**EXHIBIT [\_\_]**

**MODIFICATIONS TO Multifamily LOAN AND SECURITY AGREEMENT**

**(Co-Tenants)**

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:

“**Co-Tenant**” means, individually and collectively, all persons, trusts or entities comprising Borrower. All references to “Borrower” in the Loan Documents intend to pick up each Co-Tenant.

“**Co-Tenant Representative**” means the Co-Tenant Representative identified on the Summary of Loan Terms.

“**Initial Bankruptcy Case(s)**” means one or more bankruptcy cases resulting from one or more Co-Tenants filing for relief under the Insolvency Laws.

“**Initial Debtor**” means the debtor of an Initial Bankruptcy Case.

“**Subsequent Bankruptcy Case**” means any bankruptcy case filed by one or more Co-Tenants after an Initial Bankruptcy Case.

“**Tenancy-in-Common Agreement**” means that certain Tenancy-in-Common Agreement identified on the Summary of Loan Terms.

1. Section 3.02(a) (Personal Liability of Borrower – Personal Liability Based on Lender’s Loss) of the Loan Agreement is hereby amended by adding the following provisions to the end thereof:

[(\_\_)] the modification, termination or waiver of any provisions under any Tenancy-in-Common Agreement, or the entering into a new agreement related to the management of the Mortgaged Property, without the prior written consent of Lender; or

[(\_\_)] the filing of any action, complaint, petition or other claim to compel the sale or partition of the Mortgaged Property.

1. Section 14.01(a) (Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended by adding the following provisions to the end thereof:

[(\_\_)] the filing of any action, complaint, petition or other claim to compel the sale or partition of the Mortgaged Property, without Lender’s prior written consent; and

[(\_\_)] the modification, termination or waiver of any provisions under the Tenancy-in-Common Agreement, or the entering into a new agreement related to the management of the Mortgaged Property, without the prior written consent of Lender.

1. Section 15.02(a) (Process of Serving Notice) of the Loan Agreement is hereby amended by adding the following provision to the end thereof:

[(\_\_)] any notice to be provided to Borrower under this Loan Agreement shall be provided in accordance with and in the manner set forth in this Section 15.02 and directed to Co-Tenant Representative. Borrower agrees that any notice so sent shall constitute notice to Borrower.

1. The following article is hereby added to the Loan Agreement as Article [\_\_\_] (Co-Tenants):

**ARTICLE [\_\_\_]** **– CO-TENANTS**

## Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section [\_\_\_].01 are made as of the Effective Date, and are true and correct.

1. Borrower is comprised, individually and collectively, of each Co-Tenant party hereto.
2. Each representation and warranty made by Borrower under this Loan Agreement and each other Loan Documents is deemed to be made by each Co-Tenant, individually and collectively.
3. All necessary consents pursuant to the organizational documents of each Co-Tenant and all direct and indirect owners of each Co-Tenant have been obtained for each Co-Tenant to enter into the Loan Documents. In the event that each Co-Tenant does not have identical beneficial owners (e.g., each direct and indirect owner of a Co-Tenant is not also an owner of each other Co-Tenant), if not explicitly provided for in the organizational documents, Borrower has obtained all necessary consents from each non-controlling, non-identical owner acknowledging that the Co-Tenant it owns is entering into this Mortgage Loan with Co-Tenants owned by other owners.
4. No partition action has been filed, or is currently being threatened, with respect to the Mortgaged Property.
5. Each Co-Tenant has executed and delivered the Tenancy-in-Common Agreement and is currently a party thereto.
6. The Tenancy-in-Common Agreement is in full force and effect and there are no defaults thereunder, nor has any event occurred that with the passage of time, the giving of notice or both would result in such a default.

## Covenants.

1. **Generally.**

Each Co-Tenant agrees that each covenant made by Borrower under this Loan Agreement and each other Loan Document shall be deemed made, individually and collectively, by each Co-Tenant.

1. **No Partition, Sale or Ouster.**

No Co-Tenant shall file any action, complaint, petition or claim to seek partition or to otherwise divide the Mortgaged Property, to compel any sale of the Mortgaged Property or to seek ouster of any Co-Tenant. Each Co-Tenant expressly waives any and all rights to partition the Mortgaged Property or seek ouster of any Co-Tenant.

1. **Notification of Default under Tenancy-in-Common Agreement.**

Borrower hereby agrees that it will cause Co-Tenant Representative to notify Lender in writing within ten (10) days of a default by one or more of the parties under the Tenancy-in-Common Agreement.

