**EXHIBIT [\_\_]**

**MODIFICATIONS TO SECURITY INSTRUMENT**

**(Ground Lease Provisions)**

**[DRAFTING NOTE: IF GROUND LESSOR AND GROUND LESSEE (INCLUDING DIRECT OR INDIRECT OWNERS) ARE AFFILIATES, GROUND LESSOR MUST JOIN INTO THIS SECURITY INSTRUMENT WITH THE JOINDER AND CONSENT FORM AT THE END OF THIS FORM 6308, AND THIS SECURITY INSTRUMENT MUST BE A LIEN ON THE FEE AND THE LEASEHOLD ESTATES.]**

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:

“**Fee Estate**” means Ground Lessor’s: (a) fee simple ownership of the Land and interest in the Improvements, reversionary or otherwise, under the Ground Lease, and (b) right, title and interest in, under, and to the Ground Lease, including (1) all options, privileges and rights under the Ground Lease and all appurtenances with respect to the Ground Lease, and (2) all amounts paid to, or deposited by Borrower with, Ground Lessor under the Ground Lease.

“**Ground Lease**” means the lease described in Schedule [ ] attached hereto by and between Ground Lessor, as lessor, and Borrower, as lessee, as such lease may from time to time be amended, modified, supplemented, renewed and extended.

“**Ground Lessee Default**” means (a) a default by Borrower in making any payment of rent, additional rent or other sum of money payable by Borrower to Ground Lessor under the Ground Lease 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 Ground Lease (other than the payments referred to in clause (a)) required to be performed or observed by Borrower.

“**Ground Lessor**” means the lessor from time to time under the Ground Lease.

“**Ground Lessor Bankruptcy Event**” means any one or more of the following:

(a) the commencement of a voluntary case under one or more of the Insolvency Laws by Ground Lessor;

(b) the acknowledgment in writing by Ground Lessor that it is unable to pay its debts generally as they mature;

(c) the making of a general assignment for the benefit of creditors by Ground Lessor;

(d) the filing of an involuntary case under one or more Insolvency Laws against Ground Lessor; or

(e) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Ground Lessor or any substantial part of the assets of Ground Lessor;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Ground Lessor Bankruptcy Event until the ninetieth day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of (1) Ground Lessor, (2) any Person Controlling Ground Lessor or (3) any Person Controlled by or under common Control with Ground Lessor (in which event such case or proceeding shall be a Ground Lessor Bankruptcy Event immediately).

“**Ground Lessor Default**” means a default by Ground Lessor in performing or observing any of the terms, covenants or conditions of the Ground Lease required to be performed or observed by Ground Lessor.

“**Ground Rent**” means the base or minimum rent payable in fixed monthly or other periodic installments under the Ground Lease.

“**Leasehold Estate**” means Borrower’s right, title and interest in the Land and Improvements pursuant to the Ground Lease or other instrument, and in and to the Ground Lease, including (a) all rights of Borrower to renew or extend the term of the Ground Lease, (b) all amounts deposited by Borrower with Ground Lessor under the Ground Lease, (c) Borrower’s right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease, and (d) all other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease.

“**Lender’s Assumption Notice**” means a notice from Lender to Borrower in which (a) Lender demands that Borrower assume the Ground Lease and assign the Ground Lease to Lender, or its designee, in accordance with the applicable Insolvency Laws, and (b) Lender agrees to cure or provide adequate assurance of prompt cure of all Ground Lessee Defaults reasonably susceptible of being cured by Lender and of future performance under the Ground Lease.

1. The definitions of “**Impositions**” and “**Mortgaged Property**” set forth in Section 1 of the Security Instrument (Defined Terms) are hereby deleted and restated in their entirety to read as follows:

“**Impositions**” means

(a) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property;

(b) the premiums for fire and other casualty insurance, liability insurance, rent loss insurance and such other insurance as Lender may require under the Loan Agreement;

(c) Taxes;

(d) monthly payments to assure that sufficient funds are on deposit to cover all required Ground Rent payments; and

(e) amounts for other charges and expenses assessed against the Mortgaged Property which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably determined from time to time by Lender.

