

**AMENDMENT TO NSP  
LOAN AGREEMENT**  
(Hillcrest Court Apartments)

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This Amendment to NSP Loan Agreement (the "Amendment") is entered into as of May 6, 2019 (the "Effective Date"), is entered into by and among the County of San Bernardino, a political subdivision of the State of California (the "County") and Hillcrest Court Apartments, LLC, a California limited liability company ("Borrower"), with reference to the following facts:

RECITALS

- A. The Borrower owns that certain real property located at located at 15430 Culebra Road, Victorville, California, improved with an affordable housing project commonly referred to as Hillcrest Court Apartments (the "Project").
- B. The County and the Victorville Redevelopment Agency entered into that certain Neighborhood Stabilization Program Agreement for Multi-Family Housing dated July 27, 2010 (the "NSP Loan Agreement") under which the County provided a loan in the principal amount of Six Million Fifty Thousand Dollars (\$6,050,000) (the "County NSP Loan").
- C. The County NSP Loan is evidenced by that certain Promissory Note dated December 10, 2010 (the "NSP Promissory Note"), secured by that certain Deed of Trust with Assignment of Rents, dated as December 10, 2010 and recorded in the Official Records as Document No. 2011-0147792 on April 13, 2011, including the NSP Affordability Covenant Agreement attached thereto as Exhibit B, as modified by that certain Modification Agreement recorded concurrently herewith (the "NSP Deed of Trust"). The NSP Loan Agreement, the NSP Promissory Note, the NSP Deed of Trust, the NSP Affordability Covenant Agreement (attached to the NSP Deed of Trust as Exhibit B), (collectively, the "County NSP Documents"), were assigned to the Borrower pursuant to that certain Assignment and Assumption Agreement (County NSP Documents and CHAS Use Restrictions- Hillcrest Apartments) dated as of January 18, 2018 and recorded in the Official Records on March 01, 2018 as Document No. 2018-0074836 (the "NSP Assignment Agreement").
- D. At the time the Borrower acquired the Project, the Borrower assumed the County NSP Loan in the approximate principal amount of Five Million Six Hundred Eighty-Two Thousand Eighty Dollars and Sixty-Eight Cents (\$5,682,080.68) plus accrued interest. As of the date of this Amendment, the NSP Loan has accrued interest in the amount of One Million Two Thousand Five Hundred Fifty-Six Dollars and Fifty-Nine Cents (\$1,002,556.59), for a total current outstanding principal balance of balance of Six Million Six Hundred Eighty Four Thousand Six Hundred Thirty-Seven Dollars and Twenty-Seven Cents (\$6,684,637.27).
- E. The Housing Authority of the County of San Bernardino (the "Authority") provided the Borrower a loan in the amount of Eight Hundred Four Thousand Four Hundred Eighty-Nine Dollars (\$804,489) to assist in the acquisition of the Project (the "Authority Loan").

- F. The Borrower desires to refinance the debt on the Project to pay off specified debt and to support operations of the Project. The Borrower is requesting the County's consent to obtain a refinancing loan from Greystone Servicing Corporation, Inc. in an amount not to exceed \$2,500,000 (the "Greystone Loan").
- G. These recitals refer to and utilize certain capitalized terms which are defined in Section 101 of the NSP Loan Agreement. Capitalized terms used in this Amendment, but not defined, shall have the meaning set forth in the NSP Loan Agreement.
- H. Pursuant to Section 611 of the NSP Loan Agreement, the terms of the NSP Loan Agreement may not be changed orally, but only by agreement in writing by the parties thereto.
- I. To implement and effectuate the purpose of the NSP Loan Agreement, the County and Borrower desire to enter into this Amendment to: (1) document the County's consent to the Greystone Loan; (2) require special repayments of the Authority Loan and the County NSP Loan; (3) restructure the County NSP Loan; (4) revise the Term of the NSP Affordability Covenant Agreement and (4) make conforming non-substantive changes to effectuate the purpose of the NSP Loan Agreement as modified by this Amendment.

