**NOTE TO DRAFTER:**

**(1) bold and bracketed provisions should be evaluated on a deal-by-deal basis for**

 **applicability**

**(2) footnotes should be removed prior to sending to a borrower**

**CASH MANAGEMENT AGREEMENT**

**CASH MANAGEMENT AGREEMENT** (this **“Agreement”**), dated as of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “**Effective Date**”), among **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**, a [\_\_\_\_\_\_\_\_\_\_\_\_] (together with its permitted successors and assigns, **“Borrower”**), **TRUIST BANK**, a North Carolina banking corporation, in its capacity as administrative agent for each of the Lenders (as defined in the Loan Agreement) (the “**Administrative Agent**”), **TRUIST BANK**, a North Carolina banking corporation, in its capacity as depository bank (the “**Depository Bank**”)[[1]](#footnote-2) and **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**, a [\_\_\_\_\_\_\_\_\_\_\_\_] (“**Manager**”).

**WITNESSETH:**

**WHEREAS,** pursuant to a certain **[Term][Construction]** Loan Agreement (as the same may be supplemented, amended and/or restated from time to time, the “**Loan Agreement**”), dated the date hereof among Borrower, certain Lenders and Administrative Agent, Lenders have a made a loan to Borrower in the original principal amount of $[\_\_\_\_\_\_\_\_\_\_\_\_] (the “**Loan**”);

**WHEREAS**, pursuant to the Security Instrument (as defined in the Loan Agreement) and the Assignment of Leases and Rents (as defined in the Loan Agreement), Borrower has granted to Administrative Agent, for the ratable benefit of the Lenders, a security interest in all of Borrower’s right, title and interest in, to and under the Rents (as hereinafter defined) and has assigned and conveyed to Administrative Agent, for the ratable benefit of the Lenders, all of Borrower’s right, title and interest in, to and under the Rents due and to become due to Borrower or to which Borrower is now or may hereafter become entitled, arising directly or indirectly out of the Property (as defined in the Loan Agreement), Borrower’s ownership thereof, or any part of parts thereof;

**WHEREAS**, Borrower and Manager have entered into that certain **[INSERT PROPERTY MANAGEMENT AGREEMENT DESCRIPTION],** dated as of [\_\_\_\_\_\_\_\_\_\_\_\_] (the “**Management Agreement**”), pursuant to which Manager has agreed to act as property manager for the Property, and to collect the Rents;

**WHEREAS,** as a condition to making the Loan, Administrative Agent has required that all Rents and any other revenues from the Property be deposited directly into the Collections Account (as hereinafter defined) to secure the payment and performance of all obligations of Borrower under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement);

**NOW, THEREFORE,** in consideration of the agreements and covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

# **Defined Terms.** As used herein, the following terms shall have the following definitions. Any capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement.

**“Accounts”** means collectively, the Collections Account and the Master Disbursement Sweep Account, including all sub-accounts, if any, of the Master Disbursement Sweep Account.[[2]](#footnote-3) **[add any other additional reserve or escrow account contemplated by a particular deal]**

**“Approved Annual Budget”** shall mean the operating and capital budget for the Property submitted from time to time by Borrower to Administrative Agent pursuant to Section \_\_\_\_\_\_\_ of the Loan Agreement, as approved by Administrative Agent in its reasonable discretion in accordance with Section \_\_\_ of the Loan Agreement.[[3]](#footnote-4)

 **“Borrower”** shall have the meaning set forth in the Recitals hereto.

 **“Cash Flow Sweep Event”** shall have the meaning set forth in the Loan Agreement.

**“Checks”** shall have the meaning set forth in Section 2(a)(iv) hereof.

 **“Collateral”** shall have the meaning set forth in Section 2(a) hereof.

 “**Collections Account**” shall have the meaning set forth in Section 3(b) hereof.

 “**Collections Account Agreement**” shall mean that certain Deposit Account Control Agreement (CRE Cash Management) among Borrower, Administrative Agent and the Depository Bank, relating to the Collections Account.

 **“Deposit Account”** shall have the meaning set forth in the UCC.

“**Eligible Account**” shall mean a separate and identifiable account, segregated from all other funds held by the holding institution that is either (i) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (ii) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least $50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” means (i) a federal or state chartered depository institution or trust company whose commercial paper, short-term debt obligations or other short-term deposits are rated at least “A‑1” by S&P, at least “P1” by Moody’s and at least “F‑1+” by Fitch if the deposits in the Eligible Account are to be held for thirty (30) days or less, or (ii) a federal or state-chartered depository institution or trust company whose long-term unsecured debt obligations are rated at least “AA” by S&P, at least “Aa3” by Moody’s and at least “AA” by Fitch if the deposits in the Eligible Account are to be held for more than thirty (30) days, or (iii) Truist Bank.

