ASSIGNMENT, ASSUMPTION AND MODIFICATION OF

MARK-TO-MARKET USE AGREEMENT

(QNP – NON-EXCEPTION RENTS)

**THIS ASSIGNMENT, ASSUMPTION AND MODIFICATION OF MARK-TO-MARKET USE AGREEMENT** (“Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by and between **\_\_\_{*INSERT NAME AND STATE OF ORGANIZATION OF SELLER*}\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”), \_\_\_\_\_\_\_\_\_\_{***INSERT NAME AND STATE OF ORGANIZATION OF ENTITY ACQUIRING THE SUBJECT PROPERTY***}

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Purchaser”), and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Washington D.C. (the “Secretary” or “HUD”).

 **WHEREAS**, Seller was the owner of certain improved real property located in the city of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as more particularly described in Exhibit A, on which is constructed a rental apartment project known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (collectively, “Property”);

 **WHEREAS**, Seller (which term includes a predecessor to Seller in title to the Property) and HUD entered into that certain Use Agreement for Multifamily Projects Participating in the Mark-to-Market Program Underthe Multifamily Assisted Housing Reform and Affordability Act of 1997” (as amended through the date of this Agreement “Use Agreement”), dated {*insert date of Use Agreement*} \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ , and recorded on \_\_\_\_\_\_\_\_\_\_\_\_\_ {*insert date Use Agreement was recorded*} in {*insert deed book and page or equivalent reference*} in the Office of the {*insert name of office where deeds and mortgages are recorded*} (the “Land Records”);

 **WHEREAS**, the Use Agreement set forth certain obligations requiring the use of the Property, affordability of the units rented, and similar restrictions, pursuant to section 514(e)(6) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Pub. L. No. 105-65, 111 STAT. 1384), and the Restructuring Commitment between Seller or Seller’s predecessor in title and HUD (“Restructuring Commitment”);

 **WHEREAS**, the Seller and Purchaser entered into a contract pursuant to which Seller agreed to sell, and Purchaseragreed to purchase the Property;

 **WHEREAS**, as part of its request and proposal for the transfer of physical assets, the Purchaser received approval from the Secretary for the assignment to Purchaser (the “Assignment”) of that certain Mortgage Restructuring Mortgage Note (the “Mortgage Restructuring Note”) dated \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, in the original amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ No/100’s Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), payable to the Secretary, made and executed by Seller, together with the mortgage securing the Mortgage Restructuring Note that encumbers the Property;

 [{*INSERT IF CONTINGENT REPAYMENT NOTE IS BEING ASSIGNED*}**WHEREAS**, the Property is further encumbered by the Contingent Repayment *{select appropriate* Deed of Trust/Mortgage*}* (“CR Mortgage”) from the Seller to the Secretary dated *{insert date of Mortgage}* and recorded *{insert date Mortgage is or will be recorded}* among the Land Records, which secures the performance of a Contingent Repayment *{insert appropriate* Deed of Trust/Mortgage*}* Note dated *{insert date}*, in the original amount of *{insert Note amount in text}* ($*{insert numerical amount of Note}*), payable to the Secretary (the “Contingent Repayment Note”), made and executed by Seller or Seller’s predecessor in title, both of which are included in the Assignment at Purchaser’s request; and]

 **WHEREAS**, it is a condition of the Assignment that the Use Agreement be assigned to and assumed by the Purchaser, and additional restrictions regarding the Property be added to the Use Agreement; and

 **WHEREAS**, the Seller desires, with the consent of the Secretary, to assign all its rights and obligations in and to the Use Agreement as herein provided, effective upon the recording among the Land Records of the deed to the Property into the Purchaser (“Effective Date”).

 **NOW, THEREFORE**, in consideration of the Assignment, the mutual agreements contained herein and other good and valuable consideration, it is agreed as follows:

 1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

 2. Seller and the Secretary hereby agree to the assignment of the undertakings and obligations contained in the Use Agreement subject to the additional terms set forth herein. Nothing in this Agreement shall waive, compromise, impair, or prejudice any right HUD may have against Seller for any violation of the Use Agreement that may have occurred prior to the Effective Date.

