

[DRAFTING NOTE: FOR USE ONLY WHEN BORROWER OWNS ALL UNITS IN A CONDOMINIUM]

EXHIBIT [ ]

MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT  
(Condominium Provisions)

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:

“Association” means \_\_\_\_\_ [DRAFTING NOTE: INSERT NAME OF CONDOMINIUM ASSOCIATION].

“Complete Condominium Control” means Borrower possesses the power (including the requisite votes in any body governing the Condominium) to direct or cause the direction of the management and operations of the Condominium, including the right to control the outcome of any matters that are subject to a vote and the right to consent to action before it is taken (including matters related to Condominium termination, amendments to the Condominium Documents, assessments, insurance requirements, and restoration or application of proceeds after a casualty or damage related to a condemnation).

“Condominium” has the meaning set forth in the Security Instrument.

“Condominium Act” has the meaning set forth in the Security Instrument.

“Condominium Documents” has the meaning set forth in the Security Instrument.

3. Section 14.01(a) (Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended by adding the following ~~provision~~provisions to the end thereof:

[ ] Borrower ~~(A)~~ terminates or revokes or attempts to terminate or revoke the appointment of Lender as Borrower’s proxy or attorney-in-fact either permanently or as to any election in the Condominium Act or Condominium Documents~~;~~;

[~~(B)~~ ] Borrower modifies or attempts to modify the terms of the Condominium Documents without the prior written consent of Lender~~;~~;

[ ] Borrower commences any action for partition of the Mortgaged Property; or

[( )] if any provision of the Condominium Act is held invalid, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Loan Agreement or the Security Instrument or Lender's interest in the Mortgaged Property.

4. Section 14.03(c) (Appointment of Lender as Attorney-in-Fact) of the Loan Agreement is hereby amended by adding the following provision to the end thereof:

[( )] perform all of the obligations and exercise all of the rights and powers of Borrower under the Condominium Documents.

5. The following article is hereby added to the Loan Agreement as Article [( )] (Condominium Provisions):

## **ARTICLE [( )] – CONDOMINIUM PROVISIONS**

### **Section [( )].01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section are made as of the Effective Date.

(a) The Mortgaged Property is a Condominium and constitutes all of the condominium units and all of the common elements comprising the Condominium as set forth in the Condominium Documents together with all rights that Borrower has, in any capacity, under the Condominium Documents and Condominium Act, including rights to approve any amendments to the Condominium Documents.

(b) Borrower owns all of the condominium units and common elements comprising the Condominium.

(c) Borrower possesses Complete Condominium Control.

(d) None of the condominium units and no portion of the common elements comprising the Condominium have been sold, conveyed or encumbered or are subject to any agreement to sell, convey or encumber.

### **Section [( )].02 Covenants.**

(a) Borrower Control of Condominium.

Borrower shall continue to possess Complete Condominium Control.

(b) No Changes to Condominium Documents; No Partition.

Borrower shall not:

(1) terminate or revoke or attempt to terminate or revoke the appointment of Lender as Borrower's proxy or attorney-in-fact either permanently or as to any election in the Condominium Act or Condominium Documents,

(2) modify or attempt to modify the Condominium Documents without the prior written consent of Lender; or

(3) commence any action for partition of the Mortgaged Property.

**(ac) Condominium Assessments.**

Notwithstanding Borrower's payment of annual assessments or special assessments levied under the terms of the Condominium Documents to provide any repairs to or maintenance of any of the common elements, Borrower shall deposit any Initial Replacement Reserve Deposit, Repairs Escrow Deposit and Monthly Replacement Reserve Deposit required pursuant to the terms of this Loan Agreement.

**(bd) Insurance.**

Borrower shall (1) maintain, or shall cause the Association to maintain, insurance in accordance with Lender's guidelines on all of the Mortgaged Property, including any common areas, and (2) send to Lender copies of all notices received by Borrower from the Association related to insurance.

**(ee) Indemnification.**

Borrower agrees to indemnify and hold Lender harmless from and against any and all losses, costs, liabilities, or damages (including reasonable attorneys' fees and disbursements) arising out of (1) the failure of Borrower to comply with any state or local law, ordinance, statute, rule, or regulation by any Governmental Authority covering the Condominium, (2) any claim of any unit owner or tenant of any unit owner as a result of any violation, breach, misrepresentation, fraud, act, or omission of any obligation of Borrower as set forth in the Condominium Documents, ~~or~~ (3) the performance by Lender of any of the rights and powers of Borrower under the Condominium Documents, or (4) a determination that the Condominium is not considered a validly created condominium under the Condominium Act; provided that Borrower shall have no indemnity obligation if such losses, costs, liabilities, or damages arise as a result of the willful misconduct and 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. Further, Lender (or its nominees or transferees) shall have no personal

liability under the Condominium Documents unless and until it has record title to the Condominium.

**(df) Power of Attorney.**

Borrower acknowledges and consents to the exercise by Lender of the power of attorney and proxy granted by Borrower to Lender with respect to rights of Borrower in connection with the Condominium.

**(eg) Termination of Condominium.**

Notwithstanding anything to the contrary contained in this Loan Agreement or the other Loan Documents, Borrower may terminate the Condominium; ~~provided that~~ with Lender's prior written consent. Such termination is subject to the following conditions:

Borrower: (1) provides Lender thirty (30) days' written notice of its intent to terminate the Condominium; (2) obtains all necessary consents and approvals to terminate the Condominium in accordance with the requirements of the Condominium Act and the Condominium Documents; (3) takes all necessary steps to wind-up and dissolve the Association in accordance with the requirements of the Condominium Act and the Condominium Documents; (4) executes all necessary documents to modify the definition of the Mortgaged Property covered by the Security Instrument to include all of the assets previously subject to the Condominium Documents; (5) obtains all necessary title endorsements to modify the definition of the Mortgaged Property covered by the Title Policy; and (6) takes any other actions, and signs and delivers such other instruments and documents, reasonably required by Lender in connection therewith.

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**Summary report:**  
**Litera Compare for Word 11.2.0.54 Document comparison done on**  
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Format changes	0
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