**[ARCHITECT’S/ENGINEER’S CONSENT, CERTIFICATE AND AGREEMENT]**

(LETTERHEAD OF ARCHITECTURAL/ENGINEERING FIRM)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

Truist Bank

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Re: Proposed construction loan (“**Loan**”) from Truist Bank, a North Carolina banking corporation, as administrative agent (“**Administrative Agent**”) for itself and the other lenders party to the loan agreement evidencing the Loan (“**Lenders**”) to \_\_\_\_\_\_\_\_\_\_ (“**Borrower**”) for \_\_\_\_\_ square foot **[multi-family/office/industrial/hotel/etc.]** project (“**Project**”) located *[on approximately \_\_\_\_\_\_\_ acres of real property more particularly described on* ***Exhibit “A”*** *hereto] [at \_\_\_\_\_ (insert street address)]* (“**Land**”), and

Agreement dated \_\_\_, 20\_\_ between Borrower and the undersigned regarding the Project (together with any assignments and amendments thereof, the “**Contract**”) *[attached as* ***Exhibit “B”*** *hereto]*

Ladies and Gentlemen:

This letter is written at the request of Borrower. We understand that the Contract and the plans and specifications for the Project (as may be amended from time to time and including all drawings and related papers, the “**Plans**”) have been or will be collaterally assigned by Borrower to Administrative Agent for the benefit of Lenders in connection with the Loan and as a condition thereto. In consideration of the Loan and as an inducement thereto, we hereby (a) consent to such assignment and (b) agree that in the event of a default by Borrower under the terms of any of the documents evidencing or securing the Loan (“**Loan Documents**”), (l) we shall at your request provide to you services as required by the Contract, provided that we are compensated as provided in the Contract for all services rendered at your request, and (2) whether or not you request our continued services under the Contract, you shall be entitled to use the Plans in connection with the Project, without payment of additional fees or charges to us except as described in the foregoing clause (1). We acknowledge that this letter agreement shall be binding upon us, notwithstanding that Borrower may be indebted to us and in default under the Contract; and we further acknowledge that we shall have no right, claim or lien against Administrative Agent, the Loan, the Land or the Property with respect to any compensation which may be owed to us by Borrower (except as described in the foregoing clause (1)).

To our knowledge (a) you have been provided with a correct and complete copy of the Contract, and the Contract has not been assigned, amended or supplemented except as indicated above [*or shown on* ***Exhibit “B”*** ], and (b) no party is in default under the Contract and it remains in full force and effect as of the date hereof. We will not agree to any amendment to the Contract, or to any change of either the price or scope of the Plans in any material respect, without your prior written consent in each instance. We agree to make the Plans, along with all related documents and materials in our possession, available for inspection by Lender and its officers and agents during reasonable business hours at our offices, and further agree, upon request, to provide copies thereof, at the actual cost of reproduction

As the **[architectural/engineering]** firm responsible for performing the work regarding the Project described in the Contract, duly licensed and in good standing under the laws of the state in which the Project is located, we certify, to and for your benefit, the information set forth on **Schedule 1** hereto. All schedules and exhibits hereto are incorporated herein by this reference.

### If Borrower defaults in payment or performance of the Contract or if the Contract is terminated for any reason, the undersigned will give Administrative Agent prompt written notice thereof and prior to exercising any remedy as a result thereof, will afford Administrative Agent a period of thirty (30) days within which to cure the default (it being acknowledged that Administrative Agent shall have no obligation to cure any such default). Any notice of default or termination will be delivered by personal delivery, by nationally recognized overnight courier service or by certified mail, return receipt requested, to the address set forth above.

### The undersigned expressly subordinates all contractual, constitutional and statutory mechanics’ and materialmen’s liens to which it may be or become entitled with respect to the Property to all liens and security interests securing the Loan, and expressly waives any equitable lien upon the Loan funds to which it might otherwise be entitled.

# This letter agreement shall bind and benefit Administrative Agent and the undersigned and their respective heirs, successors and assigns, including Owner and Owner’s successors and assigns, and shall be governed by the laws of the state where the Land is located. Time is of the essence of this letter agreement.

Sincerely,  
  
[insert entity name and state of formation]

By:   
Name:   
Title:

Schedule 1

## The Plans comply with all applicable federal, state and local laws, rules and regulations, codes and ordinances relating to the construction and use of the Project *[and have been approved by all applicable governmental authorities whose approval is required to date]*. When finalized, the Plans will be complete and adequate for the construction of the Project. The structural aned civil design of the Project and the materials specified by the Plans are adequate and appropriate for the Project. In our professional judgment, the Project, if constructed in accordance with the Plans, will comply with all applicable federal, state and local laws, rules and regulations, codes and ordinances relating to the construction and use thereof.

1. The following permits, licenses and approvals are all of the permits, licenses and approvals required for the work and improvements contemplated by the Plans:

|  |  |
| --- | --- |
| Issuing Agency | Type of Permit |
|  |  |
|  |  |
|  |  |

It is our opinion that the foregoing permits, licenses and approvals have been or will be duly issued in the ordinary course of construction of the Project.

# The Land is zoned        under the applicable zoning ordinance of \_\_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*attached hereto as Exhibit “C”*], and such zoning classification permits the intended use of the Project as depicted in the Plans, without reliance upon a variance or other exception concerning a non-conforming use or structure.

## The following requirements and restrictions are applicable to the Project: *[The following could be given by the Engineer or the Architect.*]

|  |  |
| --- | --- |
| Zoning Requirements | Project Specifications |
|  |  |

Minimum Lot Area: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Height Limitation:

Maximum Floor Area Ratio:

(or other bulk restriction)

Front Yard Setback:

Side/Rear Yard Setback:

Parking Requirements:

Other:

# 5. The Project is not located in an area having special flood hazards according to the flood hazard boundary maps used by the United States Department of Housing and Urban Development in connection with the National Flood Insurance program.

# 6. We have reviewed and are familiar with the locations of all easements, rights-of-way, subsurface rights and the like in force relating to the Project site, and the Plans have been prepared so that the Project will not encroach over, across, or upon any such easements, rights-of-way or subsurface rights and the like. The property on which the Project is located does not serve any adjoining property for drainage. Further, design conditions are such that no drainage of surface or other water across the property of others is called for or indicated by the Plans. Satisfactory methods of access to and egress from the Project and adjoining or nearby public ways are available and in place, sufficient to meet the reasonable needs for the Project and all applicable requirements of public authorities. Sanitary water supply and storm sewer and sanitary sewer facilities and other required utilities (gas, electricity, telephone, etc.) are likewise available, sufficient to meet the reasonable needs of the Project, as the same is proposed to be constructed, and all applicable requirements of public authorities, at or within the lot lines of the Project. No easements over land of others are required for such means of access and egress or for any such utilities.

Exhibit “A”

LAND

(Attach Description or delete if identifying by street address instead)

[Exhibit “B”

CONTRACT

(Attach Contract, including assignments, amendments and supplements)]