**“Loan”** shall have the meaning set forth in the Recitals hereto.

**“Loan Agreement ”** shall have the meaning set forth in the Recitals hereto.

**[“Lockbox” shall mean any post office box linked to the Collections Account.]**

**“Management Agreement”** shall have the meaning set forth in the Recitals hereto.

**“Master Disbursement Sweep Account”** shall have the meaning set forth in Section 3(c) hereof.

 **“Notice”** shall have the meaning set forth in Section 20(d) hereof.

**“Operating Account”** shall mean Borrower’s account with Depository Bank (Account No.\_\_\_\_\_\_\_\_\_\_\_\_).

**“Operating Expenses”** shall mean, for such period, budgeted third party expenses to operate and maintain the Property (including any property management fees payable to a Person not an Affiliate of the Borrower), approved by the Administrative Agent.

 “**Rents**” shall have the meaning assigned thereto in the **[Assignments of Rents and Leases][Loan Agreement]**.

 **“Tenant Direction Letter”** shall the meaning set forth in Section 4(a) hereof.

**“UCC”** shall mean the Uniform Commercial Code as in effect in the State of \_\_\_\_\_\_\_\_.

# **Security for Obligations**.

## As additional security for the full and punctual payment and performance of the Obligations, Borrower hereby sells, assigns, conveys, pledges and transfers to Administrative Agent, for the ratable benefit of the Lenders, a first priority continuing security interest in and to the following property of Borrower, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the **“Collateral”**):

### the Operating Account, and all cash, funds, checks, drafts, certificates and instruments, items, and other property from time to time deposited or held in the Operating Account, including, without limitation, all deposits or wire transfers made to the Operating Account;

### the Accounts, and all cash, funds, checks, drafts, certificates and instruments, items, and other property from time to time deposited or held in the Accounts, including, without limitation, all deposits or wire transfers made to the Accounts;

### all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing;

### checks and other payment instruments (“**Checks**”) mailed to **[the Lockbox or]** the Collections Account; and

### to the extent not covered by (i), (ii), (iii) or (iv) above of this clause (a), all “proceeds” (as defined in the UCC) of any or all of the foregoing.

##  (b) Borrower acknowledges and agrees that: (1) so long as a Cash Flow Sweep Event and/or an Event of Default shall have occurred and is continuing, the Collections Account will be subject to the sole dominion, control and discretion of Administrative Agent, its authorized agents or designees, subject to the terms hereof; and during the continuance of such Cash Flow Sweep Event and/or Event of Default, the Borrower shall not have any right of withdrawal with respect to the Collections Account; and (2) Administrative Agent will at all times be the Depository Bank’s “customer” (within the meaning of Section 9-104 of the UCC) with respect to the Master Disbursement Sweep Account and the Master Disbursement Sweep Account will at all times be subject to the sole dominion, control and discretion of Administrative Agent, its authorized agents or designees, subject to the terms hereof, and Borrower shall not have any right of withdrawal with respect to the Master Disbursement Sweep Account. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Borrower and Administrative Agent further agree that it is the intent of the parties that this Agreement is an authenticated record evidencing Administrative Agent’s “control” of the Accounts (within the meaning of Section 9-104 of the UCC).Administrative Agent shall have with respect to the Collateral, in addition to the rights and remedies herein set forth, all of the rights and remedies available to a secured party under the UCC, as if such rights and remedies were fully set forth herein.

##  (c) Borrower hereby represents and warrants to Administrative Agent that, as of the date hereof:

##  (i) This Agreement, together with the other Loan Documents, creates a valid and continuing security interest in the Collateral in favor of Administrative Agent, for the ratable benefit of the Lenders, which security interest is prior to all other liens and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents, Borrower has not sold or otherwise conveyed any interest in any Accounts; and

 (ii) Borrower has not consented to, and will not during the term of the Loan consent to, Depository Bank’s complying with instructions with respect to the Accounts from any Person other than Administrative Agent.

# **Establishment of the Accounts.**

## Simultaneously herewith, Borrower shall establish the Operating Account at Depository Bank in the name of Borrower.

## Simultaneously herewith,[[4]](#footnote-5) Borrower shall (i) establish a Deposit Account at Depository Bank (the "**Collections Account**")[[5]](#footnote-6) in the name of Borrower for the benefit of Administrative Agent for the ratable benefit of the Lenders into which Borrower or Manager shall deposit, or cause to be deposited, all Rents and other revenue from the Property, and (ii) execute a Collections Account Agreement, providing for the control of the Collections Account in form and substance approved by Administrative Agent.

## Simultaneously herewith, [[6]](#footnote-7) Borrower shall establish a restricted collateral account at Depository Bank (the “**Master Disbursement Sweep Account**”) in the name of Borrower for the benefit of Administrative Agent for the ratable benefit of the Lenders, into which funds from the Collections Account are to be transferred in accordance with Section 6 hereof; provided, that Administrative Agent or its designee shall have the right to entitle such account with such other designation as Administrative Agent or its designee may select at its sole discretion.

