A picture containing text, clipart

Description automatically generatedFreddie Mac Loan Number:

Property Name:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Multifamily Note – Floating Rate (30-Day Average SOFR)**  (Revised 6-13-2023)   |  |  | | --- | --- | | **Borrower**: |  | | **Lender**: |  | | **Effective Date**: |  | |  |

FOR VALUE RECEIVED, Borrower (jointly and severally if more than one), promises to pay to the order of Lender the Loan Amount shown below, plus interest, according to the terms provided in this Multifamily Note (“**Note**”). Capitalized terms used but not defined in this Note, including those set forth in the tables in Section 1 of this Note, will have the meanings given to such terms in the Loan Agreement. “**Loan Agreement**” means the Multifamily Loan and Security Agreement by and between Borrower and Lender, effective as of the Effective Date, as amended, modified, or supplemented from time to time.

**1. Key Note Terms**

|  |  |  |
| --- | --- | --- |
| “**Loan Amount**”:US $\_\_\_\_\_\_\_\_\_\_\_\_ | | “**First Installment Due Date**” **1**:\_\_\_\_\_\_\_ 1, 20\_\_ |
| “**Interest-Only Period**”: *(choose one)* | | |
|  | The period from the Effective Date until the First Principal and Interest Installment Due Date.  “**First Principal and Interest Installment Due Date**” **2**: \_\_\_\_\_\_\_ 1, 20\_\_ | |
|  | The period from the Effective Date until the Scheduled Maturity Date. | |
|  | Not applicable. | |
| “**Amortization Period**” **3**: \_\_\_ months | | |
| **1***Insert the first day of the second month following the Effective Date; however, if the Loan is originated on the first day of a month, insert the first day of the first month following the Effective Date.*  **2***For partial term interest-only Loans, insert the date that is the number of months of interest-only payments (12, 24 or 36 months) after the First Installment Due Date, or for Supplemental Loans, the date specified in the Commitment.*  **3***If the Loan is interest-only for the entire term, insert “0”.* | | |
| “**Scheduled Maturity Date**”: \_\_\_\_\_\_\_\_\_\_ 1, 20\_\_  “**Maturity Date**” means the earlier of(i) the Scheduled Maturity Date and (ii) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document; provided, however, that if the unpaid principal balance of this Note becomes due and payable by acceleration but such acceleration is rendered null and void and of no further force and effect by operation of law or agreement by Lender, such acceleration will have no effect on the Maturity Date. | | |

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| --- |
| **Interest Rate** |
| “**Margin**”: \_\_\_%  “**Floating Interest Rate**” meansthe variable annual interest rate calculated for each Interest Adjustment Period so as to equal the Index Rate for such Interest Adjustment Period (truncated at the 5th decimal place if necessary) plus the Margin. However, in no event will the Floating Interest Rate exceed the Capped Interest Rate, if applicable.  “**Capped Interest Rate**” **4** means \_\_\_\_% per annum or  is not applicable.  The **Index** as of the Effective Date is 30-Day Average SOFR *(see Section 2(d)(i))*.  “**Index Rate**” means for any Interest Adjustment Period, the Index published by the Index Source on the Determination Date *(see Section 2(d)(i))*, provided, however, that if at any time the Index Rate is less than zero, the Index Rate will be deemed to be zero for all purposes of this Note and the other Loan Documents.  “**Interest Adjustment Period**” meanseach successive one calendar month period until the entire Indebtedness is paid in full, except that the first Interest Adjustment Period is the period from the Effective Date through the last day of the calendar month in which the Effective Date occurs. |
| **4***If the Loan has an internal interest rate cap, complete the “\_% per annum” as specified in the Commitment. If the Loan has an external interest rate cap or no interest rate cap, select “is not applicable”.* |

|  |  |  |
| --- | --- | --- |
| **Modifications, Riders, and Schedules** | | |
|  | Note modifications are included in Exhibit A | |
|  | The following Rider(s) are attached to this Note:  *[if checked, list name of Rider and revision date]* | |
| X | The following Schedules are attached to this Note:  Schedule 1 – Effect of Benchmark Transition Event  Schedule 2 – State-Specific Provisions by Property Jurisdiction | |
|  |  | **Property Jurisdiction**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(list state in which Mortgaged Property is located)* |

**2. Interest**.

(a) **Interest Rate**. Interest will accrue on the outstanding principal balance of this Note at the Floating Interest Rate, subject to the provisions of Section 5(c) of this Note related to the Default Rate. Except as set forth in Section 2(c) and Loan Agreement Section 11.12, accrued interest will be payable in arrears.

