# EXHIBIT [\_\_\_]

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Seniors Housing – Skilled Nursing)**

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.
2. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

“**Compliance Calculation**” means Lender’s periodic calculation of the Skilled Nursing Net Cash Flow Percentage to determine the Mortgaged Property compliance with the Skilled Nursing Covenant.

“**Medicare**” means the federal health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. Secs. 1395 et seq.) and any statutes succeeding thereto.

“**Medicare Participant**” means a Person that has entered into a contract to be a participating provider in the Medicare Program, as identified on the Summary of Loan Terms.

“**Medicare Program**” means the Medicare program administered by a Governmental Authority under which certain benefits are available through a Governmental Authority or a Managed Care Organization.

“**Skilled Nursing Covenant**” means the requirement that the Skilled Nursing Net Cash Flow Percentage shall not exceed twenty percent (20%).

“**Skilled Nursing Net Cash Flow**” means, for any specified period, the total of (i) the net rental income derived from the skilled nursing units of the Mortgaged Property, plus (ii) other allowable income derived from the skilled nursing units of the Mortgaged Property, if any, minus (iii) operating expenses for the skilled nursing units of the Mortgaged Property, minus (iv) the full amount underwritten for the Replacement Reserve Account (regardless of whether deposits have been or will be waived or reduced) with respect to the skilled nursing units of the Mortgaged Property, and as adjusted for economic vacancy and other factors by the Lender for the specific asset class or loan type.

“**Skilled Nursing Net Cash Flow Percentage**” means the ratio ofSkilled Nursing Net Cash Flow to the total Net Cash Flow of the Mortgaged Property, expressed as a percentage.

1. The Definitions Schedule is hereby amended by deleting the following definitions and restating them in their entirety:

“**Managed Care Organization**” means a Person that has been certified by, and has entered into a contractual relationship with, a Governmental Authority in the Property Jurisdiction to make available to its members (including residents of the Mortgaged Property) certain long-term care and health care services through Medicaid Participant(s) and/or Medicare Participant(s), which, as of the Effective Date, is the party identified on the Summary of Loan Terms.

“**Medicaid/Medicare Provider Agreement**” means, individually and collectively, Borrower or Property Operator’s enrollment as a participating provider in the Medicaid Program or Medicare Program, or an agreement between Borrower or Property Operator and a Governmental Authority (or administered by a Governmental Authority, as applicable) or a Managed Care Organization to be a participating provider under the Medicaid Program or Medicare Program, as further described in the Summary of Loan Terms, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Third Party Payments**” means all payments and the rights to receive such payments from the Medicaid Program, the Medicare Program or other federal, state or local programs, boards, bureaus or agencies, and from residents, private insurers or others relating to the Mortgaged Property.

1. Section 4.01(r) (Borrower and Property Operator Status – Representations and Warranties – Licensing; Borrower/Property Operator Compliance with Laws) is hereby revised as follows:

All references to “Medicaid Provider Agreement” in Section 4.01(r) of the Loan Agreement are hereby deleted and replaced with “Medicaid/Medicare Provider Agreement.”

1. Section 4.02(j) (Borrower and Property Operator Status – Covenants – Borrower/Property Operator Compliance with Laws) is hereby revised as follows:

All references to “Medicaid Provider Agreement” in Section 4.02(j) of the Loan Agreement are hereby deleted and replaced with “Medicaid/Medicare Provider Agreement.”

1. Section 6.01(h) (Property Use, Preservation and Maintenance – Representations and Warranties – Medicaid Provider Agreement Representation) is hereby deleted and restated in its entirety to read as follows:

**(h) Medicaid/Medicare Provider Agreement Representations.**

(1) If neither Borrower nor any Property Operator is a Medicaid Participant nor a Medicare Participant as of the Effective Date, Borrower hereby confirms that neither Borrower nor Property Operator has entered into a Medicaid/Medicare Provider Agreement with respect to the Mortgaged Property.

