



MISC 2013011627



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Register of Deeds, Douglas County, NE
02/05/2013 08:11:16.00



2013011627

**MODIFICATION OF
MULTIFAMILY DEED OF TRUST
AND SECURITY AGREEMENT**

Modifying Instrument No: 2007039477

**Club at Highland Park Apartments
11402 Evans Street
Omaha, Nebraska 68164**

**This instrument prepared by and after recording
return to:**

Cassin & Cassin LLP
711 Third Avenue, 20th Floor
New York, New York 10017
Attn: Recording Department

County: Douglas

13-116696
-16-

**MODIFICATION OF MULTIFAMILY DEED OF TRUST
AND SECURITY AGREEMENT**

THIS MODIFICATION OF MULTIFAMILY DEED OF TRUST AND SECURITY AGREEMENT (the “**Agreement**”) is made as of the 29th day of January, 2013, between **11402 EVANS OMAHA LLC**, an Iowa limited liability company, whose address is c/o BH Equities, L.L.C, (“**Grantor**”), to **JOHN A. DAUM, ESQ. (“TRUSTEE”)** and **FANNIE MAE**, a corporation organized under the laws of the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. Section 1716 et seq. And duly organized and existing under the laws of the United States, whose address is 3900 Wisconsin Avenue, NW, Washington, District of Columbia 20016 (“**Beneficiary**”).

W I T N E S S E T H

WHEREAS, the Grantor owns in fee simple the entire premises covered by the Mortgage hereinafter described, which premises are known as Lake Forest, 11402 Evans Street, Omaha, Nebraska 68164 (the “**Premises**”), and being more particularly described in Exhibit A annexed hereto and made a part hereof; and

WHEREAS, the Beneficiary is the holder of that certain Multifamily Deed of Trust and Security Agreement covering the Premises, made by Grantor to Deutsche Bank Berkshire Mortgage, Inc, a Delaware company, predecessor in interest to Berkeley Point Capital LLC, a Delaware limited liability company (Original Lender), in the principal amount of Twelve Million Four Hundred and Sixty-Five Thousand and 00/100 (\$12,465,000.00) Dollars, dated as of April 3, 2007 and recorded as instrument number 2007039477 in the land records of Douglas County, Nebraska (“**Mortgage**”), which was assigned by Assignment of Security Instrument from original Lender to German American Capital Corporation date May 2, 2007 filed on December 26, 2007 and recorded as instrument number 2007140767 subsequently assigned by Assignment of Security from German American Capital Corporation to Fannie Mae dated as of December 7, 2007 and recorded on December 26, 2007 as instrument number 2007140770 in the aforesaid records (“**Assignment**”), and

WHEREAS, the Grantor and Beneficiary wish to modify the terms of the Deed of Trust for the purpose of replacing in its entirety Section 4.1(a) of Article IV; and

NOW THEREFORE, in consideration of one (\$1.00) dollar paid by Grantor and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

A. Beneficiary and Grantor have agreed to modify the terms of the Mortgage by replacing the existing Section 4.1(a) of Article IV in its entirety with the following

4.1 Replacement Reserve

{00754309;1}

(a) Grantor shall maintain a "Replacement Reserve" with Beneficiary to pay expenses in connection with work deemed capital improvements under generally accepted and accounting principle (collectively, "Replacements"). Commencing on March 1, 2013 and continuing on each payment Date thereafter. Grantor shall pay to Beneficiary, a monthly deposit to the Replacement Reserve of \$7,878.00. If no Default exists, Beneficiary shall, to the extent of funds in the Replacement Reserve, disburse to Grantor the amount paid or incurred by Grantor in performing Replacements, within ten (10) days after Beneficiary's receipt of: (i) Grantor's written request for disbursement from the Replacement Reserve and certification of completion; (ii) evidence verifying the cost of the Replacement; (iii) for requests over \$10,000, (A) lien waivers or evidence that all contractors and materialmen furnishing material or labor have been paid in full and (B) an inspecting architect's or engineer's certification verifying completion and the value thereof; and (iv) for disbursement requests over \$50,000, proof of compliance with Applicable Laws, such as a new certificate of occupancy. Beneficiary shall not be required to disburse from the Replacement Reserve more frequently than once in any ninety (90) day period. Beneficiary may, at Grantor's expense, inspect the Trust Property to determine the need for further Replacements not more than once in any calendar year unless a Default shall have occurred. If further Replacements are required, Grantor shall complete same within ninety (90) days after Beneficiary written request.