(b) **Interest Calculation**.

1. Interest under this Note will be computed, payable and allocated on the basis of an actual/360 interest calculation schedule (interest is payable for the actual number of days in each month, and each month’s interest is calculated by multiplying the unpaid principal amount of this Note as of the first day of the month for which interest is being calculated by the applicable Floating Interest Rate, dividing the product by 360, and multiplying the quotient by the number of days in the month for which interest is being calculated). For convenience in determining the amount of a monthly installment of principal and interest under this Note, Lender will use a 30/360 interest calculation payment schedule (each year is treated as consisting of twelve 30-day months). However, as provided above, the portion of the monthly installment actually payable as and allocated to interest will be based upon an actual/360 interest calculation schedule, and the amount of each installment attributable to principal and the amount attributable to interest will vary based upon the number of days in the month for which such installment is paid.
2. If Lender receives any monthly payment before its Installment Due Date, Lender will be deemed to have received the payment on its Installment Due Date for the purpose of calculating interest due.
3. Any accrued interest remaining past due for 30 days or more, at Lender’s discretion, may be added to and become part of the unpaid principal balance of this Note and any reference to “accrued interest” will refer to accrued interest that has not yet become part of the unpaid principal balance. Any amount added to principal pursuant to the Loan Documents will bear interest at the applicable rate or rates specified in this Note and will be payable with such interest upon demand by Lender and, absent such demand, as provided in this Note for the payment of principal and interest.

(c) **Interest Due for Partial Month**. Unless Lender disburses the Loan Amount to Borrower on the first day of a month, Borrower must pay interest simultaneously with the execution of this Note for the period beginning on the disbursement date through and including the last day of the calendar month. If Lender disburses the Loan Amount to Borrower on the first day of a month, then no payment will be due from Borrower at the time of the execution of this Note and the Installment Due Date for the first monthly payment under Section 3 of interest-only or principal and interest, as applicable, will be the First Installment Due Date set forth in Section 1 of this Note.

(d) **Index**.

(i) “**30-Day Average** **SOFR**” means the compounded average of SOFR over a rolling 30-calendar day period as such rate is currently identified on the Index Source as “30-Day Average SOFR”.

“**Determination Date**” means, with respect to any determination of the Index Rate applicable to an Interest Adjustment Period:

(A) If the Index is 30-Day Average SOFR, 3:00 p.m. (New York time) on the U.S. Government Securities Business Day most recently preceding the first day of the month in which the Interest Adjustment Period begins;

(B) If the Index is 30-Day Average SOFR and 30-Day Average SOFR does not so appear on such day, 3:00 p.m. (New York time) on the first preceding U.S. Government Securities Business Day for which such rate was published by the Index Source; or

(C) If the Index is a Benchmark Replacement (as defined on Schedule 1), the date and time determined by Lender in accordance with the Benchmark Replacement Conforming Changes (as defined on Schedule 1).

“**FRBNY’s Website**”means the website of the Federal Reserve Bank of New York, currently at <https://apps.newyorkfed.org/markets/autorates/sofr-avg-ind>, or at such other page as may replace such page on the FRBNY’s website.

“**Index**” means:

(A) 30-Day Average SOFR, or

(B) If Lender determines that a Benchmark Transition Event (as defined in Schedule 1) has occurred, then beginning on each Benchmark Replacement Date (as defined in Schedule 1), the Index means the applicable Benchmark Replacement (as defined in Schedule 1).

