**EXHIBIT [\_\_]**

**MODIFICATIONS TO SECURITY INSTRUMENT**

**(Unfunded Forwards)**

The foregoing Security Instrument is hereby modified as follows:

1. Section 1 of the Security Instrument (Defined Terms) is hereby deleted in its entirety and restated as follows:
2. **Defined Terms.**

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Delivery Assurance Agreement. All terms used and not specifically defined herein, but which are otherwise defined by the UCC, shall have the meanings assigned to them by the UCC. The following terms, when used in this Security Instrument, shall have the following meanings:

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“**Construction Lender**” means **[DRAFTING NOTE: INSERT NAME OF CONSTRUCTION LENDER, INCLUDING ENTITY TYPE AND STATE OF REGISTRATION]** (excluding successors and assigns).

“**Construction Loan**” means that certain loan in the original principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_ made by Construction Lender to Borrowerpursuant to the Construction Loan Agreement and secured by the Construction Loan Security Instrument.

“**Construction Loan Agreement**” means that certain **[DRAFTING NOTE: INSERT REFERENCE TO CONSTRUCTION LOAN AGREEMENT]** by and between Borrowerand Construction Lender, dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

“**Construction Loan Documents**” means (a) the Construction Loan Agreement, (b) the Construction Loan Security Instrument, and (c) any other document executed in connection with the Construction Loan (and any schedules, exhibits and/or other addenda) (as may be amended, restated, replaced, supplemented or otherwise modified from time to time), each dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_.

“**Construction Loan Security Instrument**” means that certain **[DRAFTING NOTE: INSERT REFERENCE TO CONSTRUCTION LOAN SECURITY INSTRUMENT]** by and between Borrowerand Construction Lender, as Lender, dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that secures, among other things, the Construction Loan.

**[**“**Default Rate**” – **IF SECTION 5 OF THE DELIVERY ASSURANCE AGREEMENT IS INCLUDED, CHANGE HERE TO BE** “shall have the meaning set forth in the Delivery Assurance Agreement.” **IF SECTION 5 OF THE DELIVERY ASSURANCE AGREEMENT IS DELETED, CHANGE HERE TO BE** “N/A.”.**]**

“**Delivery Assurance Documents**” means the Delivery Assurance Agreement and this Security Instrument.

“**Enforcement Costs**” means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default or in connection with efforts to collect any amount due under the Delivery Assurance Agreement, or to enforce the provisions of the Delivery Assurance Agreement or this Security Instrument, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding or Foreclosure Event) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.

“**Event of Default**” means (a) Borrower’s failure to pay the Shortfall Fee or the Delivery Assurance Fee pursuant to the Delivery Assurance Agreement, if and when due, and (b) Borrower’s failure to comply with the terms of this Security Instrument.

“**Fixtures**” means all Goods that are so attached or affixed to the Land or the Improvements as to constitute a fixture under the laws of the Property Jurisdiction.

“**Foreclosure Event**” means:

(a) foreclosure under this Security Instrument;

(b) any other exercise by Lender of rights and remedies (whether under this Security Instrument or under applicable law, including insolvency laws) as holder of this Security Instrument, as a result of which Lender (or its designee or nominee) or a third party purchaser becomes owner of the Mortgaged Property; **[or]**

(c) delivery by Borrowerto Lender (or its designee or nominee) of a deed or other conveyance of Borrower’s interest in the Mortgaged Property in lieu of any of the foregoing **[INSERT FOR LOUISIANA: ; or**

(d) **in Louisiana, any dation en paiement]**.

“**Goods**” means all goods which are used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements, including inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs, and social network pages; computer equipment (hardware and software); and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements.

“**Imposition Deposits**” means N/A.

“**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;

(c) Taxes; and

(d) 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.

“**Improvements**” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities, and additions and other construction on the Land.

“**Land**” means the real property described in Exhibit A.

“**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals thereof.

“**Lien**” means any claim or charge against property for payment of a debt or an amount owed for services rendered, including any mortgage, deed of trust, deed to secure debt, security interest, tax lien, any materialman’s or mechanic’s lien, or any lien of a governmental authority, including any lien in connection with the payment of utilities, or any other encumbrance.

“**Monthly Debt Service Payments**” means the “Obligations”.

