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By

RICHARD N TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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AFTER RECORDING RETURN TO:

Jon I. Opert, Esq.
Krooth & Altman
1850 M Street, NW, Suite 400
Washington, DC 20036

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**MODIFICATION TO MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**
(Fox Valley Apartments, Phase I)

THIS MODIFICATION TO MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Modification") is made and entered into as of the 30 day of June, 1999, by and between **WIENER OMAHA II, LLC**, a Nebraska limited liability company (the "Trustor"), whose address is c/o J.R.D. Management Corporation, 875 Mamaroneck Avenue, Mamaroneck, New York 10543, and **FANNIE MAE**, a corporation organized and existing under the laws of the United States of America (formerly known as **FEDERAL NATIONAL MORTGAGE ASSOCIATION**) ("Lender"), whose address is c/o Patrician Financial Company Limited Partnership, 4550 Montgomery Avenue, Suite 1150, Bethesda, Maryland 20814.

WITNESSETH:

WHEREAS, the Trustor is indebted to the Lender pursuant to the terms of a certain Multifamily Note, dated as of October 30, 1996, in the original principal amount of \$4,485,000 (including the Addendum to Multifamily Note, the "Note"), which Note was made by Vann Apartments General Partnership ("Original Trustor"), payable to The Patrician Financial Company, a Maryland corporation ("Patrician") and endorsed and delivered by Patrician to the Lender;

WHEREAS, the Note is collateralized and secured, inter alia, by a certain Multifamily Deed of Trust, Assignment of Rents and Security Agreement of even date with the Note (including the Rider to Multifamily Instrument, the "Deed of Trust") from the Original Trustor, to Stewart Title Guaranty Company, as trustee, for the benefit of Patrician, encumbering the real property described on Exhibit "A" attached hereto, which Deed of Trust was recorded with the Douglas County, Nebraska Register of Deeds ("Land Records") on October 31, 1996, in Book 4857 at Page 080, and was subsequently assigned by Patrician to the Lender by a certain Assignment of Deed of Trust, dated as of October 30, 1996 and recorded among the Land Records on October 31, 1996, in Book 4857 at Page 101;

WHEREAS, the Trustor has assumed the obligations under the Note and the Deed of Trust pursuant to an Assumption and Release Agreement by and among the Original Trustor, the Trustor, Fannie Mae, the Original Key Principals (as defined therein) and the New Key Principal (as defined therein), dated as of even date herewith, to be recorded simultaneously herewith;

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WHEREAS, the parties desire to reflect in this Modification certain additions to the Rider to Multifamily Instrument attached to the Deed of Trust.

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

1. The Deed of Trust is amended as follows:

The following provisions are added to Paragraph F(b) of the Rider to Multifamily Instrument:

- (6) a Transfer of any Significant Interest in Key Principal; or
- (7) a Transfer of any Significant Interest in a corporation, partnership, limited liability company, joint venture, or trust which owns a Significant Interest in Key Principal.

2. The Deed of Trust is further amended as follows:

The following sentences are added to the end of Paragraph J of the Rider to Multifamily Instrument:

However, Borrower has disclosed to and provided Lender with information relating to assets it currently owns in addition to the Property, consisting of a multifamily housing project known as Fox Valley Apartments, Phase II, as more particularly described on Exhibit "B" attached hereto and incorporated herein (the "Disclosed Assets"). Lender acknowledges that Borrower is not a single asset entity and agrees that Borrower may continue to own and operate the Disclosed Assets. Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Property and the Disclosed Assets and personal property related to the operation and maintenance of the Property and the Disclosed Assets; (b) shall not operate any business other than the management and operation of the Property and the Disclosed Assets; and (c) shall not maintain its assets in a way which is difficult to segregate and identify. In the event the Property shall be transferred, the single asset requirements of the original Paragraph J of the Rider to Multifamily Instrument shall apply for any transferee.