B. Covenants of Grantor. Grantor, in consideration of the premises, does hereby assume, covenant and agree as follows:

a. Grantor agrees to comply with all of the terms of the Mortgage as hereby modified.

b. Grantor represents and covenants that if the terms and provisions of the Mortgage in any way conflict with the terms and provisions contained in this Agreement, the terms and provisions herein contained shall prevail, and that except as specifically modified by this Agreement, the Mortgage is hereby ratified and confirmed.

C. Binding Effect. This Agreement may not be changed or terminated orally. The covenants contained in this Agreement shall run with the land and bind the Grantor, the heirs, personal representatives, successors and assigns of the Grantor and all subsequent owners, encumbrancers, tenants or subtenants of the Premises and shall enure to the benefit of Lender and all subsequent holders of the Mortgage.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Grantor has signed and delivered this Agreement or has caused this Agreement to be signed and delivered by its duly authorized representative.

GRANTOR:

**11402 Evans Omaha LLC,
an Iowa limited liability company,**

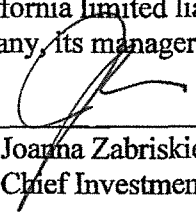
By: CT-BH-NVR Omaha Portfolio, L.P.,
an Iowa limited partnership,
its sole member

By: BH Harbour GP, LLC,
a Nebraska limited liability company,
its general partner

By: Harbour Apartment Opportunity Fund I, L.P.,
a Delaware limited partnership,
its managing member

By: Harbour Realty Partners I, GP, LLC,
a Delaware limited liability company
its general partner

By: Harbour Realty Partners, LLC,
a California limited liability
company, its manager

By: 
Joanna Zabriskie, its
Chief Investment Officer

By: BH Equities, L.L.C.,
an Iowa limited liability company,
its managing member

By: _____
Harry Bookey, its manager

[ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has signed and delivered this Agreement or has caused this Agreement to be signed and delivered by its duly authorized representative.

GRANTOR:

**11402 Evans Omaha LLC,
an Iowa limited liability company,**

By: CT-BH-NVR Omaha Portfolio, L.P.,
an Iowa limited partnership,
its sole member

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a Nebraska limited liability company,
its general partner

By: Harbour Apartment Opportunity Fund I, L.P.,
a Delaware limited partnership,
its managing member

By: Harbour Realty Partners I, GP, LLC,
a Delaware limited liability company
its general partner

By: Harbour Realty Partners, LLC,
a California limited liability
company, its manager

By: _____
Joanna Zabriskie, its
Chief Investment Officer

By: BH Equities, L.L.C.,
an Iowa limited liability company,
its managing member

By:  _____
Harry Bookey, its manager

[ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE]

Address: Joanne Zabriskie
25 East Anapamu Street
Santa Barbara, California 93101

Address: Harry Bookey
400 Locust Street, Suite 790
DeMoines, Iowa 50309

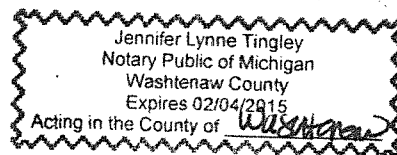
STATE OF Michigan)
: ss.:
COUNTY OF Washtenaw)

The foregoing instrument was acknowledged before me this January 24, 2013 by JOANNA ZABRISKIE, the CHIEF INVESTMENT OFFICER of HARBOUR REALTY PARTNERS, LLC, a California limited liability company, the MANAGER of HARBOUR REALTY PARTNERS I, GP, LLC, a Delaware limited liability company, the GENERAL PARTNER of HARBOUR APARTMENT OPPORTUNITY FUND I, L.P., Delaware limited partnership, the MANAGING MEMBER of BH HARBOUR GP, LLC, a Nebraska limited liability company, the GENERAL PARTNER of CT-BH-NVR OMAHA PORTFOLIO, L.P., an Iowa limited partnership, SOLE MEMBER of 11402 EVANS OMAHA LLC, an Iowa limited liability company and acknowledged the same to be her voluntary act and deed and the voluntary act and deed of said limited liability company.

