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Cook County Recorder 59.00

Park View Apartments
Chicago, Cook County, Illinois
FHA Project No. 071-35570

**MODIFICATION OF FLEXIBLE SUBSIDY NOTE
AND USE AGREEMENT SUBORDINATION AGREEMENT**

THIS MODIFICATION OF FLEXIBLE SUBSIDY NOTE AND USE AGREEMENT SUBORDINATION AGREEMENT (this "Agreement") is made, as of June 27, 2001, by and between **Dunbar Limited Partnership No. 2**, a Michigan limited partnership (the "Owner"), and the **Secretary of Housing and Urban Development**, Washington, D.C. ("HUD").

RECITALS

A. The Owner is the owner of all of that certain real property located in the City of Chicago, in the County of Cook, in the State of Illinois known as Park View Apartments, FHA Project No. 071-35570 (the "Project"), as described in Exhibit A attached hereto (the "Real Property").

B. The Owner executed a certain Flexible Subsidy Note (the "Flex Note") payable to HUD dated May 26, 1988, in the original principal amount of Two Hundred Twenty-five Thousand and No/100 Dollars (\$225,000.00) and bearing interest at the rate of 1% per annum, in accordance with a Financial Assistance Contract dated May 1, 1988, between the Owner and HUD. A Use Agreement, affecting the use of the Real Property, was entered into by the Owner and HUD and recorded on May 26, 1988, with the Cook County Recorder as Document No. 88227312 (the "Use Agreement").

C. In connection with the Owner's participation in the Mark-to-Market Program, the Owner and the Director of the Office of Multifamily Housing Assistance Restructuring have entered into that certain Restructuring Commitment dated April 6, 2001, as amended through the date hereof, pursuant to which the Owner will, among other things, pay in full the outstanding FHA-Insured mortgage note issued to finance the Project and will execute (i) a Use Agreement (the "M2M Use Agreement"); (ii) a mortgage loan to GMAC Commercial Mortgage Corporation, its successors and assigns, in the principal amount of Seven Hundred Eighty-seven Thousand and No/100 Dollars (\$787,000.00) (the "First Mortgage Loan") to be secured by a first mortgage of the Real Property (the "First Mortgage"); (iii) a Mortgage Restructuring Mortgage Note to HUD in the principal amount of One Million Two Hundred Eighty-eight Thousand Seven Hundred Five and No/100 Dollars (\$1,288,705.00) (the "Mortgage Restructuring Loan") to be secured by a second mortgage of the Real Property (the "Mortgage Restructuring Mortgage"); and (iv) a Contingent Repayment Mortgage Note to HUD in the principal amount of One Million Six Hundred Fifty Thousand Six Hundred Sixteen and No/100 Dollars (\$1,650,616.00) (the "Contingent Repayment Loan") to be secured by a third mortgage of the Real Property (the "Contingent Repayment Mortgage"). The First Mortgage Loan, the Mortgage Restructuring Loan and the Contingent Repayment Loan are together

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hereafter referred to as the "M2M Loans," and the First Mortgage, the Mortgage Restructuring Mortgage and the Contingent Repayment Mortgage are together hereafter referred to as the "M2M Mortgages."

D. The Flex Note shall be modified by this Agreement in order to avoid the acceleration and prepayment of the Flex Note, suspend the accrual of interest on the Flex Note and permit the Owner to receive certain distributions from the Project.

E. The Use Agreement shall be subordinate to the M2M Use Agreement and the M2M Mortgages and the M2M Use Agreement and the M2M Mortgages shall be superior and prior to the lien or charge of the Use Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree that the terms of the Flex Note and Use Agreement are amended as follows:

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

2. No Interest Accrual. The parties hereto hereby acknowledge and agree that, upon the execution of this Agreement and until such time as payments commence on the outstanding balance of the Flex Note as modified by this Agreement, interest shall cease to accrue on the outstanding principal amount of the Flex Note.

3. Revised Payment Terms. The payment terms of the Flex Note set forth in Section 3 of the Flex Note are amended so that from and after the date hereof, the outstanding balance of the Flex Note shall be due and payable at such time as the entire indebtedness of the M2M Loans have been paid in full.