3. The Deed of Trust is further amended as follows:

The following is added as new Paragraph N to the Rider to Multifamily Instrument:

N. **Cross-Default and Cross-Collateralization.**

(i) In addition to the Property described on Exhibit "A" attached hereto, the Borrower owns the Disclosed Assets. The Disclosed Assets, together with the Property, are referred to herein collectively as the "Borrower's Projects". In addition to the loan extended to the Borrower evidenced by the Note, the Lender has extended an additional loan to the Borrower, which is secured by a Multifamily Deed of Trust, Assignment of Rents and Security Agreement (the "Security Instrument") against the Disclosed Assets.

(ii) The Borrower acknowledges that the Lender is unwilling to allow the loan evidenced by the Note to be assumed by a multiple asset entity unless the Borrower agrees that all of the Borrower's Projects will be treated as a single project through the imposition of cross-collateralization, cross-default and release provisions. The Borrower further acknowledges that the Lender's agreement to amend the single asset borrower provisions of Paragraph J of this Rider, to permit the Borrower's ownership of all of the Borrower's Projects, is in partial consideration for the cross-collateralization, cross-default and release provisions set forth herein below.

(iii) The Borrower hereby agrees and consents that as additional security to the Lender, each of the Borrower's Projects shall be subject to the lien of the Lender's security instrument for each of the other of the Borrower's Projects, and that each of the respective Borrower's Projects shall collateralize the other Borrower's Projects as follows: all Property or Mortgaged Property (as defined in the respective security instrument) for each of the Borrower's Projects shall be considered part of the "Property" under this Instrument, and shall be collateral under this Instrument and the Loan Documents.

(iv) The Borrower hereby agrees and consents that the occurrence of an Event of Default under the security instrument securing one of the Borrower's Projects, then an Event of Default shall exist under the security instrument with respect to the other Borrower's Projects. No notice shall be required to be given to the Borrower in connection with such Event of Default. In the event of an Event of Default under the security instrument with respect to any one of the Borrower's Projects, the Lender shall have the right, in its sole and absolute discretion, to exercise and perfect any and all rights in and under the Loan Documents with regard to any or all of the other Borrower's Projects, including, but not limited to, an acceleration of one or all of the Notes and the sale of one or all of the Borrower's Projects in accordance with the terms of the respective security instrument. No notice, except as may be required by the respective security instrument, shall be required to be given to the Borrower in connection with the Lender's exercise of any and all of its rights after an Event of Default has occurred.

4. The Deed of Trust is further amended as follows:

Paragraph F(d) of the Rider to Multifamily Instrument is modified to add a new Paragraph F(d)(6):

"(6) a Transfer of ownership interests held by the Key Principal in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, to (i) other Key Principals; (ii) non-minor immediate family members; or (iii) trusts established for the benefit of the transferor and/or immediate family members; provided, however, that (A) such Transfer of ownership interests will not cause a change in the management and control of Borrower (or other intermediate entity), and after which Transfer, Key Principal shall maintain the same right and ability to manage and control Borrower (or other intermediate entity) as existed prior to the Transfer and (B) Lender shall be provided with written notice of all such Transfers permitted under this Paragraph (F)(d)(6) no later than 5 days after the date of the Transfer."

5. Nothing herein contained shall in anyway be construed to impair the aforesaid Deed of Trust or the security now held for the indebtedness evidenced thereby, nor waive, annul, vary or affect any provision, condition, or covenant therein, except as specifically amended herein, nor affect or impair any rights, powers or remedies under the Deed of Trust, as herein amended, it being the intent of the parties hereto that the terms of said Deed of Trust shall continue in full force and effect as modified hereby.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESSETH hereof, the parties hereto have entered into the Modification as of the day and year first above written.

TRUSTOR:

WIENER OMAHA II, LLC
a Nebraska limited liability company

By: **WIENER FAMILY PARTNERSHIP**
a New York general partnership
Manager and Sole Member

By: Trust created under Trust Agreement dated
December 2, 1996 F/B/O Robert R. Wiener
Managing Partner

By: Frederick K. Mehlman
Frederick K. Mehlman, Trustee

By: _____
Charles F. Crammes, Trustee

By: _____
Eric R. Wiener, Trustee

LENDER:

FANNIE MAE (formerly known as **FEDERAL
NATIONAL MORTGAGE ASSOCIATION**)

By: _____
Name: _____
Title: _____

IN WITNESSETH hereof, the parties hereto have entered into the Modification as of the day and year first above written.