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

(a) **[DRAFTING NOTE: FOR ALL STATES OTHER THAN TEXAS –** the Land;**]** **[DRAFTING NOTE: FOR TEXAS –** [intentionally deleted;]**]**

(b) **[DRAFTING NOTE: FOR ALL STATES OTHER THAN TEXAS –** the Improvements;**]** **[DRAFTING NOTE: FOR TEXAS –** [intentionally deleted;]**]**

(c) the Personalty;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(j) [Intentionally Deleted];

(k) 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);

(l) tenant security deposits;

(m) 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;

(n) [Intentionally Deleted];

(o) 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

(p) 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.

“**Obligations**” means (a) all amounts due at any time under the Delivery Assurance Documents, (b) advances, costs and expenses to perform the obligation of Borrower or to protect the Mortgaged Property or the security of this Security Instrument, including amounts due as a result of any indemnification obligations, and (c) any Enforcement Costs.

“**Permitted Encumbrance**” means (a) exceptions shown on the Title Policy, (b) the Construction Loan Security Instrument, and (c) this Security Instrument.

“**Personalty**” means all Goods, Accounts, choses in action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Land or the Improvements now or in the future, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

“**Property Jurisdiction**” means, as the context may apply, the [State][Commonwealth] of [\_\_\_\_\_\_\_\_\_\_], and the county and municipality where the Mortgaged Property is located, provided that any controversy arising under any Loan Document shall be governed by the provisions of Section [\_\_] **[DRAFTING NOTE: INSERT NUMBER OF “GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE” SECTION FROM UNDERLYING SECURITY INSTRUMENT]** of this Security Instrument.

“**Rents**” means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including subsidy payments received from any sources, including payments under any “Housing Assistance Payments Contract” or other rental subsidy agreement (if any), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and tenant security deposits.

“**Software**” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include any computer program that is included in the definition of Goods.

“**Taxes**” means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, may become a lien, on the Land or the Improvements or any taxes upon any Delivery Assurance Document.

“**Title Policy**” means the title policy issued to Construction Lender in connection with the Construction Loan Security Instrument.

“**UCC**” means the Uniform Commercial Code in effect in the [State][Commonwealth] of [\_\_\_\_\_\_\_\_\_\_], as amended from time to time.

“**UCC Collateral**” means any or all of that portion of the Mortgaged Property in which a security interest may be granted under the UCC and in which Borrower has any present or hereafter acquired right, title or interest.

1. For each of the following terms, all references to such term in this Security Instrument are hereby replaced as follows:

(a) All references to “Environmental Laws” are hereby replaced with “environmental laws.”

(b) All references to “Governmental Authority” are hereby replaced with “governmental authority.”

(c) All references to “Indebtedness” and “Mortgage Loan” are hereby replaced with “Obligations.”

(d) All references to “Loan Agreement” and “Note” are hereby replaced with “Delivery Assurance Agreement.”

(e) All references to “Loan Documents” are hereby replaced with “Delivery Assurance Documents.”

(f) All references to “repayment” are hereby replaced with “payment.”

1. The first full paragraph of the Security Instrument is deleted up to and including the words “Environmental Indemnity Agreement (as defined in this Security Instrument),” and amended and restated as follows **[DRAFTING NOTE: THE REMAINDER OF THE FIRST FULL PARAGRAPH CONTAINS THE REQUIRED STATE SPECIFIC GRANTING LANGUAGE]**:

Borrower, in consideration of (i) Lender’s commitment to make a loan to Borrower upon satisfaction of certain conditions set forth in that certain Delivery Assurance Agreement dated as of the date of this Security Instrument, and (ii) the trust created by this Security Instrument, and to secure to Lender the payment and performance of the Obligations (under the Delivery Assurance Documents),

1. Section 10 of the Security Instrument is hereby deleted in its entirety and restated as follows:

Upon satisfaction of all terms in the Delivery Assurance Agreement (including payment of the Obligations, if applicable) Lender shall cause the release of this Security Instrument and Borrower shall pay Lender’s costs incurred in connection with such release. **[DRAFTING NOTE: DRAFTER TO INCLUDE ANY OTHER NECESSARY STATE SPECIFIC LANGUAGE FROM THE BASED SECURITY INSTRUMENT]**

1. The following sections are hereby added to the Security Instrument as Sections [\_\_] through [\_\_]:

**[\_\_]. Subordination.**

This Security Instrument is subject and subordinate in all respects to the Construction Loan, until the indebtedness representing such Construction Loan is paid to the Construction Lender in full or otherwise satisfied with respect to the Construction Lender. For the avoidance of doubt, this subordination shall automatically extinguish upon the transfer, assignment or disposition of the Construction Loan by Construction Lender to any other party.