NOW, THEREFORE, the County and Borrower agree as follows:

ARTICLE 1.  
AMENDMENTS TO LOAN AGREEMENT

Section 1.1 Amendment to Section 101 (4). Section 101 (4) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"4. "Affordability Period" shall have the meaning set forth in the Amended and Restated Affordability Covenant Agreement, in the form of (Attachment 2) attached hereto and incorporated herein by this reference. A total of sixty-seven (67) NSP-assisted units shall remain affordable to Low-, Moderate, and Middle Income households, for not less than the twenty (20) year NSP Term commencing on April 13, 2011 and terminating April 13, 2031 then be subject to the Additional County Term which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, expires on the date fifty-five (55) years from the date hereof. The Amended and Restated Affordability Covenant Agreement replaces and supersedes the NSP Affordability Covenant Agreement attached as Exhibit J to the NSP Loan Agreement and recorded as Exhibit B of the County Deed of Trust, and all references in the NSP Loan Agreement to the Affordability Covenants shall be deemed to be referencing the Amended and Restated Affordability Covenants."

Section 1.2 Amendment to Section 101 (19). Section 101 (19) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"27. "Floating Units" shall mean units described in the Amended and Restated Affordability Covenant Agreement."

Section 1.3 Amendment to Section 101 (27). Section 101 (27) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"27. "Note", or "Promissory Note", shall mean that certain Amended and restated Promissory Note, of even date herewith, in the principal amount of Six Million Six Hundred Eighty Four Thousand Six Hundred Thirty-Seven Dollars and Twenty-Seven Cents (\$6,684,637.27), evidencing the County NSP Loan. The Promissory Note shall be in the form of (Attachment 1) attached hereto and incorporated herein by this reference."

Section 1.4 Amendment to Section 101 (40). Section 101 (40) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"40. "Term" or "Additional County Term" shall mean the period of time commencing on the date of this Agreement and continuing the date fifty-five (55) years from the date hereof."

Section 1.5 Amendment to Section 104 (13). Section 104 (13) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"13. Enforcement of the Agreement. The County shall have the right, by prior written notice to Borrower, to enforce the terms and conditions to this Agreement by liens on the real property (including but not limited to, the Amended and Restated Affordability Covenant Agreement, the affordability requirements in 24 CFR Part 92, Section 252, or any other such violation as is brought to the attention of the County regarding the Project. In the event of a breach of any condition or provision hereof, the County shall have the right, by prior written notice to Borrower to suspend or terminate this Agreement if Borrower fails to comply with any terms of this Agreement. Termination of this Agreement, in whole or in part, shall be made by giving Borrower written notice in accordance with 24 CFR Part 85, Section 44."

Section 1.6 Amendment to Section 104 (14). Section 104 (14) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"14. Duration of this Agreement. This Agreement will remain in effect for the Term (including the NSP Term), and verification by the County that all NSP-assisted units are occupied by NSP-eligible LMMH tenants."

Section 1.7 Amendment to Section 201 (3). Section 201 (3) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"3. AMENDED AND RESTATED AFFORDABILITY COVENANT AGREEMENT."

Section 1.8 Amendment to Section 204. Section 204 of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

**"204. Interest.** As long as the Borrower has not committed an Event of Default pursuant to Section 501 and subject to any cure period for the Event of Default, the County NSP Loan shall bear interest as follows:

1. Commencing on the Effective Date of this Amendment, the County NSP Loan shall bear no interest until December 31, 2024.
2. From and after January 1, 2025, the County Loan shall bear interest at a rate of one percent (1%) simple interest.
3. In the Event of Default by Borrowers as defined in Section 501, interest shall accrue on the unpaid principal balance of the Note at the rate of seven percent (7%) per annum compounded annually from the date of default as determined by the County until the Note is paid in full; provided, however, that if such rate of interest may not be collected under applicable law, interest shall accrue on the unpaid principal balance of the Note at the highest rate permitted under the laws of the State of California. Interest shall be computed based on an actual-day year and actual number of days elapsed."