“**Mortgaged Property**” means **[DRAFTING NOTE: INSERT IF MORTGAGED PROPERTY IS IN TEXAS –** the Leasehold Estate, the Improvements, and**]** all of Borrower’s present and hereafter acquired right, title and interest, if any, in and to all of the following:

1. **[DRAFTING NOTE: FOR ALL STATES OTHER THAN TEXAS –** the Leasehold Estate;**] [DRAFTING NOTE: FOR TEXAS –** [intentionally deleted;]**]**
2. **[DRAFTING NOTE: FOR ALL STATES OTHER THAN TEXAS –** the Improvements;**] [DRAFTING NOTE: FOR TEXAS –** [intentionally deleted;]**]**
3. the Personalty;
4. current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights‑of‑way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
5. insurance policies relating to the Mortgaged Property (and any unearned premiums) and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirements;
6. awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from (1) Condemnation Actions, (2) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation Action, or (3) the total or partial taking of the Land, the Improvements, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
7. contracts, options and other agreements for the sale of the Land, the Improvements, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
8. Leases and Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases, and all Rents;
9. earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Mortgage Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
10. Imposition Deposits;
11. refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);
12. tenant security deposits;
13. names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names and goodwill relating to any of the Mortgaged Property;
14. Collateral Accounts and all Collateral Account Funds;
15. products, and all cash and non-cash proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; and
16. all oil, gas, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Mortgaged Property and other oil, gas, minerals and mineral interests with which any of the foregoing interests or estates are pooled or unitized.
17. The following section is hereby added to the Security Instrument as Section [\_\_] (Ground Lease Provisions):

# [\_\_]. Ground Lease Provisions.

**(a) Representations and Warranties Regarding Ground Lease.**

Borrower represents and warrants to Lender that, as of the Effective Date:

(1) Borrower leases the Land and owns fee simple title to the Improvements pursuant to the Ground Lease or other instrument;

(2) the Ground Lease is 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) Borrower has not waived, canceled or surrendered any of its rights under the Ground Lease;

(4) Borrower is the sole owner of, and has good and marketable title to, the Leasehold Estate;

(5) neither Ground Lessor, any direct or indirect owner of Ground Lessor, nor any Person Controlling Ground Lessor is a Borrower Affiliate **[DRAFTING NOTE: IF GROUND LESSOR IS A BORROWER AFFILIATE, DELETE THE PRECEDING PROVISION AND REPLACE IT WITH THE FOLLOWING:** Ground Lessor is a Borrower Affiliate and has entered into this Security Instrument to spread the lien of this Security Instrument to the Fee Estate**]**;

(6) Borrower enjoys the quiet and peaceful possession of the Leasehold Estate, and there are, as of the date hereof, no defenses to Borrower’s enforcement of its rights under the Ground Lease;

(7) the Leasehold 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 the Leasehold Estate;

(8) there is no existing Ground Lessee Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessee Default; and

(9) **[DRAFTING NOTE: IF GROUND LESSOR IS A BORROWER AFFILIATE, DELETE THE FOLLOWING KNOWLEDGE QUALIFIER:** to Borrower’s knowledge,**]** there is no existing Ground Lessor Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessor Default.

**(b) Affirmative Covenants Regarding Ground Lease.**

Borrower shall:

(1) pay the Ground Rent and all other sums of money due and payable at any time and from time to time under the Ground Lease as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Ground Lease for the payment of any such sum;

(2) at all times promptly and fully perform, observe and comply with all other terms, covenants and conditions of the Ground Lease to be performed, observed or complied with by Borrower as lessee under the Ground Lease, at the times for performance set forth therein, with allowance for grace periods, if any, and will enforce the obligations of Ground Lessor under the Ground Lease to the end that Borrower may enjoy all of the material rights granted it under the Ground Lease; and

(3) notify Lender if Borrower or Ground Lessor initiates any appraisal, arbitration, litigation or other dispute resolution proceeding affecting the Ground Lease, and allow Lender to participate in such proceeding on Borrower’s behalf, in Borrower’s name, place and stead, or to exercise any or all of Borrower’s rights in such proceeding.