“**Index Source**” means:

(A) If the Index is 30-Day Average SOFR, the FRBNY’s Website.

(B) If the Index is a Benchmark Replacement, such source as contemplated by the definition of Benchmark Replacement in Schedule 1.

(C) If the then-current Index Source ceases to publish the Index, such other source selected by Lender in its sole discretion.

“**SOFR**”means the Secured Overnight Financing Rate.

“**SOFR Adjustment Conforming Changes**” means, with respect to 30-Day Average SOFR, any technical, administrative or operational changes (including changes to the timing and frequency of determining rates and making payments of interest, rounding of amounts or tenors, and other administrative matters) that Lender decides, from time to time, may be appropriate to adjust 30-Day Average SOFR in a manner substantially consistent with or conforming to market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice exists, in such other manner as Lender determines is reasonably necessary).

“**U.S. Government Securities Business Day**” means any day except for a Saturday, a Sunday or a day on which the Securities Industry and Financial Markets Association (or a successor organization) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities.

(ii) Lender will have the right, from time to time and in Lender’s sole discretion, to make SOFR Adjustment Conforming Changes. Notwithstanding anything to the contrary in this Note or in any other Loan Documents, any amendments to this Note or the other Loan Documents implementing SOFR Adjustment Conforming Changes will become effective and binding on Borrower upon Notice by Lender to Borrower without the necessity of any action by or consent of Borrower or any Guarantor.

(iii) Lender’s determination with respect to the following matters will be conclusive and binding on Borrower: (A) the Index Source, and (B) any SOFR Adjustment Conforming Changes. If Freddie Mac is the Lender, each such determination will be in Lender’s sole discretion. If Lender is not Freddie Mac, each such determination will be made at, and in accordance with, the written direction of Freddie Mac, which will be given in Freddie Mac’s sole discretion.

(e) **Effect of Benchmark Transition Event**.Upon the occurrence of a Benchmark Transition Event (as defined on Schedule 1), the provisions set forth on Schedule 1 will apply.

**3. Payments**.

(a) **Time of Payments**. Borrower must make a payment every month on the first day of each month (each, an “**Installment Due Date**”) commencing on the First Installment Due Date and continuing on each Installment Due Date thereafter until and including the monthly payment due on the Maturity Date; provided that, if the applicable Installment Due Date is not a Business Day, the Installment Due Date will be the next succeeding Business Day, except as otherwise expressly provided in this Note. The amount of each monthly payment will be determined in accordance with this Section 3. Each payment will be applied as of its scheduled Installment Due Date, and, if the payment consists of both principal and interest, it will be applied first to accrued interest and then to outstanding principal. If, on the Maturity Date, Borrower still owes amounts under this Note or any other Loan Document, Borrower must pay those amounts and any other Indebtedness in full on the Maturity Date.

(b) **Calculating Payments Generally**.

1. “**Monthly Principal and Interest Installment Amount**” means the monthly payment amount of principal and interest calculated so as to equal the monthly payment amount which would be payable on the Installment Due Date as if the unpaid principal balance of this Note as of the first day of the Interest Adjustment Period immediately preceding the Installment Due Date were to be fully amortized, together with interest at the Floating Interest Rate in effect for such Interest Adjustment Period, in equal consecutive monthly payments paid on each Installment Due Date over the Remaining Amortization Period.
2. “**Remaining Amortization Period**” means, at any point in time, the number of consecutive calendar months equal to the number of months in the Amortization Period minus the number of scheduled monthly installments of principal and interest that have elapsed since the Effective Date.

(c) **Payments if there is no Interest-Only Period**.If Section 1 does not specify an Interest-Only Period, then each monthly payment of principal and interest payable on an Installment Due Date will equal the Monthly Principal and Interest Installment Amount.

