\_\_\_\_ **[DRAFTING NOTE: INSERT AMOUNT CALCULATED AS REQUIRED BY PART I OF FORM 4660 GUIDANCE]** |
| **P&I Reserve Account Interest Disbursement Frequency** | [Monthly][Quarterly] |

**[Remainder of Page Intentionally Blank]**