## The Accounts shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Interest, if any, accruing on the property deposited in the Accounts shall be periodically added to the principal amount of the Accounts and shall be held, disbursed and applied in accordance with the provisions of this Agreement. All statements relating to the Accounts shall be issued to Borrower, with a copy to Administrative Agent. Borrower shall be the beneficial owner of the Accounts for federal and state income tax purposes and shall report all income on the Accounts. The Accounts shall be assigned the federal tax identification number of the Borrower, which number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# **Deposits into the Collections Account.**  Borrower represents, warrants and covenants that:

## Borrower and Manager shall cause all Rents, reimbursements of amounts due to Borrower under Leases and other revenues from the Property to be deposited directly into the Collections Account, including without limitation, all reimbursements and payments from tenants of the Property for taxes, insurance and other expenses due to the Borrower. Without limitation of the foregoing, upon the closing of the Loan (or upon subsequent execution of any Lease, as applicable), Borrower shall send an instruction letter substantially in the form of ***Exhibit A*** attached hereto (the **“Tenant Direction Letter”**), to each Tenant under each Lease (whether such Lease is executed before or after the Effective Date), advising each Tenant to make all payments of Rent or any other item payable to Borrower under such Lease [**(i) by check or money order directly to the Lockbox or (ii)]** by ACH payment or wire transfer directly to the Collections Account, as further described in the Tenant Direction Letter. Upon payment in full of the Obligations, Administrative Agent will cooperate with Borrower to rescind and terminate the Tenant Direction Letters previously delivered by Borrower pursuant to this Agreement.

## Commencing with the first billing statement delivered after the date hereof and for each subsequent statement delivered, Borrower and Manager shall instruct all Persons that maintain open accounts with Borrower or Manager with respect to the Property, or with whom Borrower or Manager does business on an “accounts receivable” basis with respect to the Property, to deliver all payments due under such accounts to the Collections Account; provided that upon payment in full of the Obligations, Administrative Agent will cooperate with Borrower to rescind and terminate the instruction letters previously delivered by Borrower pursuant to this Agreement. Neither Borrower nor Manager shall direct any such Person to make payments due under such accounts in any other manner.

## If, notwithstanding the provisions of this Section 4, Borrower or Manager receives any Rents or other revenue from the Property (whether in cash, by check or in any other manner whatsoever), then (i) such amounts shall be deemed to be Collateral and shall be held in trust for the benefit, and as the property, of Administrative Agent, for the ratable benefit of the Lenders, (ii) such amounts shall not be commingled with any other funds or property of Borrower, and (iii) Borrower shall deposit, or cause Manager to deposit, such amounts in the Collections Account within two (2) Business Day of receipt.

## Until such time as the Loan and all other Obligations have been indefeasibly paid in full in accordance with the Loan Documents, Borrower shall not, without the prior written consent of Administrative Agent, (i) terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever and/or (ii) direct or cause any Tenant to pay any amount in any manner other than as provided in the related Tenant Direction Letter.

 (e) There are no other accounts, other than the accounts required or permitted to be maintained by Borrower pursuant to this Agreement or the Loan Agreement, maintained by Borrower, Manager or any other Person into which Rents or other revenues from the ownership and operation of the Property are deposited. So long as the Obligations shall be outstanding, neither Borrower, Manager nor any other Person shall open any other such account for the deposit of Rent or revenues from the Property.

# **Disbursement of Funds from the Collections Account.** Prior to the occurrence of a Cash Flow Sweep Event, and provided no Event of Default exists, Administrative Agent shall direct Depository Bank to transfer funds in the Collections Account on a daily basis to the Operating Account. At any time during the existence of a Cash Flow Sweep Event or an Event of Default, Borrower shall have no right to access funds in the Collections Account and Borrower hereby irrevocably authorizes Administrative Agent to deliver to Depository Bank a notice: (i) that Borrower shall no longer have access to any amounts in the Collections Account, (ii) directing Depository Bank that funds on deposit in the Collections Account, at that time or any time thereafter, shall be transferred to the Master Disbursement Sweep Account, and (iii) directing Depository Bank to terminate any link and/or controlled balance arrangement between the Collections Account and the Operating Account.

# **Withdrawals and Disbursements by Administrative Agent.**

## Subject to the provisions of this Section, upon the occurrence of a Cash Flow Sweep Event and continuing until the conditions set forth in Section **[5.18(b)]** of the Loan Agreement with respect to return of control of the Collections Account to the Borrower have occurred, Administrative Agent shall have the right to direct the Depository Bank to transfer funds from the Collections Account to the Master Disbursement Sweep Account, and no less frequently than once per calendar month, Administrative Agent shall disburse funds on deposit in the Master Disbursement Sweep Account, in the following order and priority, in each case to the extent that sufficient funds remain therefor:

#### (i) First, drawing upon funds from any cash reserves maintained pursuant to

Subsection **[(ix)]** below, as well as from any other funds on deposit in the Master Disbursement Sweep Account as necessary, to the payment of any property taxes or insurance premiums then due and payable with respect to the Property. Administrative Agent shall either (x) fund such payments directly to the applicable taxing authority or insurance company pursuant to invoices provided by Borrower, or (y) disburse funds necessary to pay such property taxes or insurance premiums to the Operating Account for payment thereof by Borrower.