1. **No Changes to Tenancy-in-Common Agreement.**

No Co-Tenant may cancel, terminate, or surrender, or materially modify or amend, any of the terms or provisions of the Tenancy-in-Common Agreement without the prior written consent of Lender.

## Subordination of the Tenancy-in-Common Agreement and Other Obligations.

1. Each Co-Tenant specifically, irrevocably, and unconditionally agrees that the Tenancy-in-Common Agreement and all rights, remedies and indemnities benefiting each Co-Tenant thereunder (including any rights to receive amounts payable from time to time to such Co-Tenant by any other Co-Tenant pursuant to the Tenancy-in-Common Agreement, any other agreement or otherwise, whether secured or unsecured, whether of principal, interest, or otherwise), the Mortgaged Property or the ownership or operation thereof (collectively, the “**Subordinated Obligations**”) are hereby deferred, postponed, and expressly made fully junior, secondary, subject and subordinate to the prior payment, performance, and satisfaction in full of the Indebtedness, to the lien of the Security Instrument, and to all rights and remedies of Lender under the Loan Documents, including any future advances made by Lender; provided, however, that payments may be received by any Co-Tenant in accordance with, and only in accordance with, the provisions of Section [\_\_].03(b) hereof. Each Co-Tenant further subordinates and hereby makes junior, secondary and subject any and all purchase options, rights of first refusal and rights to purchase the Mortgaged Property or any right or interest therein, whether now owned or hereafter acquired (including any rights arising under the Insolvency Laws) to the terms and provisions of the Loan Documents. To the extent that any one or more Co-Tenant has or in the future obtains any lien or similar interest whatsoever in or to the Mortgaged Property, or any right or interest therein, whether now owned or hereafter acquired, such lien or other similar interest shall be and hereby is waived in its entirety until the Indebtedness is paid in full. Each Co-Tenant further agrees and covenants that prior to the full and final payment of the Indebtedness and the written final release and discharge of the Indebtedness by Lender, each Co-Tenant will not pursue any remedies against one another to which it may be entitled pursuant to the Tenancy-in-Common Agreement or to which it may be entitled at law or in equity without Lender’s prior written consent, other than the right expressly set forth in the Tenancy-in-Common Agreement to purchase the interest of another Co-Tenant, to reduce the interest of another Co-Tenant, or (subject to the provisions in Section [\_\_].04 (Bankruptcy) below) the right to seek contribution from another Co-Tenant.
2. Until the Indebtedness has been finally paid in full or fully performed and all the Loan Documents have been terminated, each Co-Tenant irrevocably and unconditionally agrees that it will not (1) ask for, demand, sue for, take, or receive, directly or indirectly, by set-off, redemption, purchase, or in any other manner whatsoever, any payment with respect to, or any security or guaranty for, the whole or any part of the Subordinated Obligations, and in issuing documents, instruments, or agreements of any kind evidencing the Subordinated Obligations, and (2) receive any payment of any kind on account of the Subordinated Obligations; provided, however, that, notwithstanding anything to the contrary contained herein, if no Event of Default (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing under any of the Loan Documents, then payments may be received by such Co-Tenant in respect of the Subordinated Obligations in accordance with the stated terms thereof. Except as aforesaid, each Co-Tenant agrees (i) not to accept any payment or satisfaction of any kind of indebtedness of any other Co-Tenant in respect of the Subordinated Obligations and hereby unconditionally and irrevocably assigns all rights, remedies, actions, claims, votes, payments, and/or indebtedness to Lender, including (A) the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code, and (B) the right to vote on any plan of reorganization; and (ii) to standstill with respect to the taking of any action and the enforcement of any rights or remedies of any Co-Tenant against any other Co-Tenant in connection with the Subordinated Obligations and not to take any enforcement action or other action with respect to such rights and remedies. Each Co-Tenant agrees that all payments or other satisfaction any Co-Tenant may be entitled to on account of the Subordinated Obligations shall be paid directly to and automatically vest in Lender for application to the Indebtedness except as otherwise stated in this subsection [\_\_].03(b). In the event that any payment on account of Subordinated Obligations shall be received by any Co-Tenant in violation of the foregoing, such payment shall be held in trust for the benefit of Lender, and any amount so collected shall be turned over to Lender upon demand. Any right to payment of a Co-Tenant that is required to be turned over to Lender shall be subject and subordinate in all respects to the rights and claims of Lender against any Co-Tenant under the Loan Documents.

