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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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BKP          C/O          COMP VP

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

**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 ("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 August 12, 1998, in the original principal amount of \$3,400,000 (the "Note"), which Note was made by Fox Valley Apartments General Partnership ("Original Trustor"), payable to Patrician Financial Company Limited Partnership, a Massachusetts limited partnership ("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 (the "Deed of Trust") from the Original Trustor, to Transnation Title Insurance 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 August 12, 1998, in Book 5409 at Page 103, and was subsequently assigned by Patrician to Berkshire Mortgage Finance Limited Partnership ("Berkshire") by a certain Assignment of Deed of Trust, dated as of August 12, 1998 and recorded among the Land Records on August 12, 1998 in Book 5409 at Page 149, and was further assigned by Berkshire to the Lender by a certain Assignment of Deed of Trust, dated as of August 12, 1998 and recorded among the Land Records on August 12, 1998, in Book 5409 at Page 153;

**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;

*Return*  
*16*

**WHEREAS**, the parties desire to reflect in this Modification certain additions 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:

Section 33 is amended by adding the following sentences at the end of such Section:

However, Borrower has disclosed to and provided Lender with information relating to assets it currently owns in addition to the Mortgaged Property, consisting of a multifamily housing project known as Fox Valley Apartments, Phase I, 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 Mortgaged Property and the Disclosed Assets and personal property related to the operation and maintenance of the Mortgaged Property and the Disclosed Assets; (b) shall not operate any business other than the management and operation of the Mortgaged 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 Section 33 of this Instrument shall apply for any transferee.

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

Section 48 is deleted in its entirety and replaced with the following new Section 48:

**48. Cross-Default and Cross-Collateralization.**

(i) In addition to the Mortgaged Property described on Exhibit "A" attached hereto, the Borrower owns the Disclosed Assets. The Disclosed Assets, together with the Mortgaged 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 (including the Rider to Multifamily Instrument, 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 Section 33 of this Instrument, 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.

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

Section 21(b) is modified to delete the period at the end of Section 21(b)(6) and substitute “; and” therefor and to add a new Section 21(b)(7):

"(7) 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 Section 21(b)(7) no later than 5 days after the date of the Transfer."

4. 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, 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

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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. Crames, 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. Crames, 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: 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 11<sup>th</sup> 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 6-6-00

[Signature]  
Notary Public

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss:

The foregoing instrument was acknowledged before me this \_\_\_\_ 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 \_\_\_\_\_, 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 16<sup>th</sup> 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: \_\_\_\_\_

\_\_\_\_\_  
 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

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STATE OF Colorado )  
 COUNTY OF DENVER ) ss:

The foregoing instrument was acknowledged before me this 16<sup>th</sup> 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

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 (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 \_\_\_\_\_ 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

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NOTARIAL SEAL AFFIXED  
 REGISTER OF DEEDS

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 21<sup>st</sup> 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 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.

My Commission Expires:  
 DISTRICT OF COLUMBIA  
 PAULETTE M. GAYLES  
 MY COMMISSION EXPIRES JANUARY 1, 2004

\_\_\_\_\_  
 Notary Public

NOTARIAL SEAL AFFIXED  
 REGISTER OF DEEDS

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TA-34784-A

**EXHIBIT "A"**

**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.

## EXHIBIT B

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.