If the Ground Lease does not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

**(c) Negative Covenants Regarding Ground Lease.**

Borrower 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 Leasehold Estate to Ground Lessor or terminate or cancel the Ground Lease;

(2) amend, modify or change the Ground Lease, either orally or in writing, or waive any of Borrower’s rights under the Ground Lease;

(3) subordinate the Ground Lease or the Leasehold Estate to any mortgage, deed of trust or other lien on the Fee Estate;

(4) except as otherwise provided in Section [\_\_](d) (Ground Lease Provisions – Borrower Bankruptcy Event) of this Security Instrument, reject or assume the Ground Lease or assign the Leasehold Estate pursuant to any Insolvency Laws. Borrower absolutely and unconditionally transfers and assigns to Lender all of Borrower’s rights to surrender, terminate, cancel, modify and change the Ground Lease, and any such surrender, termination, cancellation, modification or change made without the prior written consent of Lender shall be void and have no legal effect;

(5) acquire the Fee Estate**[**; or**]**

(6) **[DRAFTING NOTE: DELETE IF GROUND LESSOR IS A BORROWER AFFILIATE AS OF THE EFFECTIVE DATE:** cause or permit a Transfer of direct or indirect ownership interests in Borrower, Key Principal, Guarantor, or Ground Lessor that could cause Ground Lessor, any direct or indirect owner of Ground Lessor, or any Person Controlling Ground Lessor, to become a Borrower Affiliate**]**.

**(d) Borrower Bankruptcy Event.**

(1) Borrower assigns to Lender, as additional security for the Indebtedness, Borrower’s right to reject the Ground Lease under the Insolvency Laws after the occurrence of a Bankruptcy Event, subject to Section [\_\_](d)(2) (Ground Lease Provisions – Borrower Bankruptcy Event) of this Security Instrument.

(2) If, after the occurrence of a Bankruptcy Event, Borrower decides to reject the Ground Lease, Borrower shall give Lender written notice, at least ten (10) Business Days in advance, of the date on which Borrower intends to apply to any bankruptcy court for authority and permission to reject the Ground Lease. Lender shall have the right, but not the obligation, within ten (10) days after receipt of Borrower’s notice, to deliver a Lender’s Assumption Notice. If Lender timely delivers Lender’s Assumption Notice to Borrower, Borrower shall not reject the Ground Lease and shall, within fifteen (15) days after receipt of Lender’s notice, comply with the demand contained in Lender’s Assumption Notice. If Lender does not timely deliver Lender’s Assumption Notice to Borrower, Borrower shall have the right to reject the Ground Lease.

**(e) Ground Lessor Bankruptcy Event.**

(1) If, after the occurrence of a Ground Lessor Bankruptcy Event, Ground Lessor rejects the Ground Lease pursuant to the Insolvency Laws, (A) Borrower, immediately after obtaining notice of the rejection, shall deliver a copy of the notice to Lender,(B) Borrower shall not, without Lender’s prior written consent (which may be given or withheld in Lender’s discretion), elect to treat the Ground Lease as terminated pursuant to the applicable Insolvency Laws, and (C) this Security Instrument and the lien created by this Security Instrument shall extend to and encumber Borrower’s retained rights under the Ground Lease that are appurtenant to the Leasehold Estate for the balance of the term of the Ground Lease and for any renewal or extension of those rights under the Ground Lease. Borrower transfers and assigns to Lender, as additional security for the Indebtedness, Borrower’s rights, after Ground Lessor’s rejection of the Ground Lease, to treat the Ground Lease as terminated, and any termination of the Ground Lease made by Borrower without Lender’s prior written consent shall be void and have no legal effect.

(2) Borrower transfers and assigns to Lender, as additional security for the Indebtedness, all of Borrower’s rights to damages caused by Ground Lessor’s rejection of the Ground Lease after the occurrence of a Ground Lessor Bankruptcy Event and all of Borrower’s rights to offset such damages against rent payable under the Ground Lease. As long as no Event of Default has occurred and is continuing, Lender agrees that it will not enforce its rights under the preceding sentence, but will permit Borrower to exercise such rights with Lender’s prior written consent. Any amounts received by Lender as damages arising out of Ground Lessor’s rejection of the Ground Lease shall be applied in the manner set forth in Section 2.02(f) of the Loan Agreement (Application of Payments).