## Bankruptcy.

1. After the occurrence of a Bankruptcy Event involving any one or more Co-Tenant(s), each Co-Tenant:
	1. agrees not to seek the sale of its tenancy-in-common interest separate and apart from any sale of the undivided fee simple interest in the Mortgaged Property. Each Co-Tenant acknowledges and agrees that the detriment to the interest of each other Co-Tenant outweighs the benefit to such Co-Tenant; and
	2. assigns to Lender, as additional security for the Indebtedness, its right to reject or ratify the Tenancy-in-Common Agreement under the Insolvency Laws.
2. No Co-Tenant shall have any right of, and each hereby waives any claim for, subrogation or reimbursement against any Co-Tenant or any general partner, member or manager of a Co-Tenant by reason of any payment by Borrower of the Indebtedness, whether such right or claim arises at law or in equity or under any contract or statute, until the Indebtedness has been paid in full and there has expired the maximum possible period thereafter during which any payment made by Borrower to Lender with respect to the Indebtedness could be deemed a preference under the Insolvency Laws.
3. If any payment by a Co-Tenant is held to constitute a preference under the Insolvency Laws, or if for any other reason Lender is required to refund any sums to a Co-Tenant, such refund shall not constitute a release of any liability of Borrower under the Note, the Security Instrument or any other Loan Documents. It is the intention of Lender and Borrower that Borrower’s obligations under the Note, the Security Instrument and any other Loan Documents shall not be discharged except by Borrower’s performance of such obligations and then only to the extent of such performance.
4. If, as the result of one or more Initial Bankruptcy Cases, an Initial Debtor achieves confirmation of a plan that impairs the liens granted Lender under the Security Instrument, then each Co-Tenant shall agree as follows:
5. each Co-Tenant would be a party-in-interest in the Initial Bankruptcy Case(s);
6. each Co-Tenant will be bound by the terms of the plan confirmed in the Initial Bankruptcy Case(s);
7. each Co-Tenant will receive a benefit by reason of any impairment of Lender’s lien that is authorized by the court in the Initial Bankruptcy Case;
8. the interest of each Co-Tenant in the Mortgaged Property and the terms of the lien impairment will have been adequately represented by Initial Debtor(s);
9. the impairment of the liens was a critical and necessary part of the plan and order confirming the plan issued in the Initial Bankruptcy Case(s);
10. Lender and each Co-Tenant constitute all of the material necessary parties to the Initial Bankruptcy Case(s) and any Subsequent Bankruptcy Case(s) filed with respect to the Mortgaged Property;
11. the confirmation order issued by a United States bankruptcy (or district) court will have been issued by a court of competent jurisdiction;
12. the confirmation order in the Initial Bankruptcy Case(s) constitutes a final judgment on the merits;
13. any lien impairment request in the Subsequent Bankruptcy Case will be identical in all material respects to the lien impairment claims made in the Initial Bankruptcy Case(s); and
14. **that in view of the foregoing agreements, EACH Co-Tenant AGREES THAT (x) IT SHALL CONFIRM IT HAS WAIVED THE RIGHT TO REQUEST BANKRUPTCY RELIEF AFTER THE CONFIRMATION OF A PLAN IN THE INITIAL BANKRUPTCY CASE(S), (y) IT SHALL CONSENT TO ENTRY OF AN ORDER DISMISSING ANY SUBSEQUENT BANKRUPTCY CASE CONCERNING THE MORTGAGED PROPERTY, AND (z) THE FAILURE OF ONE OR MORE CO-TENANTS TO CONSENT TO AN ORDER OF DISMISSAL AS REQUESTED BY LENDER IN THE SUBSEQUENT BANKRUPTCY CASE SHALL EVIDENCE “BAD FAITH” ON THE PART OF THE CO-TENANTS, AND SUCH FAILURE TO CONSENT SHALL CONSTITUTE ADEQUATE CAUSE FOR DISMISSAL OF THE SUBSEQUENT BANKRUPTCY CASE.**

## Borrower Agency Provisions.

1. Each Co-Tenant irrevocably designates Co-Tenant Representative to be its agent and in such capacity to receive on behalf of Borrower all proceeds, receive all notices on behalf of Borrower pursuant to Section 15.02 of this Loan Agreement, make all requests under this Loan Agreement, and execute, deliver, and receive all instruments, certificates, requests, documents, amendments, writings, and further assurances now or hereafter required hereunder, on behalf of such Co-Tenant, and hereby authorizes Lender to pay over all proceeds hereunder in accordance with the request of Co-Tenant Representative.