 (ii) Second, to the payment of Operating Expenses of the Property for the applicable period as set forth in the Approved Annual Budget (less any property management fees due or payable to any Affiliate of the Borrower), or as otherwise approved by Administrative Agent, and/or to fund any capital expenditure and/or re-leasing reserve as reasonably determined by Administrative Agent to be necessary for the operation of the improvements on the Property. Administrative Agent shall either (x) fund such payments directly, or (y) disburse funds necessary to pay such Operating Expenses or other payments to the Operating Account for payment by thereof by Borrower.

 (iii) Third, to the payment of any costs, indemnities or expenses paid or incurred by Administrative Agent, in its capacity as administrative agent for the Lenders, including reasonable fees and expenses of outside legal counsel and amounts due pursuant to subsection 6(b) below, in connection with the administration, collection and enforcement of the Loan Documents. Administrative Agent shall direct Depository Bank to disburse such funds directly to Administrative Agent, pursuant to invoices provided by Administrative Agent, with copies to Borrower.

(iv) Fourth, to the payment of any costs, indemnities or expenses paid or incurred by the Lenders, including reasonable fees and expenses of outside legal counsel, in connection with the collection and enforcement of the Loan Documents. Administrative Agent shall direct Depository Bank to disburse such funds directly to the Lenders pursuant to invoices provided by the Lenders, with copies to Borrower.

(v) Fifth, to the payment of any unpaid interest (including interest at the Default Rate, as applicable) then owing, together with any other charges then due and payable to Lenders under any of the Loan Documents. Administrative Agent shall direct Depository Bank to disburse such funds directly to Administrative Agent for the benefit of the Lenders.

(vi) [**Sixth, to the payment of any net amounts due from Borrower with respect to the Hedging Transaction entered into in connection with the Loan. Administrative Agent shall either (x) direct Depository Bank to disburse such funds directly to the counterparty under the Hedging Transaction, pursuant to invoices provided to Administrative Agent, or (y) disburse funds necessary to pay such amounts to the Operating Account for payment thereof by Borrower.]**

(vii) Seventh, to the payment of any principal then due and payable to Lenders under the Loan Documents. Administrative Agent shall direct Depository Bank to disburse such funds directly to Administrative Agent for the benefit of the Lenders.

**[(viii) Eighth, to the payment of any other amounts required to be funded by Borrower with respect to the Loan [, including \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *specify any required reserves, if applicable*.] Administrative Agent shall direct Depository Bank to disburse such amounts directly to Administrative Agent, to be held in the \_\_\_\_\_\_ Account.]**

**(ix)** Ninth. to fund cash reserves in amounts sufficient to pay the estimated aggregate annual (A) insurance premiums on all policies of insurance required by the Loan Documents when and as such premiums are due and (B) taxes for the Property when and as such taxes are due, in accordance with the
Approved Annual Budget. Such funds may remain on deposit in the Master Disbursement Sweep Account, or Administrative Agent may direct Depository Bank to disburse such funds into a sub-account of the Master Disbursement Sweep Account.

(x) Finally, all amounts remaining in the Master Disbursement Sweep Account after the disbursements set forth above, shall be maintained in the Master Disbursement Sweep Account, to be disbursed by Administrative Agent in accordance with the terms of this Agreement.

## Borrower shall be responsible for the reasonable fees and expenses of Administrative Agent to administer, and of any third party service provider Administrative Agent may engage to assist in the administration of, this Agreement during a Cash Flow Sweep Event[[7]](#footnote-8) Notwithstanding anything to the contrary herein, Borrower acknowledges that Borrower is responsible for monitoring the sufficiency of funds deposited in the Accounts and that Borrower is liable for any deficiency in available funds, irrespective of whether Borrower has received any notice or demand from Administrative Agent. If at any time during a Cash Flow Sweep Event, the amount of the available funds in the Accounts is insufficient to make all of the disbursements described in subsections (a)(i) through **[(ix)],** inclusive, Borrower shall promptly deposit into the Collections Account, without the need for any notice or demand from Administrative Agent, the amount of such deficiency in immediately available funds. Borrower shall at all times remain responsible for the obligations described in subsections (a)(i) through **[(ix)]** above, regardless of whether there are sufficient funds in the Accounts or whether Borrower satisfies the conditions set forth in Section **[5.18(b)]** of the Loan Agreement with respect to return of control of the Collections Account to the Borrower.

##  (c) Promptly following the end of each calendar month during a Cash Flow Sweep Event, Borrower shall provide to Administrative Agent evidence of payments made from funds disbursed to the Operating Account for payment of expenses by Borrower in accordance with subsection (a) above, as a condition to Administrative Agent’s obligation to disburse funds on deposit in the Master Disbursement Sweep Account in accordance with subsection (a) above for the next succeeding calendar month.