**(f) Lender’s Right to Cure Ground Lessee Defaults.**

At any time after Lender receives notice of a Ground Lessee Default, (1) Lender may (but shall not be obligated to do so), make any payment, perform any obligation, and take any other action Borrower would have the right to pay, perform or take under the Ground Lease which Lender deems necessary or desirable to cure the Ground Lessee Default, and (2) Lender and its authorized agents shall have the right at any time or from time to time to enter the Mortgaged Property, or any part thereof, including the Leasehold Estate, to such extent and as often as Lender, in its discretion, deems necessary or desirable in order to cure the Ground Lessee Default, subject to the rights of the tenants and occupants of the Mortgaged Property. Lender may exercise its rights hereunder immediately after receipt of notice of a Ground Lessee Default and without regard to any grace period provided to Borrower in the Ground Lease to cure the Ground Lessee Default. For purposes of exercising its rights hereunder, Lender shall be fully protected for any action taken or omitted to be taken by Lender, in good faith, in reliance on any written notice from Ground Lessor stating that a Ground Lessee Default has occurred and is continuing even though Borrower may question or deny the existence or nature of the Ground Lessee Default. All expenditures made by Lender hereunder to cure a Ground Lessee Default shall become an additional part of the Indebtedness.

**(g) Option To Renew Or Extend Ground Lease.**

Borrower shall give Lender written notice of Borrower’s intention to exercise each option to renew or extend the term of the Ground Lease at least ninety (90) days, but not more than one hundred fifty (150) days, before the last day on which the option may be timely exercised. If Borrower intends to renew or extend the term of the Ground Lease, it shall deliver to Lender, together with the notice of such decision, a copy of the notice of renewal or extension it delivers to Ground Lessor. If Borrower does not intend to renew or extend the term of the Ground Lease or, if Borrower fails to deliver its written notice of exercise of its option to renew or extend the term of the Ground Lease at least ninety (90) days before the last day on which the option may be timely exercised, Lender shall have the right, but shall not be obligated, to renew or extend the term of the Ground Lease for and on behalf of Borrower.

**(h) No Merger of Estates.**

Borrower shall not acquire the Fee Estate without Lender’s prior written consent, which shall be granted in Lender’s discretion, and the consent of all other persons having an interest in the Ground Lease. In the event Borrower acquires the Fee Estate after obtaining the foregoing consent, (1) there shall be no merger between the Fee Estate and the Leasehold Estate and the Ground Lease shall remain in full force and effect, and (2) simultaneously with Borrower’s acquisition of the Fee Estate, the lien of this Security Instrument shall automatically, without the necessity of any further conveyance, be deemed spread to cover the Fee Estate (or if previously encumbered, will continue to cover) and as so spread shall be prior to the lien of any mortgage, deed of trust or other lien placed on the Fee Estate after the date of this Security Instrument. In connection with Borrower’s acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender’s attorneys’ fees and out-of-pocket disbursements, shall (A) execute and deliver all documents and instruments necessary to subject the Fee Estate, or confirm the Fee Estate is subjected to, the lien of this Security Instrument, (B) provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Fee Estate and the Leasehold Estate, and (C) deliver, in form and substance required by Lender, any other opinions, estoppels or other instruments Lender deems prudent in connection with the acquisition. If Lender acquires the Fee Estate and the Leasehold Estate (whether pursuant to the provisions of the Ground Lease, by foreclosure of this Security Instrument, or otherwise), the Fee Estate and the Leasehold Estate shall not merge and shall remain separate and distinct for all purposes unless and until Lender shall elect to merge the Fee Estate and the Leasehold Estate.

**[DRAFTING NOTE: DELETE THE FOLLOWING PARAGRAPH (i) AND REPLACE IT WITH “INTENTIONALLY DELETED” IF GROUND LESSOR IS A BORROWER AFFILIATE AS OF THE EFFECTIVE DATE:**

**(i) Borrower Affiliate Transactions.**

If, at any time during the Loan Term, Ground Lessor, any direct or indirect owner of Ground Lessor, or any Person Controlling Ground Lessor becomes a Borrower Affiliate, Borrower shall promptly notify Lender of the foregoing and, at Borrower’s sole cost and expense, including payment of Lender’s attorneys’ fees and out-of-pocket disbursements (1) cause Ground Lessor to execute a joinder and amendment to this Security Instrument in such form as Lender may require to spread the lien of this Security Instrument to the Fee Estate and as so spread shall be prior to the lien of any mortgage, deed of trust or other lien placed on the Fee Estate after the date of this Security Instrument, (2) provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Fee Estate and the Leasehold Estate, and (3) deliver, in form and substance required by Lender, any other opinions, estoppels or other instruments Lender deems prudent.**]**

