

**DOCUMENT PREPARED BY:**

Paul Renno, Esq.  
Levy, Levy & Levy  
900 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939

**WHEN RECORDED RETURN TO:**

Prudential Huntoon Paige Associates, Ltd.  
c/o PAR Servicing Department  
Attn: FHA Loan Administration  
Reference FHA Loan Number: 105-43054  
2100 Ross Avenue, Suite 2500  
Dallas, TX 75201-7907

FIDELITY TITLE  
FILE # 21084

**PARKWAY HEALTH CENTER  
CITY OF PAYSON, UTAH  
FHA Project No. 105-43054**

**MODIFICATION OF MORTGAGE**

**THIS MODIFICATION OF MORTGAGE** (the "Agreement"), dated as of the first day of December, 2009, is made with the approval of the Federal Housing Commissioner (the "Commissioner") by and between **B D & E PROPERTIES, L.C.**, a Utah limited liability company (the "Mortgagor"), having its place of business at 1990 59<sup>th</sup> Avenue, Suite E, Greeley, CO 80634, and **PRUDENTIAL HUNTOON PAIGE ASSOCIATES, LTD.**, a Delaware corporation (the "Lender"), whose address is c/o PAR Servicing Department, Attn: FHA Loan Administration, 2100 Ross Avenue, Suite 2500, Dallas, TX 75201-7907.

**WITNESSETH:**

**WHEREAS**, the Mortgagor is the owner of certain real property located in the City of Payson, County of Utah, State of Utah, as further described in this Agreement, on which is constructed a certain assisted care facility known as Parkway Health Center, FHA Project No. 105-43054, hereinafter referred to as the "Project".

**WHEREAS**, Mortgagor previously executed a certain Mortgage Note (the "Mortgage Note"), dated June 1, 2008, in favor of Lender, in the original principal amount of Seven Million, Four Hundred Forty-Three Thousand, Nine Hundred and No/100ths Dollars (\$7,443,900.00). The Mortgage Note is secured by (i) a certain Mortgage (the "Mortgage"), dated June 1, 2008, which was executed by the Mortgagor and delivered to Lender and thereafter recorded on June 16, 2008, against the real property component of the Project as further described in Exhibit "A" (the "Property"), attached hereto, in the Official Records of Utah County, Utah, as Entry No. 69410:2008, and a certain Security Agreement (the "Security Agreement"), dated June 1, 2008, by and between the Mortgagor and Lender, and (iii) certain UCC Financing Statements (the "UCC Financing Statements") given by the Mortgagor in favor of Lender and HUD and filed or recorded, as applicable, (a) against the personal property component of the Project on June 16, 2008, Receipt No. 2519614, with the Utah Secretary of State, and (b) against the fixtures and real property components of the Project on June 16, 2008, in the Official Records as Entry No. 69413:2008;

**WHEREAS**, the Mortgage Note and the indebtedness evidenced thereby (the "Mortgage Loan") was insured by the Secretary of Housing and Urban Development of Washington, D.C. ("HUD") under Section 232 of the National Housing Act, as amended, which contract of insurance (the "Contract of Insurance") is evidenced by the initial endorsement of the Mortgage Note by the Authorized Agent of the Commissioner;

**WHEREAS**, the Mortgagor and HUD previously executed that certain Regulatory Agreement for Multifamily Housing Projects Insured by HUD (the "Regulatory Agreement"), dated June 1, 2008, and recorded on June 16, 2008, against the Property in Official Records of Utah County, Utah, as Entry No. 69411:2008. The Regulatory Agreement is incorporated by reference into and made a part of the Mortgage.

**WHEREAS**, pursuant to Section 227 of the National Housing Act and as reflected on that certain Maximum Insurable Mortgage, form HUD-92580, dated October 26, 2009, HUD has agreed to insure the Mortgage Loan in the permanent loan amount of Seven Million, Three Hundred Fourteen Thousand, Nine Hundred and no/100ths Dollars (\$7,314,900.00) which

represents a mortgage decrease in the amount of One Hundred Twenty-Nine Thousand and no/100ths Dollars (\$129,000.00).