##  (d) Notwithstanding anything to the contrary set forth above, (i) during a Cash Flow Sweep Event, any sums remaining in the Collections Account or the Master Disbursement Sweep Account, after application for items in subsections (a)(i) through **[(ix)]** above, may be applied by Administrative Agent each month to the Obligations in its sole discretion, (ii) once all of the conditions set forth in Section **[5.18(b)]** of the Loan Agreement with respect to return of control of the Collections Account to the Borrower have occurred, all sums in the Master Disbursement Sweep Account shall be disbursed by Administrative Agent to the Collections Account, and (iii) upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall not be obligated to make disbursements for items (a)(i) through **[(a)(ix)]** above (but Administrative Agent may, in its sole discretion, elect to make disbursements for any or all of such items, without regard to priority), and Administrative Agent may apply all amounts in the Accounts from time to time as set forth in Section 9.

# **Financing Statements: Further Assurances.** Administrative Agent may file one or more financing statements naming Borrower, as debtor, and Administrative Agent, as secured party, and describing the collateral therein to include the Collateral. Borrower agrees that at any time and from time to time, at the reasonable expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further actions, that may be reasonably necessary or desirable, or that Administrative Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

# **Transfers and Other Liens.** Borrower agrees that it will not (a) sell or otherwise dispose of any of its rights with respect to the Collateral or (b) create or permit to exist any lien upon or with respect to all or any of the Collateral, except for liens permitted by the Loan Agreement and the liens granted to Administrative Agent under this Agreement and the other Loan Documents.

# **Remedies.** Upon the occurrence and during the continuance of an Event of Default, with respect to the Collateral, Administrative Agent may:

## without notice to Borrower or Manager, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Collateral against the Obligations or any part thereof, in such order of priority as Administrative Agent may determine in its sole discretion, or apply all or any part of the Collateral as provided in the Loan Documents, and/or hold all or any part of the Collateral as security for the Obligations;

## in its sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under the Loan Documents, this Agreement, Applicable Law, and/or as a secured party under the UCC; and

## demand, collect, take possession of, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Collateral (or any portion thereof) as Administrative Agent may determine in its sole discretion.

Borrower hereby expressly waives, to the fullest extent permitted by Applicable Law, presentment, demand, protest or any notice of any kind in connection with this Agreement or the Collateral. Borrower acknowledges and agrees that ten (10) days’ prior written notice of the time and place of any public sale of the Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

# **Not a Mortgagee-in-Possession.** Notwithstanding Administrative Agent’s rights hereunder (including, without limitation, Administrative Agent’s right to perform certain obligations of Borrower), it is acknowledged and agreed that Borrower retains control of the Property and operation thereof, and notwithstanding anything contained herein or or Administrative Agent’s exercise of any of its rights or remedies hereunder, under the Loan Documents, or otherwise at law or in equity, Administrative Agent shall not be deemed to be a mortgagee-in-possession nor shall Administrative Agent be subject to any liability with respect to the Property or otherwise based upon any claim of lender liability.

# **Reasonable Care.** Beyond the exercise of reasonable care in the custody thereof or as otherwise expressly provided herein, neither Depository Bank nor Administrative Agent shall have any duty as to any Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any Person or otherwise with respect thereto. Depository Bank and Administrative Agent each shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which Depository Bank or Administrative Agent accords its own property, it being understood that neither Depository Bank nor Administrative Agent shall be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in value thereof, by reason of the act or omission of Depository Bank or Administrative Agent, or their respective affiliates, agents, employees or bailees, except to the extent that such loss or damage directly results from Depository Bank’s or Administrative Agent’s gross negligence or willful misconduct.

# **No Waiver.** The rights and remedies provided in this Agreement and the other Loan Documents are cumulative and may be exercised independently or concurrently, and are not exclusive of any other right or remedy provided at law or in equity. No failure to exercise or delay by Administrative Agent in exercising any right or remedy hereunder or under the Loan Documents shall impair or prohibit the exercise of any such rights or remedies in the future or be deemed to constitute a waiver or limitation of any such right or remedy or acquiescence therein. Every right and remedy granted to Administrative Agent under this Agreement or by law may be exercised by Administrative Agent, as the case may be, at any time and from time to time, and as often as Administrative Agent may deem expedient. Any and all of Administrative Agent’s rights with respect to the lien and security interest granted hereunder shall continue unimpaired, and Borrower shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) any proceeding of Borrower under the Federal Bankruptcy Code or any bankruptcy, insolvency or reorganization laws or statutes of any state, (b) the release or substitution of Collateral at any time, or of any rights or interests therein, or (c) any delay, extension of time, renewal, compromise or other indulgence granted by Administrative Agent in the event of any default with respect to the Collateral or otherwise hereunder. No delay or extension of time by Administrative Agent in exercising any power of sale, option or other right or remedy hereunder, and no notice or demand which may be given to or made upon Administrative Agent shall constitute a waiver thereof, or limit, impair or prejudice Administrative Agent’s right, without notice or demand, to take any action against Borrower or to exercise any other power of sale, option or any other right or remedy**.**

# **Administrative Agent Appointed Attorney-In-Fact.** Borrower hereby irrevocably constitutes and appoints Administrative Agent as Borrower’s true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments or notices and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Administrative Agent may deem necessary or desirable to more fully vest in Administrative Agent the rights and remedies provided for herein and to accomplish the purposes of this Agreement, including, but not limited to, endorsing for deposit in the Collections Account any Checks received by Administrative Agent and made payable to Borrower and sending a Tenant Direction Letter to all Tenants now or hereafter occupying space at the Property. The foregoing powers of attorney shall not be exercised other than in accordance with the preceding sentence. The foregoing powers of attorney are irrevocable and coupled with an interest.