**(j) New Lease.**

If (1) the Ground Lease is canceled or terminated for any reason before the natural expiration of its term, and (2) Lender (or its designee) obtains from Ground Lessor a new lease in accordance with the term of the Ground Lease, Borrower shall have no right, title or interest in and to the new lease or the leasehold estate created by the new lease.

**(k) Notices Under Ground Lease.**

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

**(l) Appointment of Lender as Borrower’s Attorney-In-Fact.**

Borrower makes, constitutes and appoints Lender as Borrower’s attorney-in-fact, in Borrower’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 Ground Lessee Default pursuant to Section [\_\_](f) (Ground Lease Provisions – Lender’s Right To Cure Ground Lessee Defaults) of this Security Instrument, (2) perform or carry out any of Borrower’s covenants under Section [\_\_](d) (Ground Lease Provisions – Borrower Bankruptcy Event) of this Security Instrument, (3) renew or extend the term of the Ground Lease pursuant to Section [\_\_](g) (Ground Lease Provisions – Option to Renew or Extend Ground Lease) of this Security Instrument, (4) appoint arbitrators and conduct arbitration proceedings pursuant to the Ground Lease, and (5) request and obtain estoppel certificates from Ground Lessor pursuant to the Ground Lease. Borrower gives and grants to Lender, as Borrower’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 Borrower might or could do, and Borrower hereby ratifies and confirms all acts that Lender, as Borrower’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

**(m) No Lender Obligation Under Ground Lease.**

Lender shall have no liability or obligation under the Ground Lease by reason of its acceptance of this Security Instrument.

**(n) Schedule [\_\_].**

Schedule [ ] (Description of Ground Lease) is hereby attached to and made a part of this Security Instrument.

**[Remainder of Page Intentionally Blank]**

**SCHEDULE [\_\_]**

**[DESCRIPTION OF GROUND LEASE]**

**[DRAFTING NOTE: IF GROUND LESSOR AND GROUND LESSEE (INCLUDING DIRECT OR INDIRECT OWNERS) ARE AFFILIATES, GROUND LESSOR MUST EXECUTE THIS JOINDER AND CONSENT TO JOIN INTO THE SECURITY INSTRUMENT, AND THE SECURITY INSTRUMENT MUST BE A LIEN ON THE FEE AND THE LEASEHOLD ESTATES; OTHERWISE DELETE THIS EXHIBIT.]**

**EXHIBIT [\_\_]**

**MODIFICATIONS TO SECURITY INSTRUMENT**

**(Joinder and Consent of Ground Lessor)**

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:

“**Ground Lessor’s Estate**” means the Fee Estate and all of Ground Lessor’s right, title and interest in the Mortgaged Property.

“**Lender’s Assumption Notice to Ground Lessor**” means a notice from Lender to Ground Lessor in which (a) Lender demands that Ground Lessor assume the Ground Lease and assign the Ground Lease to Lender, or its designee, in accordance with the applicable Insolvency Laws, and (b) Lender agrees to cure or provide adequate assurance of prompt cure of all Ground Lessor Defaults reasonably susceptible of being cured by Lender and of future performance under the Ground Lease.

1. The definition of “**Mortgaged Property**” set forth in Section 1 of the Security Instrument (Defined Terms) is hereby amended and shall include the Fee Estate and Ground Lessor’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. **Ground Lessor Joinder.**

The undersigned, **[to be inserted]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is Ground Lessor, owner of the Fee Estate and the landlord under the Ground Lease.