(d) **Payments** **if there is an Interest-Only Period**. If Section 1 specifies an Interest-Only Period, then beginning on the First Installment Due Date, each monthly payment during the Interest-Only Period will only be for the amount of accrued interest due on the unpaid principal balance of this Note. Each monthly payment during the Interest-Only Period will equal the product of (i) annual interest on the unpaid principal balance of this Note as of the first day of the Interest Adjustment Period immediately preceding the Installment Due Date at the Floating Interest Rate in effect for such Interest Adjustment Period, divided by 360, multiplied by (ii) the number of days in such Interest Adjustment Period. If the Interest-Only Period specified in Section 1 is the period from the Effective Date until the First Principal and Interest Installment Due Date, then beginning on the First Principal and Interest Installment Due Date, each monthly payment will equal the Monthly Principal and Interest Installment Amount.

(e) **Manner and Place of Payment**.All payments due under this Note must be made in immediately available U.S. funds and will be payable at Lender’s address specified in Section 1.05 of the Loan Agreement or such other place as may be designated by Notice to Borrower from or on behalf of Lender.

(f) **Notice of Payment**. Lender will provide Borrower with Notice of the amount of each monthly payment due under this Note. However, if Lender has not provided Borrower with prior Notice of the monthly payment due on any Installment Due Date, then on that Installment Due Date, Borrower will pay an amount equal to the monthly payment for which Borrower last received Notice from Lender. If Lender at any time determines that Borrower has paid one or more monthly payments in an incorrect amount because of the operation of the preceding sentence, or because Lender has miscalculated the Floating Interest Rate or has otherwise miscalculated the amount of any monthly payment, then Lender will give Notice to Borrower of such determination. If such determination discloses that Borrower has paid less than the full amount that was due for such period, then within 30 calendar days after receipt of the Notice from Lender, Borrower will pay Lender the full amount of the deficiency. If such determination discloses that Borrower has paid more than the full amount that was due for such period, then the amount of the overpayment will be credited to the next payment(s) of interest only or principal and interest, as applicable, due under this Note (or, if an Event of Default has occurred and is continuing, such overpayment will be credited against any amount Borrower owes Lender).

(g) **Maximum Interest Rate**. In accordance with Section 9, interest charged under this Note cannot exceed the Maximum Interest Rate. If the Floating Interest Rate at any time exceeds the Maximum Interest Rate, resulting in the charging of interest hereunder to be limited to the Maximum Interest Rate, then any subsequent reduction in the Floating Interest Rate will not reduce the rate at which interest under this Note accrues below the Maximum Interest Rate until the total amount of interest accrued hereunder equals the amount of interest which would have accrued had the Floating Interest Rate at all times been in effect.

**4. Prepayment**.The provisions of Loan Agreement Section 1.07, Loan Agreement Section 11.12, and Loan Agreement Schedule I are incorporated by reference into this Note to the same extent and with the same force as if fully set forth in this Note.

**5. Borrower’s Failure to Pay as Required; Events of Default**.

(a) **Application of Partial Payments**.If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply the amount received to amounts then due and payable in any manner and in any order determined by Lender, in Lender’s discretion. Borrower agrees that neither Lender’s acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender’s application of such payment will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

(b) **Late Charge for Overdue Payments**.If Lender has not received the full amount of any monthly payment by the 10th day of any month or any amount due under any Loan Document by the 9th day after its due date (unless applicable law requires a longer period of time before a late charge may be imposed), then Borrower must pay a late charge to Lender (“**Late Charge**”). The amount of the Late Charge will be 5% of any overdue payment or overdue amount (unless applicable law requires a lower amount to be charged). Borrower will pay this Late Charge immediately and without demand. If the Loan is not fully amortizing, no Late Charge will be due on the final payment of principal owed on the Maturity Date. The Late Charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 5(c).

(c) **Interest Rate after Default**.If Lender has not received the full amount of any monthly payment for 30 days or more after the Installment Due Date or any other Event of Default has occurred and is continuing, then the interest under this Note will accrue on the unpaid principal balance at a variable rate equal to the then-applicable Floating Interest Rate plus 4% (“**Default Rate**”) beginning on that Installment Due Date or the date such other Event of Default commences; provided, that in no event will the Default Rate exceed the Maximum Interest Rate specified in Section 9. If Borrower has not paid the entire principal balance of this Note by the Maturity Date, the unpaid principal balance will continue to bear interest at the Default Rate until and including the date on which the entire principal balance of this Note is paid in full.