**WHEREAS**, Mortgagor and Mortgagee, with the approval of the Commissioner, now desire to amend the Mortgage, the Mortgage Note, the Security Agreement and other Mortgage Loan Documents, as hereinafter defined, to reflect the decreased mortgage amount, and to modify and amend the terms of payment of interest and principal as presently recited in said Mortgage and Mortgage Note, and covered by this Agreement, as fully, and to the same extent as though therein set out at length, and

**NOW, THEREFORE**, for and in consideration of the premises, the sum of Ten and 00/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and in further consideration of the agreements, covenants and stipulation hereinafter set forth, the parties for themselves and for their respective successors and assigns, do hereby agree and covenant as follows:

1. The foregoing recitals are hereby incorporated by reference as if set forth fully herein. All capitalized terms not otherwise defined in this Agreement shall have the same meanings ascribed thereto in the Mortgage and Mortgage Note.

2. The maximum principal balance of the Mortgage Loan endorsed by HUD for mortgage insurance pursuant to the Contract of Insurance shall be Seven Million, Three Hundred Fourteen Thousand, Nine Hundred and no/100ths Dollars (\$7,314,900.00).

3. The Mortgage is hereby amended as necessary by the deletion in its entirety of the second paragraph following "WITNESSETH" on the first page of the Mortgage to reflect (a) the principal reduction in mortgage loan, and (b) the resulting modification of the secured obligation of Mortgagor to make payments of principal and/or interest under the Mortgage Loan, as amended by this Agreement, as follows:

"THAT WHEREAS the Mortgagor is indebted to the Mortgagee in the principal sum of Seven Million, Three Hundred Fourteen Thousand, Nine Hundred and no/100ths Dollars (7,474,700.00) evidenced by a promissory note, bearing even date herewith, with interest thereon at the rate of **six and seventy-five hundredths per centum (6.75%) per annum** until paid (the "Note"); principal sum and interest thereon being payable at the office of the Mortgagee in Dallas Texas, or at such other place as the holder of the Note may designate in writing, in monthly installments, as follows:

Interest alone payable monthly on the **first day of July, 2008** and on the first day of each month thereafter to and including September 1, 2009. Thereafter, commencing on the **first day of October, 2009**, installments of interest and principal shall be paid

in the sum of **Forty-Four Thousand, One Hundred Thirty-Four and 95/100ths Dollars (\$44,134.95)** each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal (if any) remaining unpaid, plus accrued interest shall be due and payable on **September 1, 2049**. The installments of interest and principal payable under the Note shall be applied first to interest at the rate of **Six and Seventy-Five Hundredths per centum (6.75%) per annum** upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.”

4. The Mortgage, the Security Agreement and the other loan documents executed by the Mortgagor in connection with the Loan (the “Loan Documents”) are hereby amended by deleting (a) all references to the amount “\$7,443,900.00” and substituting therefore “\$7,314,900.00”, and (b) all references to “Seven Million, Four Hundred Forty-Three Thousand, Nine Hundred” and substituting in lieu thereof “Seven Million Three Hundred Fourteen Thousand, Nine Hundred”.

5. Nothing in this Agreement shall waive, compromise, impair or prejudice any right the Lender or HUD may have to seek judicial recourse for any breach of the HUD Regulatory Agreement that may have occurred prior to or that may occur subsequent to the date of this Agreement. In the event that the Lender or HUD initiates an action for breach of the HUD Regulatory Agreement and recovers funds, either on behalf of the Lender or HUD or on behalf of the Project or the Mortgagor, those funds may be applied, at the discretion of HUD, to payment of the delinquent amounts due under the Mortgage or as a partial payment of the Mortgage Loan.