Section 1.9 Amendment to Section 205. Section 205 of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

**"205. Repayment.** As long as the Borrower has not committed an Event of Default pursuant to Section 501 and subject to any cure period for the Event of Default, the County NSP Loan shall be repaid by Borrower as follows:

1. At the close of escrow for the Greystone Loan, the Borrower shall use up to Eight Hundred Four Thousand Four Hundred Eighty-Nine Dollars (\$804,489) of the Greystone Loan proceeds to repay the Authority Loan. The Authority shall cause the reconveyance of that certain Deed of Trust, dated January 01, 2018, recorded in the Official Records of the County of San Bernardino on March 01, 2018 as Instrument No. 2018-0074838);
2. At the close of escrow for the Greystone Loan, the Borrower shall use up to One Hundred Forty-Eight Thousand Dollars (\$148,000) to make a one time deposit into the Replacement Reserve for the Project;
3. At the close of escrow for the Greystone Loan, the Borrower shall use up to Sixty-Three Thousand Four Hundred Thirty Dollars (\$63,430) to pay closing costs associated with the origination of the Greystone Loan; all remaining balances of the Greystone Loan estimated to be approximately One Million Three Hundred Thousand Dollars (\$1,300,000) shall be paid by Borrower to the County to make a one-time installment payment on the County NSP Loan;
4. After the payment required under Section 205 number 3 above has been made to the County, no payments shall be due under the County NSP Loan through December 31,

2024. From and after the close of escrow for the Greystone Loan through December 31, 2024, Borrower shall be entitled to retain One Hundred percent (100%) of Residual Receipts. On April 1, 2025 and annually thereafter, the Borrower shall pay to the County Seventy-Five percent (75%) of Residual Receipts. All outstanding amounts owed (including any interest) will be due and payable pursuant to Section 1 of the Note.

Section 1.10 Amendment to Section 209. Section 209 of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"209 **Subordination of Deed of Trust.** The Deed of Trust shall be subordinated only to the Amended and Restated Affordability Covenant Agreement and the Greystone Deed of Trust and shall not be subordinated to the lien of any other loan, mortgage, or deed of trust, unless approved in writing by the County. "

Section 1.11 Amendment to Section 212(4). Section 212(4) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"4. Priority of this Agreement. This Agreement has been executed and the County recorded the Amended and Restated Affordability Covenant Agreement and the Greystone Deed of Trust. The Amended and Restated Affordability Covenant Agreement shall be superior to all other liens and encumbrances. This Agreement shall be subordinate only to the lien of the Amended and Restated Affordability Covenant Agreement and the Greystone Deed of Trust, and shall be prior to, and superior to, all other liens and encumbrances of record with respect to the Property."

Section 1.12 Amendment to Section 205. Section 205 of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"**205. Subordination.** The Affordability Covenant Agreement has been recorded and shall run with the land and shall be senior to all liens and encumbrances, including the Greystone Deed of Trust. The County NSP Loan shall be in second lien position.

1. The County agrees to subordinate the Deed of Trust to other financing approved in writing by the County (in each case, a "Senior Lien"), but only on condition that all of the following conditions are satisfied:

- (a) All the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction or permanent financing (or County approved refinancing thereof) for the Project, or any combination thereof.
- (b) The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with the Borrower, other than as a depositor or a lender.

(c) The Borrower must demonstrate to the County's reasonable satisfaction that subordination of the County NSP Loan is necessary to secure adequate construction, rehabilitation and/or permanent financing (or County approved refinancing thereof) to ensure the viability of the Project, including the operation of the Project as affordable housing, as required by this Agreement. To satisfy this requirement, the Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate construction and/or permanent financing (or County approved refinancing thereof) to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination.

(d) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by the Borrower, including: (a) providing the County or its successor with copies of any notices of default at the same time and in the same manner as provided to the Borrower; and (b) providing the County with a cure period of at least sixty (60) days to cure any default.

2. The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and any extension of its term or refinancing approved in writing by the County.

3. No subordination may limit the effect of the Deed of Trust before a foreclosure, nor require consent of the holder of the Senior Loan to exercise any remedies by the County under the NSP Loan Agreement or NSP Loan documents.

Upon a determination by the County Executive Officer that the conditions in this Section have been satisfied, the County Executive Officer or the County Executive Officer's designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval."

Section 1.13 Subordination of Deed of Trust. Under Section 205 of the NSP Loan Agreement, the Greystone Deed of Trust shall be subordinate only to the Affordability Covenant Agreement and shall not be subordinate to the lien of any other Loan, mortgage or deed of trust, unless approved in writing by the County pursuant to Section 205. Notwithstanding Section 612 of the NSP Loan Agreement, this Amendment serves as the County's written consent to the subordination of the Greystone Deed of Trust.