(d) **Event of** **Default**.An Event of Default under the Loan Agreement will constitute an Event of Default under this Note.

(e) **Lender’s Damages**.Borrower acknowledges that (i) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, (ii) during the time that any monthly installment under this Note is delinquent for 30 days or more, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender’s ability to meet its other obligations and to take advantage of other investment opportunities, and (iii) it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for 30 days or more or any other Event of Default has occurred and is continuing, Lender’s risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the Late Charge and the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the Effective Date, of the additional costs and expenses Lender will incur by reason of the Borrower’s delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

(f) **Acceleration**.If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, any Prepayment Charge calculated pursuant to the Loan Agreement, and all other amounts payable under this Note and any other Loan Document will at once become due and payable, at the option of Lender, without any prior Notice to Borrower (except if Notice is required by applicable law, then after such Notice). Lender may exercise this option to accelerate regardless of any prior forbearance. For purposes of exercising such option, Lender will calculate any Prepayment Charge as if Prepayment occurred on the date of acceleration. If Prepayment occurs thereafter, Lender will recalculate the Prepayment Charge as of the actual date of Prepayment.

**6. Presentment, Notice of Dishonor, and Other Waivers**.Borrower and all endorsers and Guarantors and all other third-party obligors waive presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness.

**7.** **Forbearance**.Any forbearance by Lender in exercising any right or remedy under this Note or any other Loan Document, or otherwise afforded by applicable law, will not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the applicable Installment Due Date, or in an amount that is less than the required payment, or Lender’s application of such payment, will not be a waiver of Lender’s right to require prompt payment when due of all other payments, a waiver of the unpaid amounts, an accord and satisfaction, or a waiver of Lender’s right to exercise any right or remedy with respect to any failure to make prompt payment. Application by Lender of any security for Borrower’s obligations under this Note will not constitute an election of remedies by Lender so as to preclude the exercise of any other right or remedy available to Lender.

**8.** **WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (a) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**9. Loan Charges**.Neither this Note nor any of the other Loan Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (“**Maximum Interest Rate**”). If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts will be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

**10. Successors and Assigns**.This Note will bind the respective successors and assigns of Borrower and Lender, and the rights granted by this Note will inure to Lender’s successors and assigns. Borrower understands that Lender may transfer this Note. Anyone who takes this Note by transfer and who is entitled to receive payments under this Note will also be called “**Lender**.”

**11. Counting of Days**. Any reference in this Note to a period of “**days**” means calendar days, not Business Days, except where otherwise specifically provided.

**12. State-Specific Provisions**.State-specific provisions, if any, for the Property Jurisdiction identified in Section 1 are included on Schedule 2 to this Note.

**13. Notices and Written Modifications**.All Notices required or permitted to be given under this Note must be given in accordance with Loan Agreement Section 11.03. Any modification or amendment to this Note will be ineffective unless in writing and signed by the party sought to be charged with such modification or amendment.

**14. Personal Liability**.The provisions of Loan Agreement Article III are incorporated by reference into this Note to the same extent and with the same force as if fully set forth in this Note.

**15.** **Security**. The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument and the Loan Agreement for other rights with respect to collateral for the Indebtedness, including the definition of Loan Documents set forth in the Loan Agreement.

**16. Payment of Lender’s Costs and Expenses**.The provisions of Loan Agreement Sections 6.17(b) through 6.17(d) are incorporated by reference into this Note to the same extent and with the same force as if fully set forth in this Note.

**17. Commercial Purpose**. The provisions of Loan Agreement Section 5.24 are incorporated by reference into this Note to the same extent and with the same force as if fully set forth in this Note.