Ground Lessor **[DRAFTING NOTE: INCLUDE THE FOLLOWING IF GROUND LESSOR AND BORROWER ARE AFFILIATES, OTHERWISE DELETE:** 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 Ground Lessor’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, Ground Lessor hereby joins in the Security Instrument for the purpose of (a) imposing the lien of the Security Instrument on Ground Lessor’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, including the Leasehold Estate, 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 Ground Lessor, and agreeing to the modifications, agreements, representations, warranties, waivers and covenants contained in this Joinder and Consent, to wit:

Ground Lessor, in consideration of Lender’s making the Mortgage Loan and approving the Ground Lease, 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,**]** Ground Lessor’s present and future right, title and interest in and to Ground Lessor’s Estate on 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 Ground Lessor’s Estate unto **[Trustee][Lender]** and **[Trustee’s][Lender’s]** successors and assigns, forever; Ground Lessor 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.**]**

Ground Lessor represents and warrants that (a) Ground Lessor has the power, authority and right to execute this Joinder and Consent, and (b) Ground Lessor is lawfully seized of the Fee Estate 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**]** Ground Lessor’s Estate, and Ground Lessor’s Estate is not encumbered by any Lien other than Permitted Encumbrances. Ground Lessor covenants that Ground Lessor will warrant and defend the title to Ground Lessor’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 Ground Lessorexcept for those references pertaining solely to Borrower as obligor of the Indebtedness.Ground Lessor 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 Ground Lessor and/or Ground Lessor’s Estate as if separately set forth in its entirety in this Joinder and Consent. Ground Lessor hereby makes, with respect to itself and Ground Lessor’s Estate only, all such Property Certifications and Agreements.

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

**[\_\_]. Ground Lessor Provisions.**

* 1. **Ground Lessor Representations and Warranties.**

Ground Lessor represents and warrants to Lender that, as of the Effective Date:

* + 1. Ground Lessor owns fee simple title to the Land and a reversionary interest in the Improvements pursuant to the Ground Lease or other instrument. Upon the expiration or earlier termination of the Ground Lease, fee simple title to the Improvements will revert and be transferred to Ground Lessor;
		2. the Ground Lease is 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. Ground Lessor has not waived, canceled or surrendered any of its rights under the Ground Lease;
		4. Ground Lessor is the sole owner of Ground Lessor’s Estate, and has good and marketable title to, the Fee Estate;
		5. Ground Lessor is a Borrower Affiliate and has entered into this Security Instrument to spread the lien of this Security Instrument to Ground Lessor’s Estate;
		6. Ground Lessor’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 Ground Lessor’s Estate;
		7. there is no existing Ground Lessee Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessee Default;
		8. there is no existing Ground Lessor Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessor Default;
		9. Ground Lessor has not subordinated its interest in the Ground Lease to any lien or other encumbrance on the Fee Estate;
		10. Ground Lessor has not granted to any Person any right or option to purchase the Fee Estate or any interest therein or any part thereof;
		11. the name and address of the debtor and secured party are set forth after Ground Lessor’s signature below which are the addresses from which information on the security interest may be obtained;
		12. Ground Lessor maintains its chief executive office at the location set forth after Ground Lessor’s signature below;
		13. the state of incorporation, organization, or formation, if applicable, of Ground Lessor is as set forth in this Joinder and Consent and Ground Lessor’s exact legal name is as set forth in this Joinder and Consent;
		14. Ground Lessor’s organizational identification number, if applicable, is as set forth after Ground Lessor’s signature below; and
		15. no financing statement covering any of the UCC Collateral owned by Ground Lessor (or any proceeds thereof) is on file in any public office except pursuant hereto.
	1. **Affirmative Covenants Regarding Ground Lease.**

Ground Lessor shall:

* + 1. notify Lender if Borrower or Ground Lessor initiates any appraisal, arbitration, litigation or other dispute resolution proceeding affecting the Ground Lease, and allow Lender to participate in such proceeding on Ground Lessor’s or Borrower’s behalf, in Ground Lessor’s or Borrower’s name, place and stead, or to exercise any or all of Ground Lessor’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 Ground Lease to be performed, observed or complied with by Ground Lessor as lessor under the Ground Lease;
		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 Ground Lessor to perform its obligations under this Security Instrument. Ground Lessor 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. Ground Lessor 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 Ground Lessor’s legal name or jurisdiction of formation/existence, Ground Lessor 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. Ground Lessor authorizes Lender to obtain, at Ground Lessor’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 Ground Lease.**