# **Liability of Administrative Agent and Depository Bank.**

## Each of Depository Bank, in its capacity as depository hereunder, and Administrative Agent, in its capacity as agent and secured party hereunder, shall be responsible for the performance only of such duties as are specifically set forth herein with respect to it, and no duty shall be implied from any provision hereof. Neither Depository Bank nor Administrative Agent shall be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect thereof, or to advance any of its own monies. Borrower shall indemnify and hold Depository Bank and Administrative Agent, and their respective directors, employees, officers and agents, harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by such parties in connection with the transactions contemplated hereby, except to the extent that such loss or damage results from the gross negligence or willful misconduct of Depository Bank or Administrative Agent.

## Depository Bank shall be protected in acting upon any bill, invoice, notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by Depository Bank to be genuine, and it may be assumed conclusively that any Person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Depository Bank may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by them hereunder and in good faith in accordance therewith. Depository Bank shall not be liable for any act or omission done or omitted to be done by Depository Bank in reliance upon any instruction, direction or certification received by Depository Bank, other than such as result from the gross negligence or willful misconduct of Depository Bank.

# **Eligible Accounts/Characterization of Accounts.** Borrower and Depository Bank shall maintain each Account as an Eligible Account. Each Account shall at all times be a Deposit Account.

# **Continuing Security Interest; Termination.** This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until indefeasible payment and performance in full of the Obligations. Upon indefeasible payment and performance in full of the Obligations, this Agreement shall terminate with respect to the rights of Administrative Agent, and Borrower shall be entitled to the prompt return, upon its request and at its expense, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and Administrative Agent shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the lien hereof.

# **Resignation/Substitution of Depository Bank.**

## Depository Bank shall have the right to resign as Depository Bank hereunder upon thirty (30) days’ prior written notice to Borrower and Administrative Agent, and in the event of such resignation, Borrower shall appoint a successor Depository Bank which must be an Eligible Institution and be approved by Administrative Agent in its reasonable discretion. No such resignation shall become effective until a successor Depository Bank shall have accepted such appointment and executed an instrument by which it shall have assumed all of the rights and obligations of Depository Bank hereunder, provided, however, that Administrative Agent shall have the right to appoint a successor Depository Bank without Borrower’s approval if a successor Depository Bank acceptable to Administrative Agent has not been appointed as provided herein within thirty (30) days after Borrower’s and Administrative Agent’s receipt of the resigning Depository Bank’s notice of resignation. If no such successor Depository Bank is appointed within sixty (60) days after receipt of the resigning Depository Bank’s notice of resignation, the resigning Depository Bank may petition a court for the appointment of a successor Depository Bank.

## In connection with any resignation by Depository Bank pursuant to the terms of this Section 17, (i) Depository Bank shall, at the sole cost of Borrower, (A) duly assign, transfer and deliver to the successor Depository Bank this Agreement and all cash held by it hereunder, (B) execute such financing statements and other instruments as may be necessary to assign to the successor Depository Bank the security interest in the Collateral existing in favor of the retiring Depository Bank hereunder and to otherwise give effect to such succession and (C) take such other actions as may be reasonably required by Administrative Agent or the successor Depository Bank in connection with the foregoing and (ii) the successor Depository Bank shall establish in its name, as agent for Administrative Agent as secured party, cash collateral accounts, which shall become the Accounts for purposes of this Agreement upon the succession of such Depository Bank.

 (c) The Administrative Agent at its sole discretion shall have the right, upon thirty (30) days notice to the Depository Bank and Borrower, to substitute the Depository Bank with a successor Depository Bank that satisfies the requirements of an Eligible Institution or to have one or more of the Accounts (other than the Collections Account) held by another Eligible Institution, provided that such successor Depository Bank shall perform the duties of the Depository Bank pursuant to the terms of this Agreement.

# **Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.**

### (a) This Agreement and each Account and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof[**except for Sections 5-1401 and 5-1402 of the New York General Obligations Law]) of the State of [Georgia][Florida][Maryland][North Carolina][South Carolina][Tennessee][Virginia][New York][District of Columbia].** Regardless of any provision in any other agreement, for the purposes of the UCC, \_\_\_\_\_\_\_\_ shall be deemed to be Administrative Agent’s jurisdiction (within the meaning of Section 8-110 of the UCC and Section 8.9A-304 of the UCC).

