**[DRAFTING NOTE: IF BORROWER OWNS ALL UNITS GOVERNED BY THE SHARED USE DOCUMENTS AND THE “COMMON ELEMENTS” (AS DEFINED BELOW) ARE OWNED BY A BORROWER AFFILIATE (EITHER THROUGH A HOMEOWNERS’ ASSOCIATION OR OTHERWISE), SUCH BORROWER AFFILIATE MUST EITHER BECOME A DIRECT BORROWER UNDER THE MORTGAGE LOAN OR EXECUTE THIS JOINDER AND CONSENT (IN LIEU OF FORM 6276) TO JOIN INTO THE SECURITY INSTRUMENT, AND THE SECURITY INSTRUMENT MUST BE A LIEN ON THE ENTIRE PROPERTY SUBJECT TO THE SHARED USE DOCUMENTS, INCLUDING THE COMMON ELEMENTS.]**

**EXHIBIT [\_\_]**

**MODIFICATIONS TO SECURITY INSTRUMENT**

**(Joinder and Consent (Affiliate-Owned Common Elements))**

The foregoing Security Instrument is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Security Instrument.
2. Section 1 of the Security Instrument (Defined Terms) is hereby amended by adding the following new definitions in the appropriate alphabetical order:

“**Common Elements**” means all common areas and shared infrastructure on or benefiting the Land and Improvements pursuant to the Shared Use Documents including but not limited to (a) parking, roadways, utility and other easements and; and (b) all amenities, including laundry facilities, clubhouses, pools, playgrounds, tennis courts, fitness clubs, and other recreational facilities.

“**Common Elements Owner**” means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

“**Common Elements Owner Default**” means a default by Common Elements Owner in performing or observing any of the terms, covenants or conditions of the Shared Use Documents required to be performed or observed by Common Elements Owner.

“**Common Elements Owner’s Estate**” means the fee interest in the Common Elements and all of Common Elements Owner’s right title and interest in the Mortgaged Property.

“**Shared Use Default**” means (a) a default by Borrower in making any payments of assessments, fees or other sum of money payable by Borrower to Common Elements Owner under the Shared Use Documents on the date such payment is due and payable, or (b) a default by Borrower in performing or observing any of the terms, covenants or conditions of the Shared Use Documents (other than the payments referred to in clause (a)) required to be performed or observed by Borrower.

“**Shared Use Documents**” means [individually and collectively] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[DRAFTING NOTE: INSERT NAME(S) OF DOCUMENT(S)]**.

1. The definition of “**Mortgaged Property**” set forth in Section 1 of the Security Instrument (Defined Terms) is hereby amended and shall include the Common Elements, the Shared Use Documents, and Common Elements Owner’s present and future right, title and interest, if any, in and to each of the items enumerated in clauses (c) through and including [(p)] of the definition of Mortgaged Property.
2. **Joinder.**

The undersigned, **[to be inserted]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is Common Elements Owner, fee owner of the Common Elements and the [Declarant][Home Owner’s Association] **[DRAFTING NOTE: Insert applicable title]** under the Shared Use Documents.

Common Elements Owner is a Borrower Affiliate and has an economic interest in Borrower and acknowledges and agrees that it derives a substantial benefit from the making of the Mortgage Loan or will otherwise obtain a material financial benefit from the Mortgage Loan and, in consideration thereof, has agreed to join in the execution of this Security Instrument to and for the benefit of Lender to subject Common Elements Owner’s Estate to the lien and security interest of this Security Instrument. This Joinder and Consent is hereby attached to and incorporated into the Security Instrument and deemed a part thereof, and all references in the Loan Documents to the Security Instrument shall be deemed to include this Joinder and Consent.

By its execution and delivery of this Joinder and Consent, Common Elements Owner hereby joins in the Security Instrument for the purpose of (a) imposing the lien of the Security Instrument on Common Elements Owner’s Estate, (b) acknowledging and consenting to the mortgage, pledge, assignment and hypothecation by Borrower of all of Borrower’s interest in the Mortgaged Property, pursuant to the Security Instrument, and (c) acknowledging the agreements, covenants and obligations set forth in the Security Instrument, including those set forth in this Joinder and Consent, as may be applicable to Common Elements Owner, and agreeing to the modifications, agreements, representations, warranties, waivers and covenants contained in this Joinder and Consent, to wit:

Common Elements Owner, in consideration of Lender’s making the Mortgage Loan, to secure to Lender the repayment of the Indebtedness, and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents (excluding the Environmental Indemnity Agreement), irrevocably and unconditionally **[DRAFTING NOTE: MIRROR GRANTING LANGUAGE ON PAGE 1 OF THE SECURITY INSTRUMENT** - mortgages, grants, warrants, conveys, bargains, sells, and assigns **[to Trustee, in trust][to and]** for benefit of Lender, with power of sale and right of entry and possession,**]** Common Elements Owner’s present and future right, title and interest in and to Common Elements Owner’s Estate on or benefiting the Land described in Exhibit A attached to the Security Instrument and incorporated herein by reference **[DRAFTING NOTE: MIRROR LANGUAGE ON PAGE 1 OF THE SECURITY INSTRUMENT IF APPLICABLE**- to have and to hold such Common Elements Owner’s Estate unto **[Trustee][Lender]** and **[Trustee’s][Lender’s]** successors and assigns, forever; Common Elements Owner hereby releasing, relinquishing and waiving, to the fullest extent allowed by law, all rights and benefits, if any, under and by virtue of the homestead exemption laws of the Property Jurisdiction.**]**

Common Elements Owner represents and warrants that (a) Common Elements Owner has the power, authority and right to execute this Joinder and Consent, and (b) Common Elements Owner is lawfully seized of the Common Elements and has the right, power and authority to **[DRAFTING NOTE: MIRROR GRANTING LANGUAGE ON PAGE 1 OF THE SECURITY INSTRUMENT** - mortgage, grant, warrant, convey, bargain, sell, and assign**]** Common Elements Owner’s Estate, and Common Elements Owner’s Estate is not encumbered by any Lien other than Permitted Encumbrances. Common Elements Owner covenants that Common Elements Owner will warrant and defend the title to Common Elements Owner’s Estate against all claims and demands other than Permitted Encumbrances.

Each reference to Borrower contained in the Security Instrument shall be deemed to include Common Elements Ownerexcept for those references pertaining solely to Borrower as obligor of the Indebtedness.Common Elements Owner agrees and acknowledges that each pledge, assignment, grant, transfer, agreement, acknowledgement, consent, release, waiver, covenant, representation and warranty contained in the Security Instrument (individually and collectively, the “**Property Certifications and Agreements**”) is hereby deemed also to apply to Common Elements Owner and/or Common Elements Owner’s Estate as if separately set forth in its entirety in this Joinder and Consent. Common Elements Owner hereby makes, with respect to itself and Common Elements Owner’s Estate only, all such Property Certifications and Agreements.

1. The following section is hereby added to the Security Instrument as Section [(\_\_)] (Shared Use Provisions):

**[\_\_]. Shared Use Provisions.**

* 1. **Common Elements Owner Representations and Warranties.**

Common Elements Owner represents and warrants to Lender that, as of the Effective Date:

* + 1. Common Elements Owner owns fee simple title to the Common Elements;
    2. the Shared Use Documents are in full force and effect in accordance with its terms, unmodified by any writing or otherwise, except as previously disclosed to Lender in writing;
    3. Common Elements Owner has not waived, canceled or surrendered any of its rights under the Shared Use Documents;
    4. Common Elements Owner is the sole owner of Common Elements Owner’s Estate, and has good and marketable title to, the Common Elements;
    5. Common Elements Owner is a Borrower Affiliate and has entered into this Security Instrument to spread the lien of this Security Instrument to Common Elements Owner’s Estate;
    6. Common Elements Owner’s Estate is free and clear of all liens, encumbrances and other matters affecting title, other than the lien of this Security Instrument and the easements and restrictions listed in a schedule of exceptions to coverage in the title insurance policy issued to Lender contemporaneously with the execution and recordation of this Security Instrument and insuring Lender’s interest in the Mortgaged Property, including Common Elements Owner’s Estate;
    7. there is no existing Shared Use Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Shared Use Default;
    8. there is no existing Common Elements Owner Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Common Elements Owner Default;
    9. Common Elements Owner has not subordinated its interest in the Shared Use Documents to any lien or other encumbrance on the Common Elements;
    10. Common Elements Owner has not granted to any Person any right or option to purchase the Common Elements or any interest therein or any part thereof;
    11. the name and address of the debtor and secured party are set forth after Common Elements Owner’s signature below which are the addresses from which information on the security interest may be obtained;
    12. Common Elements Owner maintains its chief executive office at the location set forth after Common Elements Owner’s signature below;
    13. the state of incorporation, organization, or formation, if applicable, of Common Elements Owner is as set forth in this Joinder and Consent and Common Elements Owner’s exact legal name is as set forth in this Joinder and Consent;
    14. Common Elements Owner’s organizational identification number, if applicable, is as set forth after Common Elements Owner’s signature below; and
    15. no financing statement covering any of the UCC Collateral owned by Common Elements Owner (or any proceeds thereof) is on file in any public office except pursuant hereto.
  1. **Affirmative Covenants Regarding Shared Use Documents.**

Common Elements Owner shall:

* + 1. notify Lender if Borrower or Common Elements Owner initiates any appraisal, arbitration, litigation or other dispute resolution proceeding affecting the Shared Use Documents or Common Elements, and allow Lender to participate in such proceeding on Common Elements Owner’s or Borrower’s behalf, in Common Elements Owner’s or Borrower’s name, place and stead, or to exercise any or all of Common Elements Owner’s or Borrower’s rights in such proceeding;
    2. at all times promptly and fully perform, observe and comply with all other terms, covenants and conditions of the Shared Use Documents to be performed, observed or complied with by Common Elements Owner under the Shared Use Documents;
    3. maintain its existence, its entity status, franchises, rights, and privileges under the laws of the state of its formation or organization (as applicable) and shall continue to be duly qualified and in good standing to transact business in each jurisdiction in which qualification or standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to do so would adversely affect Borrower’s operation of the Mortgaged Property or the validity, enforceability, or the ability of Common Elements Owner to perform its obligations under this Security Instrument. Common Elements Owner shall not modify or amend such certificate or change its legal name or jurisdiction of formation/existence without Lender's prior written consent, which will not to be unreasonably withheld. Common Elements Owner shall notify Lender in writing of any change in its chief executive office within five (5) days of such change. In the event of any change in Common Elements Owner’s legal name or jurisdiction of formation/existence, Common Elements Owner shall, if required by Lender, execute and record in the land records any instrument required by the Property Jurisdiction to be recorded to evidence such change. Common Elements Owner authorizes Lender to obtain, at Common Elements Owner’s sole cost and expense, a “date down” endorsement to Lender’s Title Policy (or obtain a new Title Policy if a “date down” endorsement is not available in the Property Jurisdiction) to the extent deemed necessary or required by Lender; and
    4. duly and timely comply with all laws, regulations, rules, statutes, orders and decrees of any Governmental Authority or court applicable to it or to the Mortgaged Property or any part thereof.
  1. **Negative Covenants Regarding Shared Use Documents.**

Common Elements Owner shall not, without the written consent of Lender (which may be given or withheld by Lender in its sole and absolute discretion):

* + 1. surrender the Common Elements to Borrower or terminate or cancel the Shared Use Documents;
    2. amend, modify or change the Shared Use Documents, either orally or in writing; or
    3. pledge, assign, convey, transfer, sell, further encumber or mortgage Common Elements Owner’s Estate or subordinate the Shared Use Documents or Common Elements Owner’s Estate to any mortgage, deed of trust or other lien on Common Elements Owner’s Estate other than this Security Instrument.
  1. **Subordination; Common Elements Owner Consent to Financing**.
     1. Common Elements Owner acknowledges and agrees that the obligations of Borrower to make payments to Common Elements Owner required under the Shared Use Documents and to perform and observe the other covenants and agreements on the part of Borrower as contained in the Shared Use Documents (including claims under the Shared Use Documents or any rights to subrogation Common Elements Owner may have as a result of the Security Instrument or any action taken by Lender under the Security Instrument), shall: (A) be personal to Borrower; (B) be subordinate and junior in priority, right of payment and all other respects to any and all obligations of Borrower under the Loan Documents; (C) not be secured by this Security Instrument; and (D) not constitute a lien on the Mortgaged Property. Common Elements Owner acknowledges and agrees that the lien of the Security Instrument shall be senior to Common Elements Owner’s Estate (but not the Shared Use Documents themselves) and Common Elements Owner’s Estate (but not the Shared Use Documents themselves) is hereby subjected and made subordinate to the lien of the Security Instrument.
     2. Common Elements Owner hereby consents to the hypothecation, transfer, pledge and assignment of Borrower’s present and hereafter acquired right, title and interest in the Shared Use Documents pursuant to the Security Instrument. Common Elements Owner acknowledges, agrees and consents to the terms contained in the Security Instrument.
     3. Common Elements Owner acknowledges and agrees that:
        1. all mortgagee protection provisions set forth in the Shared Use Documents, and all other provisions inuring to the benefit of mortgagees or their successors or assigns contained in the Shared Use Documents, are hereby incorporated into the Security Instrument herein by reference and are restated and confirmed by Common Elements Owner for the benefit of Lender and its successors and assigns;
        2. until such time, if any, that the Indebtedness shall be satisfied or Lender shall give Common Elements Owner written notice that the Indebtedness has been satisfied, Lender shall have the protections of a mortgagee as described in the Shared Use Documents and the execution of this Joinder and Consent by Common Elements Owner satisfies all notice and consent requirements for Lender to obtain and maintain status as a mortgagee under the Shared Use Documents;
        3. upon the occurrence of an Event of Default, Lender may take such action and exercise such remedies, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and Common Elements Owner, and its rights in and to the Mortgaged Property to the fullest extent under the terms of the Security Instrument, the Loan Agreement, and the other Loan Documents;
        4. upon receipt of notice from Common Elements Owner of a default by Borrower under the Shared Use Documents, Lender may, but shall not be obligated to, cure any default of Borrower within thirty (30) days after the expiration of the time frame set forth in the Shared Use Documents afforded to Borrower to cure such default; provided, however, that with respect to any default of Borrower under the Shared Use Documents which cannot be remedied within such time frame, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default. Notwithstanding the foregoing, with respect to any default of Borrower under the Shared Use Documents that cannot be remedied without Lender obtaining possession of the Mortgaged Property (excluding Common Elements Owner’s Estate), any cure period afforded to Borrower in the Shared Use Documents shall not commence until Lender obtains possession of the Mortgaged Property (excluding Common Elements Owner’s Estate), as long as all other defaults which reasonably can be cured by Lender without Lender obtaining possession of the Mortgaged Property (excluding Common Elements Owner’s Estate) are so cured, and provided that Lender commences to exercise any rights to obtain possession or to effect foreclosure, and diligently pursues the exercise of such rights thereafter; and
        5. all insurance proceeds and condemnation proceeds and awards shall be applied in accordance with the Loan Documents notwithstanding anything to the contrary contained in the Shared Use Documents.
  2. **Common Elements Owner Waivers.**