Witness my hand and notarial seal at Dexter, Michigan in said county, the date aforesaid.

Jennifer L. Tingley
Notary Public

My Commission Expires:



[ACKNOWLEDGEMENTS CONTINUE ON FOLLOWING PAGE]

STATE OF IOWA

)

: ss.:

COUNTY OF POLK

)

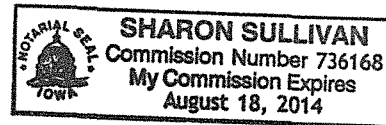
The foregoing instrument was acknowledged before me this January 23, 2013 by **HARRY BOOKEY**, the **MANAGER** of **BH EQUITIES, L.L.C.**, an Iowa limited liability company, the **MANAGING MEMBER** of **BH HARBOUR GP, LLC**, a Nebraska limited liability company, the **GENERAL PARTNER** of **CT-BH-NVR OMAHA PORTFOLIO, L.P.**, an Iowa limited partnership, **SOLE MEMBER** of **11402 EVANS OMAHA LLC**, an Iowa limited liability company and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

Witness my hand and notarial seal at DES MOINES, IOWA in said county, the date aforesaid.

SHARON SULLIVAN

Notary Public

My Commission Expires:



FANNIE MAE:

By: **BERKELEY POINT CAPITAL LLC**, as Attorney-in-fact on behalf of Fannie Mae (SEAL)

Name: *Matthew S. Mense*
Matthew S. Mense

Title: Officer
Name: *Brenda R. Dutrow*
Brenda R. Dutrow

Title: Officer

Attention: Multifamily Operations - Asset Management
Drawer AM
3900 Wisconsin Avenue, N.W.
Washington, DC 20016

STATE OF *Maryland*)
COUNTY OF *Montgomery* : ss.:

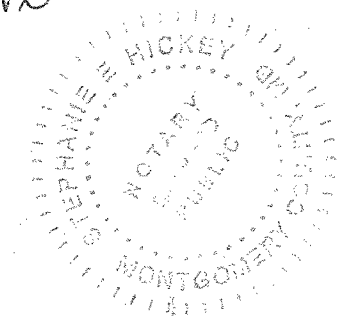
The foregoing instrument was acknowledged before me this January *28* 2013 by *Matthew S. Mense* the *officer* of **BERKELEY POINT CAPITAL LLC**, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

Witness my hand and notarial seal at *Bethesda* in said county, the date aforesaid.

Stephanie E. Hickey
Notary Public

My Commission Expires: *3/20/2016*

(ACKNOWLEDGMENT TO FOLLOW ON THE NEXT PAGE)



STATE OF Maryland)
COUNTY OF Montgomery) ss.:

The foregoing instrument was acknowledged before me this January 28 2013 by Brenda P. Dutton the Officer of **BERKELEY POINT CAPITAL LLC**, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

Witness my hand and notarial seal at Bethesda in said county, the date aforesaid.

Stephanie E. Hickey
Notary Public

My Commission Expires: 3/20/2016



EXHIBIT A

DESCRIPTION OF THE LAND

PARCEL 1:

Lots 1, 2, 3, and 10, in Lake Forest Estates Replat, an addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska, in Book 1362, page 201 except that portion of said Lot 3, more particularly described as follows:

Beginning at the Northwest corner of said Lot 3; thence East along the Northerly property line of Lot 3, a distance of 20 feet; thence Southeasterly, along a line parallel to the Westerly property line of Lot 3, a distance of 20 feet; thence Southeasterly, along a line parallel to the Northerly property line of Lot 3, a distance of 20 feet, more or less, to a point on the Westerly property line of Lot 3; thence Northwesterly, along the Westerly property line of Lot 3, to the point of beginning;

AND

Except that part of Lot 3 more particularly described as follows: Beginning at the Northeast corner of said Lot 3; thence South along the Easterly property line of Lot 3 a distance of 20 feet; thence West, along a line parallel to the Northerly property line of Lot 3, a distance of 20 feet; thence Northerly, along a line parallel to the Easterly property line of Lot 3, a distance of 20 feet, more or less, to a point on the Northerly property line of Lot 3; thence Easterly, along the Northerly line of Lot 3; to the point of beginning.

PARCEL 2:

Lots 15 ~ 25, Lake Forest Estates Replat, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, in Book 1362, page 201.