(b) The handling of this Loan Agreement as a tenancy-in-common loan with a Co-Tenant Representative in the manner set forth in this Loan Agreement is solely as an accommodation to each Co-Tenant and Key Principal and is at their mutual request. Lender shall not incur liability to Borrower or Guarantor as a result thereof. To induce Lender to do so and in consideration thereof, each Co-Tenant hereby indemnifies Lender and holds Lender harmless from and against any and all liabilities, expenses, losses, damages, and claims of damage or injury asserted against Lender by any Person arising from or incurred by reason of Co-Tenant Representatives handling of the financing arrangements of Borrower as provided herein, reliance by Lender on any request or instruction from Co-Tenant Representative or any other action taken by Lender with respect to this Section [\_\_].05(b) except due to willful misconduct or gross negligence of the indemnified party as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order.

## Joint and Several Obligation; Cross-Guaranty.

1. Notwithstanding anything contained in this Loan Agreement or the other Loan Documents to the contrary (but subject to the provisions of Section 3.01, Section 3.02(a) and Section 3.02(b), the last sentence of this Section [\_\_].06, and the provisions of Section [\_\_].09 and Section 15.05), each Co-Tenant shall have joint and several liability for the Indebtedness. Each Co-Tenant, on a joint and several basis, hereby irrevocably guarantees to Lender and its successors and assigns on a non-recourse basis, subject to the exceptions to non-recourse provisions of Section 3.01, Section 3.02(a) and Section 3.02(b), the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of all Indebtedness. Each Co-Tenant agrees that its non-recourse guaranty obligation hereunder is an unconditional guaranty of payment and performance and not merely a guaranty of collection. The Indebtedness of Borrower under this Loan Agreement shall not be subject to any counterclaim, set-off, recoupment, deduction, cross-claim, or defense based upon any claim any Co-Tenant may have against Lender or any other Co-Tenant.

## No Impairment.

Each Co-Tenant agrees that the provisions of this Article [\_\_] are for the benefit of Lender and its successors and assigns, and nothing herein contained shall impair, as between any other Co-Tenant and Lender, the obligations of such other Co-Tenant under the Loan Documents.

## Election of Remedies.

1. Lender, in its discretion, may (1) bring suit against any one or more Co-Tenants, jointly and severally, without any requirement that Lender first proceed against any other Co-Tenant or any other Person; (2) or settle with any one or more Co-Tenants, or any other Person, for such consideration as Lender may deem proper; (3) release one or more Co-Tenants, or any other Person, from liability; and (4) otherwise deal with any Co-Tenant and any other Person, or any one or more of them, in any manner, or resort to any of the Mortgaged Property at any time held by it for performance of the Indebtedness or any other source or means of obtaining payment of the Indebtedness, and no such action shall impair the rights of Lender to collect from any Co-Tenant any amount guaranteed by any Co-Tenant under this Article [\_\_].
2. If, in the exercise of any of its rights and remedies, Lender shall forfeit any of its rights or remedies, including its rights to enter a deficiency judgment against any Co-Tenant or any other Person, whether because of any applicable law pertaining to “election of remedies” or the like, each Co-Tenant hereby consents to such action by Lender and waives any claim based upon such action, even if such action by Lender shall result in a full or partial loss of any rights of subrogation that each Co-Tenant might otherwise have had but for such action by Lender. Any election of remedies that results in the denial or impairment of the right of Lender to seek a deficiency judgment against any Co-Tenant shall not impair any other Co-Tenant’s obligation to pay the full amount of the Indebtedness. In the event Lender shall bid at any foreclosure or trustee’s sale or at any private sale permitted by law or any of the Loan Documents, Lender may bid all or less than the amount of the Indebtedness and the amount of such bid need not be paid by Lender but shall be credited against the Indebtedness. The amount of the successful bid at any such sale, whether Lender or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Mortgaged Property and the difference between such bid amount and the remaining balance of the Indebtedness shall be conclusively deemed to be the amount of the Indebtedness guaranteed under this Article [\_\_], notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Lender might otherwise be entitled but for such bidding at any such sale.

## Cumulative Liability of Each Co-Tenant.

The liability of each Co-Tenant under this Article [\_\_] is in addition to and shall be cumulative with all liabilities of such Co-Tenant to Lender under this Loan Agreement and all the other Loan Documents to which such Co-Tenant is a party or in respect of any Indebtedness of any other Co-Tenant.

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