18. Governing Law; Consent to Jurisdiction and Venue. The provisions of Loan Agreement Section 11.02 are incorporated by reference into this Note to the same extent and with the same force as if fully set forth in this Note.

**19. Construction**. Any reference in this Note to a “Schedule,” an “Exhibit,” or a “Section” will, unless otherwise explicitly provided, be construed as referring, respectively, to a Schedule or Exhibit attached to this Note or to a Section of this Note. The provisions of Loan Agreement Section 11.25 are incorporated by reference into this Note to the same extent and with the same force as if fully set forth in this Note.

**20. Reserved**

**IN WITNESS WHEREOF**, and in consideration of the Lender’s agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Note under seal or has caused this Note to be signed and delivered under seal by its duly authorized representative. [**INCLUDE IF REQUIRED BY APPLICABLE LAW**: Borrower intends that this Note will be deemed to be signed and delivered as a sealed instrument.]

**[SIGNATURES]**

**[ADD SEALS AND WITNESSES IF REQUIRED]**

**SCHEDULE 1**

**Effect of Benchmark Transition Event**

The following provisions will apply upon the occurrence of a Benchmark Transition Event.

1. If Lender determines prior to the relevant Reference Time that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to this Note in respect of all determinations on such date and for all determinations on all subsequent dates.

2. In connection with the implementation of a Benchmark Replacement, Lender will have the right to make Benchmark Replacement Conforming Changes from time to time. Notwithstanding anything to the contrary in this Note or in any other Loan Documents, any amendments to this Note or the other Loan Documents implementing such Benchmark Replacement Conforming Changes will become effective and binding on Borrower upon Notice by Lender to Borrower without the necessity of any action by or consent of Borrower.

3. Any determination, decision or election that may be made by Lender pursuant to the provisions in this Schedule 1, including any determination with respect to administrative feasibility (whether due to technical, administrative or operational issues), a tenor, a rate, an adjustment or the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error, and, notwithstanding anything to the contrary in the documentation relating to this Note, will become effective without consent from any other party. If Freddie Mac is the Lender, each such determination, decision and election will be in Lender’s sole discretion. If Lender is not Freddie Mac, each such determination, decision and election will be made at, and in accordance with, the written direction of Freddie Mac, which will be given in Freddie Mac’s sole discretion.

4. The following defined terms are used in this Schedule 1:

“**Benchmark**”means, initially, SOFR, as such term is defined in Section 2(d); provided that if Lender determines prior to the Reference Time that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement.

“**Benchmark Replacement**”means the first alternative set forth in the order below that can be determined by Lender as of the Benchmark Replacement Date.

(a) the sum of: (1) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark and (2) the Benchmark Replacement Adjustment;

(b) the sum of: (1) the ISDA Fallback Rate and (2) the Benchmark Replacement Adjustment; or

(c) the sum of: (1) the alternate rate of interest that has been selected by Lender as the replacement for the Benchmark giving due consideration to any industry-accepted rate of interest as a replacement for the Benchmark for U.S. dollar-denominated floating rate securities at such time and (2) the Benchmark Replacement Adjustment.

“**Benchmark Replacement Adjustment**”means the first alternative set forth in the order below that can be determined by Lender as of the Benchmark Replacement Date:

(a) the spread adjustment (which may be a positive or negative value or zero), or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;

(b) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, the ISDA Fallback Adjustment; or

(c) the spread adjustment (which may be a positive or negative value or zero) that has been selected by Lender giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated floating rate securities at such time.

“**Benchmark Replacement Conforming Changes**”means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to Interest Adjustment Periods, the timing and frequency of determining rates and making payments of interest, rounding of amounts or tenors, and other administrative matters) that Lender decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for use of the Benchmark Replacement exists, in such other manner as Lender determines is reasonably necessary).