6. Nothing herein contained shall in any way impair the Mortgage or Security Agreement, as amended hereby, or any other security now held for the indebtedness evidenced by the Mortgage Note, as amended hereby, or alter, waive, annul, vary or affect any provision, covenant or condition of the Mortgage or the HUD Regulatory Agreement, except as specifically modified and amended herein, nor affect or impair any rights, powers or remedies of the Lender under the Mortgage Note, as amended by this Agreement, or the HUD Regulatory Agreement, nor create a novation or new agreement by and between the parties thereto, it being the intent of the parties to this Agreement that all of the terms, covenants, conditions and agreements of the Mortgage Note or the Mortgage, both as amended hereby, and the HUD Regulatory Agreement are expressly approved, ratified and confirmed, shall continue and remain in full force and effect except as modified hereby and that the lien of the Mortgage, the Security Agreement, and the HUD Regulatory Agreement and the priority thereof shall be unchanged.

7. Mortgagor hereby acknowledges and affirms to Lender that as of the effective date of this Agreement, there are no counter-claims, defenses or set-offs, whether legal or equitable, to Mortgagor's obligations under either the Mortgage or the Mortgage Note, and Mortgagor hereby

waives the right to assert or raise any such counter-claims, defenses or set-offs which Mortgagor may have had with respect to any suit, proceeding or foreclosure action under the Mortgage that the Lender, may or could have brought against Mortgagor prior to the effective date of this Agreement.

8. 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.

9. The Mortgage, Security Agreement and the other Loan Documents, as amended by this Agreement, may not be further modified except by an instrument in writing executed by each of the parties hereto.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

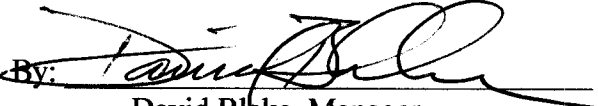
**IN WITNESS WHEREOF**, Mortgagor and Lender have caused this Agreement to be executed as of the day and year first above written.

**[SEE ATTACHED COUNTERPART SIGNATURE PAGES]**

**COUNTERPART SIGNATURE PAGE TO  
MODIFICATION OF MORTGAGE**

**MORTGAGOR:**

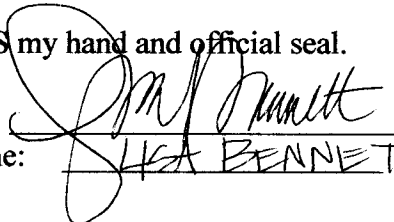
**B D & E PROPERTIES, L.C.  
a Utah limited liability company**

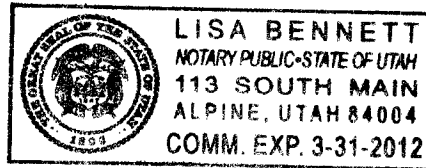
By:   
David Blake, Manager

STATE OF UTAH )  
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of December, 2009, by David Blake, Manager of B D & E Properties, L.C., a Utah limited liability company, on behalf of the company.

WITNESS my hand and official seal.

Signature:   
Print Name: LISA BENNETT



[Seal]

**COUNTERPART SIGNATURE PAGE TO  
MODIFICATION OF MORTGAGE**

**LENDER:**

**PRUDENTIAL HUNTOON PAIGE ASSOCIATES,  
LTD.,** a Delaware corporation

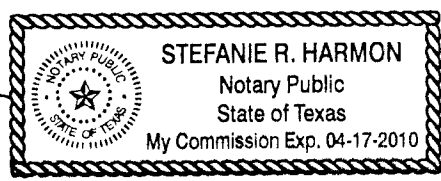
By: *Renee Carroll-Smith*  
Reneé Carroll-Smith  
Vice President

STATE OF Texas )  
                                  ) )  
COUNTY OF Dallas )

The foregoing instrument was acknowledged before me this 21 day of December, 2009, by Reneé Carroll-Smith, in her representative capacity as Vice President of Prudential Huntoon Paige Associations, Ltd., a Delaware corporation.

WITNESS my hand and official seal.