(2) The following provisions apply if one or more Medicaid/Medicare Provider Agreements is in place with respect to the Mortgaged Property:

(A) Borrower has delivered to Lender a true and complete copy of each Medicaid/Medicare Provider Agreement in place as of the Effective Date, together with any amendments and modifications thereto;

(B) each Medicaid/Medicare Provider Agreement is a valid and binding agreement enforceable against the parties in accordance with its terms and is in full force and effect;

(C) to Borrower’s knowledge, neither Borrower, Property Operator nor a Governmental Authority or Managed Care Organization is in default under any Medicaid/Medicare Provider Agreement nor does any state of facts exist that with the passage of time or the giving of notice, or both, could constitute a default under any Medicaid/Medicare Provider Agreement;

(D) neither Property Operator nor Borrower has received any notice from a Governmental Authority or Managed Care Organization, as applicable, to the effect that such Governmental Authority or Managed Care Organization, as applicable, intends to terminate its relationship or unilaterally modify any terms of any Medicaid/Medicare Provider Agreement in effect as of the Effective Date, including the reduction of rates paid to Borrower or Property Operator for services provided under any Medicaid/Medicare Provider Agreement;

(E) as of the Effective Date, Borrower or Property Operator, as applicable, meets the provider standards, including all conditions for participation, as required by such Managed Care Organization or Governmental Authority;

(F) if Borrower or any Property Operator is a Medicaid Participant and/or a Medicare Participant as of the Effective Date with respect to the Mortgaged Property, Borrower hereby confirms that no more than twenty percent (20%) of the Mortgaged Property’s effective gross income is derived from funds paid to such Borrower or Property Operator by a Governmental Authority or a Managed Care Organization, as applicable, under one or more Medicaid/Medicare Provider Agreements, taken in the aggregate; and

(G) neither Borrower nor any Property Operator has been excluded from participation in any Governmental Health Care Program with respect to the Mortgaged Property or any other property.

1. Section 6.01 (Property Use, Preservation and Maintenance – Representations and Warranties) is hereby amended to add the following new provision to the end thereof:

**[(\_\_)] Representations Regarding Skilled Nursing.**

As of the Effective Date, Borrower hereby confirms that the Skilled Nursing Net Cash Flow Percentage, the number of skilled nursing units, the number of Medicaid-eligible units, and the number of Medicare-eligible units are set forth on the Summary of Loan Terms.

1. Section 6.02(a) (Property Use, Preservation and Maintenance – Covenants – Use of Property) of the Loan Agreement is hereby amended by deleting Section 6.02(a)(8) in its entirety, and a new subsection is hereby added to the end of Section 6.02(a)(1) as follows:

[(\_\_)] such change in use does not increase the number of skilled nursing units or beds at the Mortgaged Property);

1. Section 6.02(h) (Property Use, Preservation and Maintenance – Covenants – Medicaid Provider Agreement) is hereby deleted and restated in its entirety to read as follows:

**(h) Medicaid/Medicare Provider Agreement.**

(1) If neither Borrower nor any Property Operator is a Medicaid Participant nor a Medicare Participant as of the Effective Date, Borrower shall notify Lender in writing thirty (30) days prior to Borrower’s or any Property Operator’s (with respect to the Mortgaged Property) submission of its request to enter into any Medicaid/Medicare Provider Agreement, and will provide Lender with copies of all correspondence and documentation received from the Governmental Authority or the Managed Care Organization concerning its submission. In the event Borrower or any Property Operator becomes a Medicaid Participant or a Medicare Participant with respect to the Mortgaged Property, Borrower and such Property Operator shall execute the form of Medicaid and/or Medicare reserve agreement and Depositary Agreement as Lender may require.

(2) The following provisions apply if a Medicaid/Medicare Provider Agreement is in place as of the Effective Date or entered into at any time during the Term of the Mortgage Loan:

(A) Borrower and Property Operator shall comply with the terms and conditions of each Medicaid/Medicare Provider Agreement and shall enforce the obligations of each Managed Care Organization or Governmental Authority under the applicable Medicaid/Medicare Provider Agreement;

(B) Borrower and Property Operator shall maintain their respective compliance with the provider standards, including all conditions for participation, as required by the Managed Care Organization or the Governmental Authority, as applicable;