 (b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusivejurisdiction**[[8]](#footnote-9)**of the United States District Court **[for the Northern District of Georgia][what is appropriate for Florida, Maryland, North Carolina, South Carolina, Tennessee, Virginia or** **District of Columbia][for the Southern District of New York]**, and of **[the Business Case Division of the Fulton County Superior Court located in Atlanta, Georgia][the North Carolina Business Court][any state court of the State of [Florida][Maryland][South Carolina][Tennessee][Virginia][District of Columbia][the Supreme Court of the State of New York sitting in New York county]**, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such District Court or **[the Fulton County Superior Court][the North Carolina Business Court][such [Tennessee][Florida][Maryalnd][South Carolina][District of Columbia][Virginia][New York]** **state court]** or, to the extent permitted by applicable law, such appellate court. **[The Borrower hereby acknowledges and agrees that it shall not object to, contest or oppose (whether by filing of a response or otherwise) any “Notice of Designation” or similar filing with the North Carolina Business Court that designates a dispute as one eligible to be heard by the North Carolina Business Court.]** Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that Administrative Agent or Depository Bank may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

 (c) The Borrower ir­­revocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in paragraph (b) of this Section and brought in any court referred to in paragraph (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

 (d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 20(d). Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law.

 (e) **WAIVER OF JURY TRIAL**. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

# **Interpleader and Bankruptcy.**

## If at any time (i) Depository Bank, in good faith, is in doubt as to the action it should take under this Agreement or (ii) Depository Bank is served with legal process which it in good faith believes prohibits the disbursement of the funds deposited in the Accounts, then Depository Bank shall have the right (y) to place a hold on the funds in the Accounts until such time as it receives an appropriate court order or other assurance satisfactory to it as to the disposition of the funds in the Accounts, or (z) to commence, at Borrower’s expense, an interpleader action in the United States District Court for \_\_\_\_\_\_\_\_\_\_\_\_\_ and to take no further action except in accordance with joint instructions from Administrative Agent and Borrower or in accordance with the final order of the court in such action.

## Notwithstanding any of the other provisions of this Agreement, in the event of the commencement of a case pursuant to Title 11, United States Code, filed by or against Borrower, or in the event of the commencement of any similar case under then applicable federal or state law providing for the relief of debtors or the protection of creditors by or against Borrower, Depository Bank may act as it deems necessary to comply with all applicable provisions of governing statutes and shall be held harmless from any claim of any of the other parties for so doing.

# **Miscellaneous.**

## This Agreement constitutes the entire and final agreement between the parties with respect to the subject matter hereof and may not be changed, terminated or otherwise varied, except by a writing duly executed by the parties.

## No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

## This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

 (d) All notices, demands, requests, consents, approvals and other communications required, permitted, or desired to be given hereunder (any of the foregoing, a **“Notice”)** shall have been duly given and shall be effective (a) when delivered by hand (and signed for by a Person at the offices of or the mail facilities used by such Person), (b) the Business Day following the Business Day on which the same has been delivered prepaid to a reputable national overnight air courier service for delivery on the next Business Day, (c) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, or (d) the day a communication sent by hand delivery, overnight air courier service, registered or certified mail, postage prepaid, is not accepted or rejected, in each case to the respective party at the address set forth below, or at such other address as such party may specify by written notice to the other party hereto. No notice of change of address shall be effective except upon actual receipt.

If to Administrative Agent or Depository Bank:

Truist Bank

c/o Agency Services

Mail Code GA-Atlanta-7662

303 Peachtree Street, N. E./ 25th Floor

Atlanta, Georgia 30308

Attention:  Doug Weltz, Director

Fax #: (404) 495-2170

Truist Bank

*RM Name and Address*

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

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

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

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_]

with a copy to:

 Truist Bank

 *address of CRE middle office hub where loan will be serviced*

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

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

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

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_], Loan Servicer

with a copy to:

*Law Firm*

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

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

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

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_]

If to Borrower:

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

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

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

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_]

with a copy to:

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

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

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

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_]

 If to Manager:

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

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

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

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_]

##  (e) All captions in this Agreement are included herein for convenience of reference only and shall not constitute part of this Agreement for any other purpose.

## (f) This Agreement may be executed in any number of counterparts.

 (g) The terms and provisions of this Agreement are for the benefit of Administrative Agent and the Depository Bank and, except as herein specifically provided, no other Person shall have any right or cause of action on account thereof.

 (h) The Collateral shall secure, and Borrower shall pay to Administrative Agent within ten (10) Business Days following written demand, from time to time, all reasonable and actual costs and expenses (including, but not limited to, reasonable attorneys’ fees and disbursements, and transfer, recording and filing fees, taxes and other charges) of, or incidental to, the creation or perfection of any lien or security interest granted to intended to be granted hereby, the custody, care, sale, transfer, administration, collection of or realization on the Collateral, or in any way relating to the enforcement, protection or preservation of the rights and remedies of Administrative Agent under this Agreement.