Signature: *Stefanie R. Harmon*  
Print Name: \_\_\_\_\_



(Seal)

COUNTERPART SIGNATURE PAGE TO  
MODIFICATION OF MORTGAGE

THIS MODIFICATION OF MORTGAGE IS APPROVED BY:

HUD:

U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT, acting by and  
through the Federal Housing Commissioner

*Linda Y. Cluck*  
By: \_\_\_\_\_  
Authorized Agent

STATE OF COLORADO )  
 ) ss:  
CITY AND COUNTY OF DENVER )

Before me, Tamar S. Beaman a Notary Public in and for the said State, on  
this 29 day of December, 2009, personally appeared Linda Y. Cluck, who is well  
known to me to be the Acting Director, Denver Multifamily Hub, and the person who  
executed the foregoing instrument by virtue of the authority vested in him/her by Section 7(d) of  
the Department of Housing and Urban Development Act, 42 U.S.C.A. § 3535(d), as amended,  
and Section 232(c) of the National Housing Act, 12 U.S.C. § 1715w(c), as amended, and I  
having first made known to him/her the contents thereof, he/she did acknowledge the signing  
thereof to be his/her free and voluntary act and done on behalf of Shaun Donovan, Secretary of  
Housing and Urban Development, for the uses, purposes and considerations therein set forth.

Witness my hand and official seal the 29 day of December, 2009.

SEAL  
TAMAR S. BEAMAN  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 10-28-10

Tamar S Beaman  
Notary Public

My Commission expires \_\_\_\_\_.



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

**PARCEL A:**

A PARCEL OF LAND LYING IN THE SOUTHWEST 1/4 OF SECTION 10, AND THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE BRASS CAP MONUMENTING THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N. 89°31'31" E. A DISTANCE OF 401.83 FEET ALONG THE SECTION LINE; THENCE NORTH A DISTANCE OF 499.67 FEET TO THE REAL POINT OF BEGINNING.

THENCE N. 89°39'14" W. A DISTANCE OF 353.98 FEET TO A POINT OF CURVATURE OF A 18.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE NORTHEASTERLY A DISTANCE OF 13.30 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 42°20'42" AND A CHORD THAT BEARS N.20°59'49" E. A DISTANCE OF 13.00 FEET; THENCE N. 00°00'01" W. A DISTANCE OF 177.22 FEET TO A POINT OF CURVATURE OF A 5.00-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY A DISTANCE OF 7.85 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 89°58'58" AND A CHORD THAT BEARS N. 44°59'36" W. A DISTANCE OF 7.07 FEET; THENCE N.89°59'57" W. A DISTANCE OF 321.45 FEET; THENCE N. 00°01'56" W. A DISTANCE OF 31.00 FEET; THENCE S. 89°59'57" E. A DISTANCE OF 321.29 FEET TO A POINT OF CURVATURE OF A 5.00-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHEASTERLY A DISTANCE OF 7.85 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 89°58'58" AND A CHORD THAT BEARS N. 44°59'57" E. A DISTANCE OF 7.07 FEET; THENCE N. 00°00'00" E. A DISTANCE OF 179.69 FEET; THENCE S. 89°42'47" E. A DISTANCE OF 185.00 FEET; THENCE N. 45°00'00" E. A DISTANCE OF 236.73 FEET; THENCE S. 00°17'13" W. A DISTANCE OF 578.66 FEET TO THE REAL POINT OF BEGINNING.

**PARCEL B:**

RIGHTS TO CONNECT AND USE FACILITIES OF MOUNTAIN VIEW HOUSING LIFT STATION CONTAINED IN THAT CERTAIN JOINT USE AGREEMENT DATED 19 SEPTEMBER 2007, AS AMENDED, BY AND BETWEEN MOUNTAIN VIEW HOSPITAL, INC., A UTAH CORPORATION, GRANTOR, AND BAR K. DEVELOPMENT, LLC, A UTAH LIMITED LIABILITY COMPANY AND B D & E PROPERTIES, L.C., A UTAH LIMITED LIABILITY COMPANY, WHICH JOINT USE AGREEMENT, AS AMENDED, WAS RECORDED ON 16 MAY 2008, AS INSTRUMENT NO. 58332:2008, IN THE OFFICES OF THE UTAH COUNTY RECORDER.