(C) Borrower or Property Operator, as applicable, shall not permit or allow more than twenty percent (20%) of the Mortgaged Property’s effective gross income to be derived from funds paid to Borrower or Property Operator by a Governmental Authority or a Managed Care Organization, as applicable, under one or more Medicaid/Medicare Provider Agreements, taken in the aggregate. Notwithstanding the foregoing, if Borrower or any Property Operator is a Medicaid Participant or Medicare Participant with respect to the Mortgaged Property, and if by reason of applicable law or regulation more than twenty percent (20%) of effective gross income is derived from funds paid to such Borrower or Property Operator by a Governmental Authority or a Managed Care Organization, Borrower and Property Operator shall take in a diligent and expeditious manner all reasonable steps necessary to comply with the preceding sentence to the extent permissible by applicable law or regulation;

(D) without the prior written consent of Lender, Borrower and Property Operator shall not:

(i) amend or otherwise modify any Medicaid/Medicare Provider Agreement;

(ii) terminate any Medicaid/Medicare Provider Agreement;

(iii) waive a default under any Medicaid/Medicare Provider Agreement; or

(iv) enter into a new Medicaid/Medicare Provider Agreement or renew or replace an existing Medicaid/Medicare Provider Agreement; and

(E) within five (5) days after Borrower’s or any Property Operator’s receipt thereof, Borrower shall give Lender written notice of any notice or information received by Borrower or any Property Operator that indicates that:

(i) either Borrower or any Property Operator is in default under the terms of any Medicaid/Medicare Provider Agreement;

(ii) the applicable Governmental Authority or Managed Care Organization intends to amend, modify, or terminate any Medicaid/Medicare Provider Agreement;

(iii) Borrower or Property Operator has ceased to meet the provider standards required by the applicable Governmental Authority or Managed Care Organization;

(iv) Borrower or Property Operator has received notice from any Governmental Authority or Managed Care Organization that the rates for services provided under any Medicaid/Medicare Provider Agreement will be adjusted; or

(v) either Borrower or any Property Operator has been excluded from participation in any Governmental Health Care Program with respect to the Mortgaged Property or any other property.

1. Section 6.02 (Property Use, Preservation and Maintenance – Covenants) of the Loan Agreement is hereby amended to add the following provision to the end thereof:

**[(\_\_)] Skilled Nursing Covenant.**

1. Borrower covenants and agrees that the Mortgaged Property shall comply with the Skilled Nursing Covenant. If Borrower has actual knowledge of a violation of the Skilled Nursing Covenant, Borrower shall promptly notify Lender.
2. Following Borrower’s delivery of the annual financial statements required pursuant to Section 8.02 in form sufficient for Lender to determine the Net Cash Flow of the Mortgaged Property and the Skilled Nursing Net Cash Flow for Borrower’s most recent calendar year, Lender shall perform a Compliance Calculation for such year. Lender shall notify Borrower in writing if the Compliance Calculation shows that the Mortgaged Property is in violation of the Skilled Nursing Covenant. In the event of such default, Borrower shall cause the Mortgaged Property to comply with the Skilled Nursing Covenant on or before the end of the current calendar year, which shall be reflected in the annual financial statements delivered to Lender after the end of such year.
3. Section 8.02(b)(6)(G) (Books and Records; Financial Reporting – Covenants – Items to Furnish to Lender) of the Loan Agreement is hereby deleted and restated in its entirety to read as follows:

(G) copies of all reports relating to the services and operations of the Mortgaged Property, including, if applicable, Medicare and/or Medicaid cost reports and records relating to account balances due to or from third party payors; and

1. Section 14.01(a) (Defaults/Remedies – Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended to delete Section 14.01(a)(17)(D) and replace it with “[intentionally deleted]”.
2. Section 14.01(a) (Defaults/Remedies – Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended to add the following provision to the end thereof:

[(\_\_)] ceases to provide other facilities and services normally associated with skilled nursing units, including (A) three (3) meals per day either delivered to the resident or in central dining services, (B) ancillary services such as physical therapy or occupational therapy, (C) periodic housekeeping, (D) laundry services, (E) sufficient medical staff to provide the required resident medical care, (F) customary transportation services, and (G) social activities.

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