“**Benchmark Replacement Date**”means the earliest to occur of the following events with respect to the then-current Benchmark (including the daily published component used in the calculation thereof):

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (1) the date of the public statement or publication of information referenced therein and (2) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark (or such component); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event that gives rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

“**Benchmark Transition Event**”means the occurrence of one or more of the following events with respect to the then-current Benchmark (including the daily published component used in the calculation thereof):

(a) a public statement or publication of information by or on behalf of the administrator of the Benchmark (or such component) announcing that such administrator has ceased or will cease to provide the Benchmark (or such component), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark (or such component); or

(b) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark (or such component), the central bank for the currency of the Benchmark (or such component), an insolvency official with jurisdiction over the administrator for the Benchmark (or such component), a resolution authority with jurisdiction over the administrator for the Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark (or such component) has ceased or will cease to provide the Benchmark (or such component) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark (or such component); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“**ISDA Definitions**”means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“**ISDA Fallback Adjustment**”means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark.

“**ISDA Fallback Rate**”means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“**Reference Time**”with respect to any determination of the Benchmark means (1) if the Benchmark is SOFR, the Determination Date, and (2) if the Benchmark is not SOFR, the time determined by Lender after giving effect to the Benchmark Replacement Conforming Changes.

“**Relevant Governmental Body**”means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“**Unadjusted Benchmark Replacement**”means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

**SCHEDULE 2**

**State-Specific Provisions by Property Jurisdiction**

If the Property Jurisdiction for the Loan is not listed below, then unless the list below is modified pursuant to Exhibit A to this Note, there are no state-specific modifications of this Note applicable to the Loan.