3. Purchaser agrees to the assumption of all duties, obligations and restrictions set forth in the Use Agreement and shall be responsible for all liabilities or obligations arising under the Use Agreement from and after the Effective Date.

4. Purchaser agrees that the Use Agreement is amended as follows:

 (a) Extension of Expiration Date. The Expiration Date, as defined in the Use Agreement shall mean the fiftieth (50th) anniversary of the Closing Date under the Use Agreement.

 (b) This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns; provided, however, with respect to any party benefiting from a mortgage or lien encumbrance placed against the Property after the recording of the Use Agreement but prior to the recording of this Agreement, if any, the terms and conditions contained herein shall not bind the Property if this Agreement would alter the original superiority in title of the Use Agreement as described in paragraph 14 thereof. Nothing contained herein or done hereby shall alter the original superiority of the Use Agreement.

5. The Seller made a binding commitment with the Secretary in the HAP Contract and/or Restructuring Commitment to accept renewals of the HAP Contract, if offered by the Secretary. Purchaser acknowledges and agrees that such binding commitment continues hereafter, and agrees to accept offers from the Secretary to renew such HAP Contract if (a) such renewal(s) do not extend the term of such contract beyond the Expiration Date, and (b) each such renewal offer is consistent with the terms and conditions of the then-expiring contract and such renewal offer is at the contract rents in effect on the contract expiration date, as adjusted annually by an operating cost adjustment factor determined by HUD. Any such renewal contract shall only be made from budget authority appropriated by the Congress and available for this purpose.

6. This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Property is located.

7. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one and the same Agreement.

 8. Except as amended herein, the Use Agreement shall be and remains in full force and effect in accordance with its terms.

**IN WITNESS WHEREOF**, this Agreement has been executed as of the day and

year written above.

**(SIGNATURES AND ACKNOWLEDGMENTS**

**CONTAINED ON THE FOLLOWING PAGES)**

 SELLER:

 {**INSERT NAME AND STATE OF ORGANIZATION OF ENTITY SELLING THE SUBJECT PROPERTY**}

 By:

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

{Add Acknowledgment}

 PURCHASER:

 {**INSERT NAME AND STATE OF ORGANIZATION OF ENTITY ACQUIRING THE SUBJECT PROPERTY**}

 By:

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

{Add Acknowledgment}

**(SIGNATURES CONTINUED ON NEXT PAGE)**

HUD:

 SECRETARY OF HOUSING AND

 URBAN DEVELOPMENT

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Authorized Agent

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Office of Recapitalization

District of Columbia: SS

Before me, the undersigned, a Notary Public in and for the District of Columbia, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Authorized Agent of the Secretary of Housing and Urban Development and acknowledged that he/she is duly authorized to sign for the Secretary of Housing and Urban Development and has the authority to delegate such duties provided in the foregoing instrument. Furthermore, he/she acknowledged that he/she signed the foregoing instrument and that the same is his/her free and voluntary act and deed of said corporation. In testimony and witness whereof, I have hereunto set my hand and seal this \_\_\_day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public, District of Columbia

**Exhibit A**

[Legal Description]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits. The Office of Multifamily Housing, Office of Recapitalization, 451 7th Street SW, Room 6230 Washington, DC 20410. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. Title V of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1988 (P.L.105-65, 111 Stat. 1384) authorizes the FHA Multifamily Housing Mortgage and Housing Assistance Restructuring Program. HUD implemented a statutory permanent program directed at FHA-insured multifamily projects that have project- based Section 8contracts with above- market rents. The information collection is used to determine criteria eligibility of FHA-insured multifamily properties for participation in the Mark to Market program and the terms on which participation should occur. The purpose of the program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance. While no assurances of confidentiality are pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.