

**Rider to Security
Instrument – Fee Joinder**

**U.S. Department of Housing
and Urban Development**
Office of Housing

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{When using this form, amend the first paragraph of the Security Instrument to include the Ground Lessor as an accommodating “Joinder Party” to ensure proper indexing against the Ground Lessor among the land records.}

This Rider (“**Rider**”) is attached to and amends the Security Instrument entered into between _____ (“**Borrower**”) and _____ (“**Lender**”), dated as of _____.

[For a Mortgage OR Deed to Secure Debt, insert the following:]

[This Rider is provided to secure to Lender the repayment of the Indebtedness, and the performance of the covenants and agreements of Borrower and Ground Lessor contained in the Loan Documents, Borrower and Ground Lessor mortgage, warrant, grant, convey and assign to Lender the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in _____ County, State of _____, and described in Exhibit A to the Security Instrument.]

OR

[For a Deed of Trust, insert the following:]

[Borrower and Ground Lessor, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grant, convey and assign to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate and the Fee Estate in the Land located in _____ County, State of _____, and described in Exhibit A to the Security Instrument.]

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to Borrower described in the Security Instrument, Borrower and Ground Lessor covenant and agree as follows:

1. Definitions

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) **“Fee Estate”** means that fee simple interest in the Land, presently held by Ground Lessor.
- (b) **“Ground Lease”** means that lease attached as Exhibit [], pursuant to which Borrower leases the Land from Ground Lessor, as such lease may be amended, modified, supplemented, renewed, and extended, but only with prior written approval of Lender and HUD.
- (c) **“Ground Lessor”** means that landlord, leasing the Land to Borrower pursuant to the Ground Lease.
- (d) **“Leasehold Estate”** means Borrower’s interest in the Land and all other real property, existing pursuant to the Ground Lease, including the following:
 - (i) All rights of Borrower to renew or extend the term of the Ground Lease.
 - (ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.
 - (iii) Borrower’s right or privilege to terminate, cancel, surrender, modify, or amend the Ground Lease.
 - (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances and improvements with respect to the Ground Lease.

The following term will be modified in Section 1 (Definitions) of the Security Instrument:

- (e) **“Mortgaged Property”** retains that same definition as provided in the Security Instrument, excepting that it is extended to also include Ground Lessor’s present and future right, title and interest in and to those respective items (1-17), identified in the Security Instrument’s definition of “Mortgaged Property.”

2. Ground Lessor Joinder

- (a) Ground Lessor acknowledges and agrees that all rights and interests in the Fee Estate and Leasehold Estate and any indebtedness owed by Borrower (now or later existing) are encumbered by the Security Instrument.

- (b) By its execution and delivery of this Rider, Ground Lessor joins in the Security Instrument with the same intent and consequence as if Ground Lessor were originally a party to the Security Instrument, for the purpose of encumbering the Fee Estate with the lien of the Security Instrument, granting Lender a first priority lien on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Rider are applicable to Ground Lessor.
- (c) Ground Lessor represents that Ground Lessor possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee by Borrower, the Improvements, free and clear of all Liens, encumbrances and charges except for those otherwise approved by Lender and HUD.
- (d) Ground Lessor represents to Lender and HUD that it has the power, authority and right to execute this Rider and to deed, grant, convey and assign a security interest in Ground Lessor's right, title and interest in the Mortgaged Property pursuant to the terms of this Rider and to keep and observe all of the terms of this Rider to be performed by Ground Lessor under this Rider.
- (e) Ground Lessor agrees that it shall not without the prior written approval of Lender and HUD:
 - (i) Convey, assign, transfer, pledge, or encumber any part of the Mortgaged Property or any interest in the Mortgaged Property, except as provided for under the Ground Lease.
- (f) Ground Lessor acknowledges all of the following:
 - (i) Lender has not made any representations or warranties to Ground Lessor with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
 - (ii) Ground Lessor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Ground Lessor wishes to do so.
 - (iii) Lender will have no duty to disclose or report to Ground Lessor any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (g) At any time, after Ground Lessor receives from Lender or HUD a notice of an Event of Default under any of the Loan Documents, Ground Lessor has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under the applicable Loan Document which Ground Lessor deems necessary or desirable to cure the Event of Default.

- (h) Ground Lessor acknowledges and agrees that, upon the occurrence of an Event of Default, Lender or Trustee (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to protect and enforce its rights against Borrower, Ground Lessor, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Rider, the Security Instrument, and the other Loan Documents.
- (i) Ground Lessor has no personal liability for the repayment of the Indebtedness or the performance of any of Borrower's obligations under the Loan Documents. Ground Lessor's liability is expressly limited to the Mortgaged Property. However, nothing in this Rider limits the liability or obligations of Ground Lessor, in its capacity as landlord, under the Ground Lease.

3. Borrower's Acquisition of Fee Estate

- (a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all parties, including Lender, having an interest in the Ground Lease consent in writing to the merger of estates.
- (b) If Borrower acquires the Fee Estate during any period in which HUD insures or holds the Security Instrument and Note, Borrower must promptly notify HUD and Lender (if applicable) of such acquisition.
- (c) Simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Security Instrument automatically, without the necessity of any further conveyance or recording, continues to cover the Fee Estate and remains 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. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the first lien of this Security Instrument or to confirm and ratify such first lien, and must 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, as applicable.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Rider has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

IN WITNESS WHEREOF, Borrower and Ground Lessor have signed and delivered this Rider or have caused this Rider to be signed and delivered by their duly authorized representatives, as a sealed instrument.

[INSERT STATE-LAW APPROPRIATE SIGNATURES AND ACKNOWLEDGMENTS FOR BORROWER, GROUND LESSOR]