|  |  |
| --- | --- |
| **Property Jurisdiction** | **State-Specific Provision** |
| Arizona | Borrower agrees to pay an effective contracted rate of interest equal to the rate of interest resulting from all interest payable as provided in this Note, plus an additional rate of interest resulting from all “Other Sums.” The “**Other Sums**” will consist of all fees, charges, or any other sums (other than interest payable as provided in this Note) paid or payable by Borrower, whether pursuant to this Note, any of the Loan Documents, or any other document or instrument in any way pertaining to this lending transaction that may be deemed to be interest for the purpose of any law of the State of Arizona that may limit the maximum amount of interest to be charged with respect to this lending transaction. The Other Sums will be deemed to be interest for the purposes of any such law only. |
| California | If a Guarantor is liable for only a portion of the Indebtedness, Borrower hereby waives its rights under California Civil Code Section 2822(a) to designate the portion of the Indebtedness that will be satisfied by Borrower’s partial payment. |
| Connecticut | **WAIVER OF PREJUDGMENT REMEDY, HEARING AND NOTICE. THE UNDERSIGNED ACKNOWLEDGES THAT THIS IS A** “**COMMERCIAL TRANSACTION**“ **AS SUCH IS DEFINED IN CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED. THE UNDERSIGNED FURTHER ACKNOWLEDGES THAT, PURSUANT TO SUCH SECTION, IT HAS A RIGHT TO NOTICE OF AND HEARING PRIOR TO THE ISSUANCE OF ANY** “**PREJUDGMENT REMEDY.**“ **NOTWITHSTANDING THE FOREGOING, THE UNDERSIGNED HEREBY WAIVES ALL RIGHTS TO SUCH NOTICE, JUDICIAL HEARING, OR PRIOR COURT ORDER IN CONNECTION WITH ANY SUIT ON THIS NOTE OR ANY EXTENSIONS OR RENEWALS OF THE SAME OR ON THE MORTGAGE SECURING THIS NOTE.** |
| Indiana | Borrower must make all payments of principal and interest under this Note without relief from valuation and appraisement laws. |
| Iowa | **IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS NOTE MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**  **Borrower acknowledges receipt of a copy of this Note, the Security Instrument, the Loan Agreement and all other Loan Documents.**  INITIALS OF BORROWER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Louisiana | Wherever the phrase “jointly and severally” appears in this Note, the phrase is amended to read “jointly and severally and solidarily.” |
| Maine | **NOTICE: BORROWER MAY NOT MAINTAIN ANY ACTION ON ANY AGREEMENT WITH LENDER TO LEND ADDITIONAL MONEY, EXTEND ADDITIONAL CREDIT, FORBEAR FROM COLLECTION OF THE INDEBTEDNESS OR MAKE ANY OTHER ACCOMMODATION FOR THE REPAYMENT OF THE INDEBTEDNESS, UNLESS THE AGREEMENT ON WHICH THE ACTION IS BROUGHT, OR SOME MEMORANDUM OF IT, IS IN WRITING AND SIGNED BY AN INDIVIDUAL AUTHORIZED TO SIGN FOR LENDER.** |
| Mississippi | Section 5(b) of this Note is restated as follows:  (b) **Late Charge for Overdue Payments.** If Lender has not received the full amount of any monthly payment or any amount due under any Loan Document within 15 days after it is due, then Borrower must pay a late charge to Lender (“**Late Charge**”). The amount of the Late Charge will be 5% of any overdue payment or overdue amount (unless applicable law requires a lower amount to be charged). Borrower will pay this Late Charge immediately and without demand but only once with respect to each late payment. If the Loan is not fully amortizing, no Late Charge will be due on the final payment of principal owed on the Maturity Date. The Late Charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 5(c). |
| New Mexico | Pursuant to Section 58-6-5 NMSA 1978, a contract, promise, or commitment to loan money or to grant, extend, or renew credit, or any modification thereof, in an amount greater than $25,000.00 not primarily for personal, family or household purposes made by a financial institution is not enforceable unless made in writing and signed by the party to be charged or that party’s authorized representatives. |
| North Carolina | Section 5(b) of this Note is restated as follows:  (b) **Late Charge for Overdue Payments.** If Lender has not received the full amount of any monthly payment or any amount due under any Loan Document within 15 days after it is due, then Borrower must pay a late charge to Lender (“**Late Charge**”). The amount of the Late Charge will be 4% of any overdue payment or amount. Borrower will pay this Late Charge immediately and without demand but only once with respect to each late payment. If the Loan is not fully amortizing, no Late Charge will be due on the final payment of principal owed on the Maturity Date. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 5(c). |
| North Dakota | **PURSUANT TO NORTH DAKOTA CENTURY CODE SECTION 32-19-06.1, BORROWER IS HEREBY PUT ON NOTICE THAT LENDER MAY HAVE THE RIGHT TO PROCEED TO OBTAIN AND COLLECT A DEFICIENCY JUDGMENT, TOGETHER WITH FORECLOSURE OF THE MORTGAGED PROPERTY UNDER APPLICABLE LAWS.** |
| Texas | Section 9 is deleted and replaced with the following:  **9. Loan Charges (Texas Only).** Borrower and Lender intend at all times to comply with the law of the State of Texas governing the Maximum Interest Rate or the maximum amount of interest payable on or in connection with this Note and the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount payable under this Note or under any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or as a result of acceleration of the maturity of this Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Lender expressly intend that all excess amounts collected by Lender will be applied to reduce the unpaid principal balance of this Note (or, if this Note has been or would thereby be paid in full, will be refunded to Borrower), and the provisions of this Note, the Loan Agreement and any other Loan Documents immediately will be deemed reformed and the amounts thereafter collectible under this Note or any other Loan Document reduced, without the necessity of the execution of any new documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under this Note or any other Loan Document. The right to accelerate the Maturity Date of this Note does not include the right to accelerate any interest, which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness will, to the extent permitted by any applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the applicable usury ceiling. Notwithstanding any provision contained in this Note, the Loan Agreement or any other Loan Document that permits the compounding of interest, including any provision by which any accrued interest is added to the principal amount of this Note, the total amount of interest that Borrower is obligated to pay and Lender is entitled to receive with respect to the Indebtedness will not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Loan Agreement or other Loan Documents (such as for the payment of Taxes, Insurance premiums and similar expenses or costs). |
| Washington | **NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW**. |

**EXHIBIT A**

**MODIFICATIONS TO MULTIFAMILY NOTE**

The following modifications are made to the text of the Note that precedes this Exhibit:

None.