Section 1.14 Amendment to Section 212 (1). Section 212 (1) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"1. Title to Land. Borrower shall have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than the Amended and Restated Affordability Covenant Agreement, liens for current real property taxes and assessments not yet due and payable, the Greystone Deed of Trust, and any other mortgages, liens, pledges or encumbrances approved in writing by the County."

Section 1.15 Amendment to Section 212 (3). Section 212 (3) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"3. Recordation. The County shall record the Amended and Restated Affordability Covenant Agreement concurrently with the recordation of the Amendment and has recorded the NSP Deed of Trust (as referenced in Recital D, hereof) against the Property and issue or cause to be issued to the County by a title insurance company approved by the County, an ALTA policy of lender's title insurance with mechanics lien coverage, together with such endorsements as the County may require, which shall insure the Deed of Trust as a lien upon the Property subject only to the items specified herein."

Section 1.16 Amendment to Section 212 (4). Section 212 (4) of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

"4. Priority of This Agreement. This Agreement has been executed and the County shall record the Amended and Restated Affordability Covenant Agreement and this Amendment concurrently. The County recorded the Deed of Trust securing the Note. The Amended and Restated Affordability Covenant Agreement shall be prior to, and superior to, all other liens and encumbrances of record with respect to the Property subject only to Exceptions 20-22 in the Preliminary Title Report issued by First American Title Company and dated as of December 28, 2018 File No. NCS-941849-ONT1."

Section 1.17 Amendment to Section 307. The preamble to Section 307 of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

**"307. NSP Program Requirements.** Because the County NSP Loan to Borrower will be provided through the NSP Program funds, for the NSP Term, Borrower shall carry out the operation of the Project in conformity with all requirements of the NSP Program, such as, but not limited to:"

Section 1.18 Amendment to Section 406. Section 406 of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

**"406. Subordination.** The Amended and Restated Affordability Covenant Agreement shall be recorded and shall run with the land and shall be senior to all liens

and encumbrances, subject only to Exceptions 20-22 in the Preliminary Title Report issued by First American Title Company and dated as of December 28, 2018 File No. NCS-941849-ONT1.

Section 1.19 Amendment to Section 501. The preamble to Section 501 of the NSP Loan Agreement is hereby deleted in its entirety and replaced and amended as follows:

**"501. Event of Default.** (1) Subject to the extension of time set forth in Section 503, failure or delay by either party to perform, observe or comply with the material conditions, provisions, terms, covenants or representations in the Agreement, and the Amended and Restated Affordability Covenant Agreement, constitutes a default ("Default") under the Agreement. Each of the following shall constitute an event of Default ("Event of Default"):"

## ARTICLE 2. MISCELLANEOUS

Section 2.1 No Other Changes to the NSP Loan Agreement. Except as expressly modified by this Amendment, all other provisions of the NSP Loan Agreement remain unmodified and continue in full force and effect.

Section 2.2 Conflicts with the NSP Loan Agreement. In the event of any conflict between this Amendment and the NSP Loan Agreement, the provisions of this Amendment shall prevail.

Section 2.3 Successors and Assigns. This Amendment shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

Section 2.4 California Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California.

Section 2.5 Counterparts; Multiple Originals. This Amendment may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the date first set forth above.

**COUNTY:**

**COUNTY OF SAN BERNARDINO**, a political subdivision of the State of California

By: \_\_\_\_\_  
Curt Hagman, Chairman  
Board of Supervisors

Date: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

LYNNA MONELL  
Clerk of the Board of Supervisors

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

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore  
County Counsel

By: \_\_\_\_\_  
Suzanne Bryant, Deputy County Counsel

Date: \_\_\_\_\_

**BORROWER:**

HILLCREST COURT APARTMENTS, LLC, a California  
limited liability company

By: Housing Authority of the County of  
San Bernardino, its managing member

By: \_\_\_\_\_  
Maria Razo, Executive Director

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

ATTACHMENT 1

Amended and Restated Promissory Note

ATTACHMENT 2

Amended and Restated Affordability Covenant Agreement