4. Subordination of Use Agreement. The Use Agreement and all renewals or extensions thereof shall be and hereby are subordinate and junior to the M2M Use Agreement and the M2M Mortgages securing the M2M Loans. The M2M Use Agreement and the M2M Mortgages securing the M2M Loans and all renewals and extensions thereof shall be and remain at all times a lien or charge on the Real Property prior and superior to the Use Agreement.

5. Distributions. Notwithstanding the provisions of Section 4 of the Flex Note, the Owner may receive distributions of Surplus Cash at such times and in such amounts as permitted by the M2M Loans.

6. No Impairment. Nothing in this Agreement shall in any way impair the Flex Note, or alter, waive, compromise, annul, impair or prejudice any provision, condition or covenant in the Flex Note except as specifically provided herein, nor affect or impair any rights, powers or remedies of HUD under the Flex Note, nor create a novation or new agreement by and between the parties

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thereto, it being the intent of the parties that the terms and provisions of the Flex Note, are expressly approved, ratified and confirmed, and shall continue in full force and effect except as expressly modified hereby.

7. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and/or assigns.

8. **Amendment.** The Flex Note, as amended by this Agreement, may not be further modified except by an instrument in writing executed by each of the parties hereto.

9. **Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

10. **Governing Law.** This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Project is located.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one agreement.

Prepared by:

John M. Arntson, Esq.
Arntson and Stewart P.C.
51 Broadway Suite 603
Fargo, North Dakota 58107-0789

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IN WITNESS WHEREOF, the parties hereto have caused this Modification of Flexible Subsidy Note and Use Agreement Subordination Agreement to be executed and made effective as of the date first above written.

DUNBAR LIMITED PARTNERSHIP
NO. 2, a Michigan limited partnership

By: P.M. EQUITIES, INC.,
a Michigan corporation,
its general partner

By: [Signature]
John J. Hayes, Resident

STATE OF ILLINOIS)

) ss.

COUNTY OF COOK)

On June 21st, 2001, before me, Nancy SNOW, personally appeared **John J. Hayes**, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



Nancy Snow
Notary Public

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SECRETARY OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C.

By: [Signature]
Authorized Agent
HUD/Office of Multifamily Housing
Assistance Restructuring
San Francisco Regional Office

Date: June 27, 2001

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On June 27th, 2001, before me, NANCY SNOW, personally appeared HARRY W. WEST, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that {he/she} executed the same in {his/her} authorized capacity, and that by {his/her} signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



[Signature]
Notary Public

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EXHIBIT A

LEGAL DESCRIPTION

Parcel 1: The North 40 feet of Lot 17 (except the West 150 feet and except the East 165 feet thereof), Lot 18 (except the East 165 feet thereof) and Lot 19 (except the East 132 feet of the North 73.44 feet and except the East 165 feet of that part of said Lot 19 lying South of the North 73.44 feet thereof) in Bayley's Subdivision of the North 20 acres of the Northeast Quarter of the Southwest Quarter of Section 10, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2: Easement for the benefit of Parcel 1 as created by Grant dated November 20, 1968 and recorded December 3, 1968 as Document 20693286 from Chicago Baptist Institute to Baptist Towers, Inc. and as reserved in Quit Claim Deed from Baptist Towers, Inc. to Chicago Baptist Institute dated December 4, 1968 and recorded January 17, 1969 as Document 20731979 for ingress and egress and construction and maintenance of parking facilities over and upon the following, to wit: the North 40 feet of the East 132 feet of that part of Lot 17 lying West of the East 33 feet thereof in Bayley's Subdivision of the North 20 acres of the Northeast Quarter of the Southwest Quarter of Section 10, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3: Easement for the benefit of Parcel 1 as created by Grant dated November 20, 1968 and recorded December 3, 1968 as Document 20693286 from Chicago Baptist Institute to Baptist Towers, Inc. and as reserved in Quit Claim Deed from Baptist Towers, Inc. to Chicago Baptist Institute dated December 4, 1968 and recorded January 17, 1969 as Document 20731979 for ingress and egress over and upon the following, to wit: the North 6.5 feet of the East 132 feet of that part of Lot 19 lying South of the North 73.44 feet and West of the East 33 feet thereof in Bayley's Subdivision of the North 20 acres of the Northeast Quarter of the Southwest Quarter of Section 10, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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