Ground Lessor 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 Fee Estate to Borrower or accept a surrender of the Leasehold Estate by Borrower or terminate or cancel the Ground Lease;
		2. amend, modify or change the Ground Lease, either orally or in writing;
		3. pledge, assign, convey, transfer, sell, further encumber or mortgage Ground Lessor’s Estate or subordinate the Ground Lease or Ground Lessor’s Estate to any mortgage, deed of trust or other lien on Ground Lessor’s Estate other than this Security Instrument; or
		4. except as otherwise provided in Section [\_\_](d) (Ground Lease Provisions – Ground Lessor Bankruptcy Event) of this Security Instrument, reject or assume the Ground Lease or assign Ground Lessor’s Estate pursuant to any Insolvency Laws. Ground Lessor absolutely and unconditionally transfers and assigns to Lender all of Ground Lessor’s rights to surrender, terminate, cancel, modify and change the Ground Lease, and any such surrender, termination, cancellation, modification or change made without the prior written consent of Lender shall be void and have no legal effect.
	1. **Ground Lessor Bankruptcy Event**.
		1. Ground Lessor assigns to Lender, as additional security for the Indebtedness, Ground Lessor’s right to reject the Ground Lease under the Insolvency Laws after the occurrence of a Bankruptcy Event, subject to Section [\_\_](d)(2) (Ground Lease Provisions – Ground Lessor Bankruptcy Event) of this Security Instrument.
		2. If, after the occurrence of a Ground Lessor Bankruptcy Event, Ground Lessor decides to reject the Ground Lease, Ground Lessor shall give Lender written notice, at least ten (10) Business Days in advance, of the date on which Ground Lessor intends to apply to any bankruptcy court for authority and permission to reject the Ground Lease. Lender shall have the right, but not the obligation, within ten (10) days after receipt of Ground Lessor’s notice, to deliver a Lender’s Assumption Notice to Ground Lessor. If Lender timely delivers to Ground Lessor Lender’s Assumption Notice to Ground Lessor, Ground Lessor shall not reject the Ground Lease and shall, within fifteen (15) days after receipt of Lender’s notice, comply with the demand contained in Lender’s Assumption Notice to Ground Lessor. If Lender does not timely deliver to Ground Lessor Lender’s Assumption Notice to Ground Lessor, Ground Lessor shall have the right to reject the Ground Lease.
	2. **Borrower Bankruptcy Event.**
		1. If, after the occurrence of a Bankruptcy Event of Borrower, Borrower rejects the Ground Lease pursuant to the Insolvency Laws, (A) Ground Lessor, immediately after obtaining notice of the rejection, shall deliver a copy of the notice to Lender,(B) Ground Lessor shall not, without Lender’s prior written consent (which may be given or withheld in Lender’s discretion), elect to treat the Ground Lease as terminated pursuant to the applicable Insolvency Laws, and (C) this Security Instrument and the lien created by this Security Instrument shall extend to and encumber Ground Lessor’s retained rights under the Ground Lease that are appurtenant to the Fee Estate for the balance of the term of the Ground Lease and for any renewal or extension of those rights under the Ground Lease. Ground Lessor transfers and assigns to Lender, as additional security for the Indebtedness, Ground Lessor’s rights, after Borrower’s rejection of the Ground Lease, to treat the Ground Lease as terminated, and any termination of the Ground Lease made by Ground Lessor without Lender’s prior written consent shall be void and have no legal effect.
		2. Ground Lessor transfers and assigns to Lender, as additional security for the Indebtedness, all of Ground Lessor’s rights to damages caused by Borrower’s rejection of the Ground Lease after the occurrence of a Bankruptcy Event by Borrower and all of Ground Lessor’s rights to offset such damages against rent payable under the Ground Lease. As long as no Event of Default has occurred and is continuing, Lender agrees that it will not enforce its rights under the preceding sentence but will permit Ground Lessor to exercise such rights with Lender’s prior written consent. Any amounts received by Lender as damages arising out of Borrower’s rejection of the Ground Lease shall be applied in the manner set forth in Section 2.02(f) of the Loan Agreement (Application of Payments).
	3. **Subordination; Ground Lessor Consent to Leasehold Financing**.
		1. Ground Lessor acknowledges and agrees that the obligations of Borrower to make payments to Ground Lessor required under the Ground Lease and to perform and observe the other covenants and agreements on the part of Borrower as contained in the Ground Lease (including claims under the Ground Lease or any rights to subrogation Ground Lessor may have as a result of the Security Instrument or any action taken by Lender under the Security Instrument), shall: (i) be personal to Borrower; (ii) be subordinate and junior in priority, right of payment and all other respects to any and all obligations of Borrower under the Loan Documents; (iii) not be secured by this Security Instrument; and (iv) not constitute a lien on the Mortgaged Property. Ground Lessor acknowledges and agrees that the lien of the Security Instrument shall be senior to Ground Lessor’s Estate (but not the Ground Lease itself) and Ground Lessor’s Estate (but not the Ground Lease itself) is hereby subjected and made subordinate to the lien of the Security Instrument.
		2. Ground Lessor hereby consents to the hypothecation, transfer, pledge and assignment of Borrower’s present and hereafter acquired right, title and interest in the Ground Lease and the Leasehold Estate pursuant to the Security Instrument. Ground Lessor acknowledges, agrees and consents to the terms contained in the Security Instrument.
		3. Ground Lessor acknowledges and agrees that:
			1. all leasehold mortgagee protection provisions set forth in the Ground Lease, and all other provisions inuring to the benefit of leasehold mortgagees or their successors or assigns contained in the Ground Lease, are hereby incorporated into the Security Instrument herein by reference and are restated and confirmed by Ground Lessor 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 Ground Lessor written notice that the Indebtedness has been satisfied, Lender shall have the protections of a leasehold mortgagee as described in the Ground Lease and the execution of this Joinder and Consent by Ground Lessor satisfies all notice and consent requirements for Lender to obtain and maintain status as a leasehold mortgagee under the Ground Lease;
			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 Ground Lessor, 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 Ground Lessor of a default by Borrower under the Ground Lease, 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 Ground Lease afforded to Borrower to cure such default; provided, however, that with respect to any default of Borrower under the Ground Lease 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 Ground Lease that cannot be remedied without Lender obtaining possession of the Leasehold Estate, any cure period afforded to Borrower in the Ground Lease shall not commence until Lender obtains possession of the Leasehold Estate, as long as all other defaults which reasonably can be cured by Lender without Lender obtaining possession of the Leasehold 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 Ground Lease.
	4. **Ground Lessor Waivers.**