**[\_\_]. Parties’ Intent Regarding Merger.**

Borrower waives the application of the doctrine of merger as applied to any foreclosure affecting the Mortgaged Property (or other manner of obtaining title to the Mortgaged Property) and agrees that such doctrine shall not affect the enforceability of any obligation described in this Security Instrument or the Delivery Assurance Agreement. It is the intent of the parties hereto that:

(a) in the event that Lender or any of Lender’s successors, assigns or transferees, obtains title to the Mortgaged Property pursuant to this Security Instrument (by virtue of a Foreclosure Event) and such party is also or subsequently becomes the holder of the Construction Loan Documents, such party’s title interest and lien interest SHALL NOT merge so as to effect an extinguishment of the Construction Loan Security Instrument or any indebtedness secured by or evidenced by the Construction Loan Documents;

(b) in the event that the holder of the Construction Loan Documents obtains title to the Mortgaged Property pursuant to the Construction Loan Security Instrument (by virtue of a Foreclosure Event) and such party is also or subsequently becomes the holder of this Security Instrument and the Delivery Assurance Agreement, such party’s title interest and lien interest SHALL NOT merge so as to effect an extinguishment of any Obligations secured by or evidenced by this Security Instrument or the Delivery Assurance Agreement; and

(c) no course of conduct by Borrower, Lender or the holder of the Construction Loan Documents, or any of their successors, assigns or transferees subsequent to the date hereof shall be used to demonstrate any intent contrary to the express intent stated herein.

**[\_\_]. First Lien Position Upon Payoff of Construction Loan.**

In the event that the Construction Loan is repaid in full or the Construction Loan Security Instrument is released of record prior to satisfaction of all the terms of the Delivery Assurance Agreement and release of this Security Instrument, then, unless otherwise approved by Lender, this Security Instrument shall automatically become a first lien instrument secured by the Mortgaged Property. In such event, Borrower shall provide evidence satisfactory to Lender evidencing such first lien position.

**[DRAFTING NOTE: TO THE EXTENT LENDER DETERMINES, AT ITS OPTION, THAT AN ENVIRONMENTAL INDEMNITY IS PRUDENT, LENDER MAY INCLUDE THE FOLLOWING ENVIRONMENTAL INDEMNITY PROVISION IN THIS MODIFICATION. LENDER SHOULD NOTE, HOWEVER, THAT SUCH ENVIRONMENTAL INDEMNITY MAY NOT SURVIVE RELEASE OR FORECLOSURE OF THE SECURITY INSTRUMENT AND MAY ALTERNATIVELY ELECT TO OBTAIN A SEPARATE INDEMNITY TO MITIGATE AGAINST ANY CONCERNS ABOUT SURVIVAL.**

**[\_\_]. Environmental Indemnity.**

Borrower shall indemnify, hold harmless and defend Lender (and its successors, assignees or designees) for, from and against all actions, suits, claims, proceedings, orders, damages, penalties and costs (whether initiated or sought by a governmental authority or private parties), including any reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

* 1. the current, past, threatened or alleged presence or release of any hazardous material, pollutant, contaminant or similar material at, on, under, about, to or from the Mortgaged Property and any investigation, sampling, monitoring, excavation, cleanup or remediation required of or performed by Borrower and/or others at, on, under or about the Mortgaged Property (including the subsurface, groundwater, soils or sub-slab soil vapor at, on, under or about, or the indoor or outdoor air of, the Mortgaged Property), whether located or originating at, or released from, the Mortgaged Property or any other property;

(b) any loss, cost or damage arising out of the current or former existence of any underground storage tank at, on, under or about the Mortgaged Property, whether known or unknown to any Borrower; and

(c) the actual or alleged violation of any environmental law or regulation at the Mortgaged Property.

Notwithstanding any other provision in this Security Instrument, the indemnification obligations of Borrower under this Security Instrument shall survive (1) the termination of this Security Instrument with respect to any pending claims, suits, orders, proceedings or actions existing as of such termination date and involving the Mortgaged Property and/or Lender, or future claims involving, arising out of, related to or otherwise in connection with any of the foregoing, and (2) the occurrence of any Foreclosure Event, even if, as a result of the occurrence of such Foreclosure Event, the Obligations are satisfied in full.**]**

**[Remainder of Page Intentionally Blank]**