**[CONTRACTOR’S CONSENT, CERTIFICATE AND AGREEMENT]**

(LETTERHEAD OF GENERAL CONTRACTOR)

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

Truist Bank

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

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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 \_\_\_\_\_\_\_\_\_\_\_\_ (“**Contractor**”) 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**”), 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.[[1]](#footnote-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 preceding sentence). In the event the Contract is terminated for any reason, Contractor will notify Administrative Agent in writing within seven (7) days of such termination. After such termination, Contractor will, at Administrative Agent's option, enter into a new contract with Administrative Agent upon substantially the same terms as the Contract. "Administrative Agent" as used in this Paragraph includes Administrative Agent's successors or assigns, any receiver in possession of the Project, any purchaser upon foreclosure of Administrative Agent's security, or any corporation or other nominee formed by or on Administrative Agent's behalf.

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 material respect, without your prior written consent in each instance.

As the general contractor 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, that 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. We further certify that all insurance coverage which we are required to carry under the Contract has been obtained.

### If Borrower defaults in payment or performance of the Contract or if the Contract is terminated for any reason, Contractor will give Administrative Agent prompt written notice thereof and prior to exercising any remedy as a result thereof, will afford Administrative Agent the same opportunity to cure such default to which Borrower is entitled, but at least thirty (30) days in any event, or such longer period of time as may be necessary to enable Administrative Agent to obtain possession of, or title to, the Project(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, and be effective upon receipt or when the attempted initial delivery is refused or cannot be made because of a change of address of which the sending party has not been notified. Any curative act done by Administrative Agent shall be as effective as if done by Borrower.

### Contractor will not perform work under any change order unless Administrative Agent has consented in writing thereto or Administrative Agent's consent is not required for such change order in accordance with the Loan Documents. In any such case, Contractor will promptly provide Administrative Agent and its construction consultant with a copy of such change order or other modification. Administrative Agent's consent shall not constitute any assumption by Administrative Agent of any obligation under the Contract. In addition Contractor will not amend, modify, or terminate the Contract without the prior written consent of Administrative Agent, except that Contractor may terminate the Contract because of a default by Borrower thereunder to the extent the Contract so provides and Contractor has first complied with this Letter Agreement.

### Nothing herein shall be construed to confer any present benefits on Contractor or to create any contractual arrangement between Contractor and Administrative Agent or to impose upon Administrative Agent any duty to see to the application of the proceeds of the loan contemplated by the Loan Documents or to give any notice of any type to Contractor. Contractor acknowledges that Administrative Agent is obligated under the Loan Documents only to Borrower and to no other person or entity.

### Contractor 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 and any right to remove any removable improvements from the Project.

# This letter agreement shall bind and benefit Administrative Agent and Contractor and their respective heirs, 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:

Exhibit “A”

LAND

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

[Exhibit “B”

CONTRACT

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

1. ***NOTE: acceptable alternative language that may be added in response to Contractor comments (to replace proviso starting with “provided that”):*** “, provided that Administrative Agent pays Contractor for (i) all work, labor and materials in place for which Contractor has not previously been paid (including any so-called “retainage” and any applicable Contractor’s fee, when such amounts are otherwise due and payable pursuant to the terms and provisions of the Contract), but only to the extent that proceeds of the Loan are allocated in the construction budget for the construction of the Project that has been agreed to by Borrower and Administrative Agent pursuant to the Loan Documents (the “**Budget**”) for payment of such work, labor and/or materials and Administrative Agent has not previously advanced such proceeds, and (ii) all work performed or labor and materials furnished or services rendered to Administrative Agent, at Administrative Agent’s request, in accordance with the terms of the Contract.”

   ***The following language may also be added in response to Contractor comments:***

   “If Administrative Agent terminates the Contract, Administrative Agent shall notify Contractor in writing of such termination and Contractor shall be reimbursed by Administrative Agent for all work, labor and materials in place for which Contractor has not previously been paid (including any retainage and any applicable Contractor’s fee, when such amounts are otherwise due and payable pursuant to the terms and provisions of the Contract), but only to the extent that proceeds of the Loan are allocated in the Budget *[add definition if language above not included]* for payment of such work, labor and/or materials and Administrative Agent has not previously advanced such proceeds.” [↑](#footnote-ref-1)