Common Elements Owner is a non-borrower mortgagor under the Security Instrument and Common Elements Owner hereby waives the following:

* + 1. any defense that Common Elements Owner may have by reason of the failure of Lender to provide Common Elements Owner with any material facts about Borrower, including any information respecting the financial condition of Borrower, Borrower’s ability to perform the Mortgage Loan obligations or the sufficiency of Lender’s security; and
    2. any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person, or the failure of Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons.
  1. **Common Elements Owner’s Personal Liability.**

Common Elements Owner has no personal liability for the repayment of the Indebtedness or for the performance of any of Borrower’s obligations under the Loan Documents, and Common Elements Owner’s liability under this Security Instrument is expressly limited to its interest in Common Elements Owner’s Estate. Nothing in this Security Instrument limits the liability or obligations of Common Elements Owner under the Shared Use Documents.

* 1. **Notices Under Shared Use Documents.**

Common Elements Owner shall deliver to Lender, (1) within ten (10) days after Common Elements Owner’s receipt, a true and correct copy of each notice, demand, complaint or request from Borrower under, or with respect to, the Shared Use Documents; and (2) within ten (10) days after Common Elements Owner’s receipt of request from Lender, such other information and evidence as Lender may reasonably request concerning Common Elements Owner’s due observance, performance and compliance with the terms, covenants and provisions of the Shared Use Documents.

* 1. **Appointment of Lender as Common Elements Owner’s Attorney-In-Fact.**

Common Elements Owner makes, constitutes and appoints Lender as Common Elements Owner’s attorney-in-fact, in Common Elements Owner’s name, place and stead, with full power of substitution, to take all actions and to sign all documents and instruments which Lender, in its discretion, considers to be necessary or desirable to (1) prevent or cure a Common Elements Owner Default, (2) renew or extend the term of the Shared Use Documents pursuant to any rights granted to Common Elements Owner under the Shared Use Documents, and (3) appoint arbitrators and conduct arbitration proceedings pursuant to the Shared Use Documents. Common Elements Owner gives and grants to Lender, as Common Elements Owner’s attorney-in-fact, full power and authority to do and perform every act and sign every document and instrument necessary and proper to be done in the exercise of the foregoing power as fully as Common Elements Owner might or could do, and Common Elements Owner hereby ratifies and confirms all acts that Lender, as Common Elements Owner’s attorney-in-fact, shall lawfully do or cause to be done by virtue of this power of attorney. This power of attorney, being coupled with an interest, shall be irrevocable as long as any of the Indebtedness remains unpaid.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Common Elements Owner has signed and delivered this Joinder and Consent of Common Elements Owner to this Security Instrument or has caused this Joinder and Consent of Common Elements Owner to this Security Instrument to be signed and delivered by its duly authorized representative.

**COMMON ELEMENTS OWNER**:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

|  |
| --- |
| By: (SEAL)  Name:  Title: |
| The name, chief executive office and organizational identification number of Common Elements Owner (as Debtor under any applicable Uniform Commercial Code) are:  Debtor Name/Record Owner:  Debtor Chief Executive Office Address:        Debtor Organizational ID Number:  **[INSERT COMMON ELEMENTS OWNER’S NOTICE ADDRESS IF DIFFERENT]** |
|  |

**[ADD NOTARY/ACKNOWLEDGMENT FOR COMMON ELEMENTS OWNER IN RECORDABLE FORM AND AS REQUIRED UNDER APPLICABLE LAW]**