**EXHIBIT [\_]**

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(Employee Benefit Plan – ERISA or Governmental Plans)**

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:

“**ERISA Event**” shall mean:

* 1. any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to an ERISA Plan, unless the PBGC has, by regulation, waived reporting with regard to the occurrence of the event;
  2. the failure to make by its due date a required contribution under Section 430 or 431 of the Internal Revenue Code with respect to any ERISA Plan;
  3. the filing pursuant to Section 412 of the Internal Revenue Code of an application for a waiver of the minimum funding standard with respect to any ERISA Plan;
  4. the incurrence by Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to any ERISA Plan (other than the obligation to pay PBGC premiums);
  5. the filing under Section 4041(c) of ERISA of a notice of intent to terminate any ERISA Plan, or the termination of any ERISA Plan under Section 4041(c) of ERISA;
  6. the receipt by Borrower or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any ERISA Plan, or the occurrence of any event or condition that could reasonably be expected to constitute grounds under ERISA for the termination of any ERISA Plan;
  7. a determination that any ERISA Plan is, or is expected to be, in at-risk status (within the meaning of Section 430 of the Internal Revenue Code);
  8. the incurrence by Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal from any ERISA Plan or Multiemployer Plan;
  9. the receipt by Borrower or its ERISA Affiliates of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in reorganization, in endangered status or in critical status within the meaning of Titles I and IV of ERISA;
  10. the making of any amendment to any ERISA Plan which could result in the imposition of a lien or the requirement to post a bond or other security; or
  11. the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Internal Revenue Code or Section 406 of ERISA) that could reasonably be expected to result in liability to Borrower.

“**Governmental Plan**” shall have the meaning ascribed to such term under Section 3(32) of ERISA.

“**Multiemployer Plan**” shall mean an ERISA Plan that is a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions; or (b) to which Borrower or any ERISA Affiliate has in the past made contributions.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Withdrawal Liability**” shall mean liability as a result of a complete or partial withdrawal, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA, from a Multiemployer Plan.

1. Section 4.01(m) (Representations and Warranties – ERISA) is hereby deleted and restated as follows:

**(m)** **ERISA.**

**[DRAFTING NOTE: ADD THE FOLLOWING EXCEPT FOR GOVERNMENTAL PLANS:**

Borrower hereby represents and warrants as follows:

(1) Borrower is not an Employee Benefit Plan;

(2) no asset of Borrower constitutes “plan assets” (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of an Employee Benefit Plan;

(3) no asset of Borrower is subject to any laws of any Governmental Authority governing the assets of an Employee Benefit Plan;

(4) Borrower and its ERISA Affiliates are in compliance with the applicable provisions of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder, to the extent a violation of such provisions could give rise to a lien on assets of Borrower or an ERISA Affiliate, or could result in liability to Borrower or an ERISA Affiliate;

(5) no ERISA Event has occurred or is reasonably expected to occur;

(6) each ERISA Plan that is a defined benefit plan (and not a Multiemployer Plan) has a funding target attainment percentage (as defined in Section 430 of the Internal Revenue Code) of at least eighty percent (80%);

(7) all amounts required by law with respect to, or under the terms of, any Employee Benefit Plan that provides retiree welfare benefits have been accrued in accordance with Statement of Financial Accounting Standards No. 106 or Government Accounting Standards Board No. 45, as applicable (or any successor thereto);

(8) neither Borrower nor its ERISA Affiliates have incurred any material liability due to a violation of the Patient Protection and Affordable Care Act of 2010, as amended (and the regulations and other guidance thereunder).**]**

**[DRAFTING NOTE: ADD THE FOLLOWING FOR GOVERNMENTAL PLANS:**

Borrower hereby represents and warrants as follows:

(1) Borrower is a Governmental Plan, or Borrower’s assets are treated as the assets of a Governmental Plan;

(2) neither Borrower nor its ERISA Affiliates are subject to any liability or obligation with respect to any ERISA Plan, and no asset of Borrower constitutes “plan assets” (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation 2510.3-101) of an Employee Benefit Plan that is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code;

(3) none of (A) Borrower’s obtaining the Mortgage Loan, (B) Borrower’s or Guarantor’s execution of the Loan Documents, or (C) Borrower’s or Guarantor’s performance of its respective obligations under the Loan Documents will result in a violation of any state or local law regulating Governmental Plans; and

(4) neither Borrower nor its ERISA Affiliates have incurred any material liability due to a violation of the Patient Protection and Affordable Care Act of 2010, as amended (and the regulations and other guidance thereunder).**]**

1. Section 4.02(e) (Covenants – ERISA) is hereby deleted and restated as follows:

**(e)** **ERISA.**

**[DRAFTING NOTE: ADD THE FOLLOWING EXCEPT FOR GOVERNMENTAL PLANS:**

Borrower hereby covenants as follows:

(1) no asset of Borrower shall constitute “plan assets” (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of any Employee Benefit Plan;

(2) no asset of Borrower shall be subject to any laws of any Governmental Authority governing assets of an Employee Benefit Plan;

(3) neither Borrower nor any ERISA Affiliate shall violate any applicable provision of ERISA or the Internal Revenue Code or the regulations and published interpretations thereunder, if such violation could give rise to a lien on assets of Borrower or an ERISA Affiliate, or could result in liability to Borrower or an ERISA Affiliate;

(4) Borrower shall promptly give written notice to Lender of the occurrence of any ERISA Event;

(5) neither Borrower nor any ERISA Affiliate shall cause or permit to occur an ERISA Event of a type that could give rise to a lien on assets of Borrower or an ERISA Affiliate, or could result in liability to Borrower or an ERISA Affiliate;

(6) all amounts required by law with respect to, or under the terms of, any Employee Benefit Plan that provides retiree welfare benefits shall be accrued in accordance with Statement of Financial Accounting Standards No. 106 or Government Accounting Standards Board No. 45, as applicable (or any successor thereto); and

(7) neither Borrower nor its ERISA Affiliates shall incur any material liability due to a violation of the Patient Protection and Affordable Care Act of 2010, as amended (and the regulations and other guidance thereunder).**]**

**[DRAFTING NOTE: ADD THE FOLLOWING FOR GOVERNMENTAL PLANS:**

Borrower hereby covenants as follows:

(1) Borrower shall remain a Governmental Plan, or Borrower’s assets shall continue to be treated as the assets of a Governmental Plan;

(2) neither Borrower nor its ERISA Affiliates shall become subject to any liability or obligation with respect to any ERISA Plan, and no asset of Borrower shall constitute “plan assets” (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation 2510.3-101) of an Employee Benefit Plan that is subject to Title I of ERISA or Section 4975 of the Internal Revenue Code;

(3) none of (A) Borrower’s obtaining the Mortgage Loan, (B) Borrower’s or Guarantor’s execution of the Loan Documents, or (C) Borrower’s or Guarantor’s performance of its respective obligations under the Loan Documents will result in a violation of any state or local law regulating Governmental Plans; and

(4) neither Borrower nor its ERISA Affiliates shall incur any material liability due to a violation of the Patient Protection and Affordable Care Act of 2010, as amended (and the regulations and other guidance thereunder).**]**

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