TRUSTOR:

WIENER OMAHA II, LLC

a Nebraska limited liability company

By: **WIENER FAMILY PARTNERSHIP**
a New York general partnership
Manager and Sole Member

By: Trust created under Trust Agreement dated
December 2, 1996 F/B/O Robert R. Wiener
Managing Partner

By: _____
Frederick K. Mehlman, Trustee

By: _____
Charles F. Crammes, Trustee

By: _____
Eric R. Wiener, Trustee

LENDER:

**FANNIE MAE (formerly known as FEDERAL
NATIONAL MORTGAGE ASSOCIATION)**

By: _____
Name: _____
Title: _____

IN WITNESSETH hereof, the parties hereto have entered into the Modification as of the day and year first above written.

TRUSTOR:

WIENER OMAHA II, LLC
a Nebraska limited liability company

By: **WIENER FAMILY PARTNERSHIP**
a New York general partnership
Manager and Sole Member

By: Trust created under Trust Agreement dated
December 2, 1996 F/B/O Robert R. Wiener
Managing Partner

By: _____
Frederick K. Mehlman, Trustee

By: _____
Charles F. Crammes, Trustee

By: _____
Eric R. Wiener, Trustee

LENDER:

FANNIE MAE

By: _____
Name: _____
Title: _____

IN WITNESSETH hereof, the parties hereto have entered into the Modification as of the day and year first above written.

TRUSTOR:

WIENER OMAHA II, LLC

a Nebraska limited liability company

By: **WIENER FAMILY PARTNERSHIP**
a New York general partnership
Manager and Sole Member

By: Trust created under Trust Agreement dated
December 2, 1996 F/B/O Robert R. Wiener
Managing Partner

By: _____
Frederick K. Mehlman, Trustee

By: _____
Charles F. Crammes, Trustee

By: _____
Eric R. Wiener, Trustee

LENDER:

FANNIE MAE (formerly known as **FEDERAL
NATIONAL MORTGAGE ASSOCIATION**)

By: Margaret K. Cullom
Name: Margaret K. Cullom
Title: Assistant Vice President

ACKNOWLEDGMENTS

STATE OF New York)
COUNTY OF Westchester) ss:

The foregoing instrument was acknowledged before me this 11th day of June, 1999, by **Frederick K. Mehlman**, Trustee on behalf of Trust created under Trust Agreement dated December 2, 1996 F/B/O Robert R. Wiener, Managing Partner of Wiener Family Partnership, a general partnership, Manager and Sole Member on behalf of Wiener Omaha II, LLC, a limited liability company, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

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

My Commission Expires:

BONNIE JEAN WALSH
Notary Public, State of New York
Registration No. 01WA5061181
Qualified in Westchester County
Commission Expires 6-10-99

Bonnie Jean Walsh
Notary Public

STATE OF _____)
COUNTY OF _____) ss:

The foregoing instrument was acknowledged before me this ____ day of June, 1999, by **Charles F. Cramers**, Trustee on behalf of Trust created under Trust Agreement dated December 2, 1996 F/B/O Robert R. Wiener, Managing Partner of Wiener Family Partnership, a general partnership, Manager and Sole Member on behalf of Wiener Omaha II, LLC, a limited liability company, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

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

My Commission Expires:

Notary Public

ACKNOWLEDGMENTS

STATE OF _____)
) ss:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of June, 1999, by **Frederick K. Mehlman**, Trustee on behalf of Trust created under Trust Agreement dated December 2, 1996 F/B/O Robert R. Wiener, Managing Partner of Wiener Family Partnership, a general partnership, Manager and Sole Member on behalf of Wiener Omaha II, LLC, a limited liability company, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