Ground Lessor is a non-borrower mortgagor under the Security Instrument and Ground Lessor hereby waives the following:

* + 1. any defense that Ground Lessor may have by reason of the failure of Lender to provide Ground Lessor 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. **Ground Lessor’s Personal Liability.**

Ground Lessor 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 Ground Lessor’s liability under this Security Instrument is expressly limited to its interest in Ground Lessor’s Estate. Nothing in this Security Instrument limits the liability or obligations of Ground Lessor as landlord under the Ground Lease.

* 1. **Notices Under Ground Lease.**

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

* 1. **Appointment of Lender as Ground Lessor’s Attorney-In-Fact.**

Ground Lessor makes, constitutes and appoints Lender as Ground Lessor’s attorney-in-fact, in Ground Lessor’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 Ground Lessor Default, (2) perform or carry out any of Ground Lessor’s covenants under Section [\_\_](d) (Ground Lease Provisions – Ground Lessor Bankruptcy Event) of this Security Instrument, (3) renew or extend the term of the Ground Lease pursuant to any rights granted to Ground Lessor under the Ground Lease, and (4) appoint arbitrators and conduct arbitration proceedings pursuant to the Ground Lease. Ground Lessor gives and grants to Lender, as Ground Lessor’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 Ground Lessor might or could do, and Ground Lessor hereby ratifies and confirms all acts that Lender, as Ground Lessor’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**, Ground Lessor has signed and delivered this Joinder and Consent of Ground Lessor to this Security Instrument or has caused this Joinder and Consent of Ground Lessor to this Security Instrument to be signed and delivered by its duly authorized representative.

**GROUND LESSOR**:

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

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

**[ADD NOTARY/ACKNOWLEDGMENT FOR GROUND LESSOR IN RECORDABLE FORM AND AS REQUIRED UNDER APPLICABLE LAW]**