##  (i) Except to the extent required by law, the liability of Depository Bank and any Affiliate thereof will be limited as set forth herein. The liability of Depository Bank or that of any Affiliate thereof under this Agreement for failing to comply with the terms of this Agreement shall be limited to actual damages sustained by Borrower or Administrative Agent and only to the extent such damages are a direct result of Depository Bank’s, or any of its Affiliates’, gross negligence or willful misconduct. Neither Depository Bank, nor any Affiliate thereof, shall be liable for damages hereunder caused by any act or omission of any third party, whether or not such party was chosen by Depository Bank or an Affiliate thereof (so long as such party was chosen in good faith), or for any charges imposed by any third party. **IN NO EVENT SHALL DEPOSITORY BANK BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR INDIRECT LOSS OR DAMAGE WHICH BORROWER OR ADMINISTRATIVE AGENT MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER THE LIKELIHOOD OF SUCH LOSS OR DAMAGE WAS KNOWN BY DEPOSITORY BANK AND REGARDLESS OF THE BASIS, THEORY OR NATURE OF THE ACTION ON WHICH A CLAIM IS ASSERTED.** Without limiting the generality of the foregoing, Depository Bank shall not be liable for delays or errors occurring by reason of circumstances beyond the control of Depository Bank, including, without limitation, acts of civil, military, or banking authorities, national emergencies, labor difficulties, fire, flood or other catastrophes, acts of God, insurrection, war, riots, failure of transportation, failure of vendors, communication or power supply, or malfunction of or unavoidable difficulties with its equipment. The provisions of this Section 20(i) shall survive the termination of this Agreement.

**[NO FURTHER TEXT ON THIS PAGE]**

**IN WITNESS WHEREOF,** the parties hereto have duly executed this Agreement as of the day and year first above written.

**BORROWER:**

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_]

By:

Name:

Title:

**MANAGER:**

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

By:

Name:

Title:

**ADMINISTRATIVE AGENT:**

 **TRUIST BANK**, a North Carolina banking corporation, in its capacity as administrative agent for each of the Lenders

By:

Name:

Title:

**DEPOSITORY BANK:**

 **TRUIST BANK**, a North Carolina banking corporation, in its capacity as depository bank

By:

Name:

Title:

**EXHIBIT A**

Form of Tenant Direction Letter

[\_\_\_\_\_\_\_\_\_\_\_\_\_], 20[\_\_]

Re: Lease dated \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, between Landlord, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Tenant (as amended, the “**Lease**”), concerning premises known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Property**”)

Ladies and Gentlemen:

 [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_\_\_\_] (“**Landlord**”), is the landlord under the referenced Lease. This letter shall constitute notice to you that the Landlord has granted a security interest in the captioned Lease, and all rents, reimbursements, additional rents, termination payments and all other monetary obligations payable to landlord thereunder (collectively, “**Rents**”) in favor of Truist Bank, as Administrative Agent (“**Agent**”), to secure certain of Landlord’s obligations. Landlord hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with the payment of Rents and hereafter to deliver all payment of Rents as set forth below.

 **[If Rents are paid by check, money order or other instrument, and sent by U.S. Mail, please mail such items to the following address:**

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

 **P.O. Box [\_\_\_\_\_\_\_\_\_]**

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

 **If Rents are paid by check, money order or other instrument, and sent by overnight delivery or courier, please send such items to the following address:**

 **Truist Bank**

 **Attn: P.O. Box [\_\_\_\_\_\_\_\_\_]**

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

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

 **[If Rents are paid by ACH or wire transfer, payments should be made][Payments should be made by ACH or wire transfer]** to the following account:

 Depository Bank Truist Bank

 ABA: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Account #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Account Name: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] / for the benefit of Truist Bank, as Administrative Agent and secured party / Collections Account

 [Signature Page to Follow]

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Agent, or any successor lender so identified by Agent, may by written notice to you rescind the instructions contained herein.

Sincerely,

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

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

By:

Name:

Title:

1. Note to drafter: no further duties or obligations with respect to Truist in its capacity as Depository Bank may be added to this agreement without consultation with Truist internal legal. [↑](#footnote-ref-2)
2. Note to drafter: the Collections Account and Master Disbursement Sweep Account cannot be interest-bearing accounts. [↑](#footnote-ref-3)
3. Note to drafter: confirm that provisions for submittal and approval of an annual budget for the Property are contained in the Loan Agreement. [↑](#footnote-ref-4)
4. For construction loans, replace “Simultaeneously herewith” with “At the time and as required by Section [5.18(a)] of the Loan Agreement”. [↑](#footnote-ref-5)
5. Note for Truist Closing and Deposit Specialists: See CRE-MO-CMA-100 “Cash Managed Accounts” for procedures for proper set-up of the Collections Account, Operating Account and Master Disbursement Sweep Account. [↑](#footnote-ref-6)
6. For construction loans, replace “Simultaeneously herewith” with “At the time and as required by Section [5.18(a)] of the Loan Agreement”. [↑](#footnote-ref-7)
7. Note to drafter: do not delete this provision without approval from both the Truist RM and Closing Specialist for a given deal. [↑](#footnote-ref-8)
8. If NY law is selected to govern, the Borrower must submit to the **exclusive** jurisdiction of NY courts, unless the Borrower is principally located in the Truist footprint, in which case non-exclusive jurisdiction is acceptable. If GA law is selected to govern, the Borrower must submit to the exclusive jurisdiction of the GA Business Court. If NC law is selected to govern, the Borrower must submit to the exclusive jurisdiction of the NC Business Court. [↑](#footnote-ref-9)