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

My Commission Expires: _____

 Notary Public

STATE OF NEW YORK)
) ss:
 COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 16th day of June, 1999, by **Charles F. Crammes**, Trustee on behalf of Trust created under Trust Agreement dated December 2, 1996 F/B/O Robert R. Wiener, Managing Partner of Wiener Family Partnership, a general partnership, Manager and Sole Member on behalf of Wiener Omaha II, LLC, a limited liability company, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

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

My Commission Expires: _____

Sam M. Silvers
 Notary Public

SAMUEL M. SILVERS
 Notary Public, State of New York
 No. 31-4857438
 Qualified in New York County
 Commission Expires March 31, 2000

NOTARIAL SEAL AFFIXED
 REGISTER OF DEEDS

STATE OF Colorado)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 16th day of June, 1999, by Eric Wiener, Trustee on behalf of Trust created under Trust Agreement dated December 2, 1996 F/B/O Robert R. Wiener, Managing Partner of Wiener Family Partnership, a general partnership, Manager and Sole Member on behalf of Wiener Omaha II, LLC, a limited liability company, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

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

My Commission Expires:

Susan Dampier
Notary Public

My Commission Expires
05/06/2001

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

DISTRICT OF COLUMBIA) ss:

On this ____ day of June, 1999, before me, the undersigned, a Notary Public duly commissioned and qualified in and for said district, personally came the above named _____, _____ of Fannie Mae a corporation, who is personally known to be the identical person whose name is affixed to the above document as _____ of said corporation, and he/she acknowledged the instrument to be his/her voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and notarial seal in said District of Columbia, the date aforesaid.

My Commission Expires:

Notary Public

STATE OF _____)
) ss:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of June, 1999, by **Eric Wiener**, Trustee on behalf of Trust created under Trust Agreement dated December 2, 1996 F/B/O Robert R. Wiener, Managing Partner of Wiener Family Partnership, a general partnership, Manager and Sole Member on behalf of Wiener Omaha II, LLC, a limited liability company, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.

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

My Commission Expires:

 Notary Public

DISTRICT OF COLUMBIA) ss:

On this 2nd day of June, 1999, before me, the undersigned, a Notary Public duly commissioned and qualified in and for said district, personally came the above named Margaret K. Cullom, AVP of Fannie Mae (formerly known as Federal National Mortgage Association), a corporation, who is personally known to be the identical person whose name is affixed to the above document as AVP of said corporation, and he/she acknowledged the instrument to be his/her voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and notarial seal in said District of Columbia, the date aforesaid.

NOTARIAL SEAL AFFIXED
 REGISTER OF DEEDS

My Commission Expires

DISTRICT OF COLUMBIA

PAULETTE M. GAYLES

MY COMMISSION EXPIRES JANUARY 1, 2004

 Notary Public

EXHIBIT A

Lot 64, THE KNOLLS, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, together with the West Half of vacated 104th Avenue adjacent to said Lot on the East, and that part of the East Half of vacated 104th Avenue adjacent to said Lot on the West;

Together with beneficial easement rights for construction of sanitary sewer as set forth in instrument dated April 21, 1995, filed April 24, 1995 in Book 1145 at Page 286.

INFORMATIONAL NOTE: Above property is a platted subdivision known as THE KNOLLS, filed February 16, 1972 in Book 1448 at Page 718 and further identified by Tax Key No. 1414-5464-15.

TA-34784-A

EXHIBIT B

LEGAL DESCRIPTION

Lot 65, in THE KNOLLS, a Subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska, together with the East Half (E1/2) of the vacated portion of 104th Avenue adjacent thereto on the West;

Together with non-exclusive easement rights appurtenant thereto as established by Permanent Driveway Easement dated June 19, 1995 and recorded June 22, 1995, in Book 1149 at Page 577 of the Miscellaneous Records of Douglas County, Nebraska.

NOTE: The Plat and Dedication of The Knolls was recorded February 16, 1972, in Book 1448 at Page 718 of the Deed Records of Douglas County, Nebraska.

NOTE: Subject property is taxed under County Treasurer's Tax Key Number 1414-5473-15.