**GUARANTY AGREEMENT**

**THIS GUARANTY AGREEMENT** (this “**Guaranty**”) is made as of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Guarantor**”) to and for the benefit of **TRUIST BANK**, a North Carolina banking corporation, as administrative agent (the “**Administrative Agent**”)for itself and the Secured Parties (as defined in the Loan Agreement).

**RECITALS:**

1. As more fully provided in that certain **[Construction][Term]** Loan Agreement (as the same may be amended, restated, supplemented, renewed or replaced from time to time, the “**Loan Agreement**”) of even date herewith by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “**Borrower**”), Administrative Agent and the other lenders from time to time party thereto (collectively, the “**Lenders**”), Lenders have agreed to make a **[construction]** loan to Borrower in the aggregate principal amount of up to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and No/100 Dollars ($\_\_\_\_\_\_\_\_\_\_) (the “**Loan**”).
2. The Loan is evidenced by one or more promissory notes made by Borrower, as maker, payable to Lenders, as payees, in the aggregate principal amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and No/100 Dollars ($\_\_\_\_\_\_\_\_\_\_) (collectively, as each may be amended, restated, supplemented, renewed or replaced from time to time, the “**Notes**”).
3. The Loan is secured by, among other things, a **[mortgage/deed of trust/deed to secure debt]** (as the same may be amended, restated, supplemented, renewed or replaced from time to time, the “**Security Instrument**”)encumbering certain property owned by Borrower located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_\_\_.
4. A condition precedent to Lenders’ obligations to make the Loan to Borrower is Guarantor's execution and delivery of this Guaranty to Administrative Agent, for the benefit of itself and the Secured Parties.
5. Guarantor will benefit directly or indirectly and substantially from the making of the Loan.
6. Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement. This Guaranty is one of the Loan Documents described in the Loan Agreement.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to each Lender to extend credit to Borrower, Guarantor hereby covenants and agrees as follows, incorporating by reference the foregoing recitals as a part of this Guaranty:

# **Guaranty.**

## **Guaranty of Payment**.

Guarantor hereby unconditionally and irrevocably guarantees to Administrative Agent, for the benefit of itself and the Secured Parties**[, in addition to the payment of the Costs as set forth below,]** the full and punctual payment and performance when due of all of the Obligations, whether such Obligations would have arisen at maturity or earlier by reason of acceleration or otherwise and whether denominated as Costs, damages, principal, interest, fees or otherwise, together with all pre- and post- maturity interest thereon (including, without limitation, amounts that, but for the initiation of any proceeding under any insolvency or bankruptcy law, would become due). [**[NOTE: add reduction in principal obligations if applicable:** Notwithstanding any language of this Guaranty, Guarantor’s obligations with respect to the repayment of principal of the Loan shall be subject to reduction as provided in the attached Rider. The Rider is incorporated herein by this reference, the same as though set forth herein in full.]

## **Guaranty of Non-recourse Carveouts.** **[NOTE: may choose to omit if full guaranty in (a) applies – discuss with business team if full payment guaranty has reduction in principal**]

## In addition to any and all other guarantees delivered by Guarantor, or any of them, or any other Guarantor, to Administrative Agent, for the benefit of itself and the Secured Parties, Guarantor hereby assumes liability for, hereby guarantees payment to Administrative Agent, for the benefit of itself and the Secured Parties, of, hereby agrees to pay, protect, defend and save Administrative Agent and each of Lenders harmless from and against, and hereby indemnifies Administrative Agent and each of Lenders from and against any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys’ fees), causes of action, suits, claims, demands and judgments of any nature or description whatsoever (collectively, “**Costs**”) which may at any time be imposed upon, incurred or suffered by or awarded against Administrative Agent or any Lender as a result of one or more of the following:

### Rents or other income, issues, profits, and revenues derived from the Property after the occurrence of an Event of Default, which are not (A) applied to ordinary and necessary operating expenses of the Property or (B) paid to Administrative Agent or a duly appointed receiver of the Property, except as may be otherwise expressly permitted by the Loan Documents.

### The failure (A) to pay, apply or return any security deposit or other refundable deposit to tenants when due as provided in the applicable Lease or other instrument, or (B) to deliver any security deposit or other refundable deposit to Administrative Agent or as designated by Administrative Agent, or to any receiver or any person or entity purchasing the Property upon a foreclosure of the Property or deed in lieu of foreclosure.

` (iii) Fraud or intentional misrepresentation by Borrower or any Guarantor **[*also include all parties liable under the loan or any loan document, including parties signing environmental indemnity*]** (any of the foregoing, a “**Liable Party**”), in connection with the construction, leasing or operation of the Property, the making or disbursement of the Loan, or any certificates or documents provided in connection therewith.

### Any (A) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Property, or (B) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation of any portion of the Property, which proceeds or awards are received and retained or applied by any Liable Party in violation of the terms of the Loan Documents (except to the extent that Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct disbursement of such sums or payments).

### The failure to pay recording taxes payable in connection with the recording of the Security Instrument or any of the other Loan Documents.

### The occurrence of physical waste to the Property as a result of intentional or fraudulent acts or omissions (excluding physical waste resulting from insufficient cash flow from the Property).

### Failure to pay premiums of insurance policies for the Property required by the Loan Documents.

### Subject to any right to contest such matters as provided in the Loan Documents, failure to pay any valid real estate taxes or assessments, provided, however, that the Borrower shall not be subject to the aforesaid liability to the extent the Administrative Agent is holding funds in escrow for such taxes and assessments.

### Non-compliance with any of the warranties, representations, covenants, obligations, and liabilities under the **[Environmental Indemnification Agreement].**

### Any modification by Borrower or its members of the organizational documents of Borrower or any of its constituent entities in violation of the Loan Documents other than as expressly provided for in 1.(b)(iii) below.

### Any violation of the Single Purpose Entity covenants set forth in **[Section 5.17]** of the Loan Agreement (the “**SPE Covenants**”) other than as expressly provided for in 1.(b)(iii) below.

### Any loss of the Property due to forfeiture thereof or of any portion thereof or interest therein as a result of any criminal or quasi-criminal activity by any Liable Party (or any person so related to a Liable Party or the Property that the Property or any portion thereof or any interest therein might be forfeited on account of the activity of such person), to the full extent of diminution in the net realizable value of the Property encumbered by the Loan Documents.

### An involuntary bankruptcy filing against Borrower or Guarantor (other than the collusive involuntary petitions described in 1.(b)(i)(C) below), unless Borrower or Guarantor, as applicable, has used reasonably diligent efforts to obtain dismissal of such filing within ninety (90) days after the date of such filing.

## Guarantor further hereby unconditionally and irrevocably guarantees to Administrative Agent, for the benefit of itself and the Secured Parties, in addition to the payment of the Costs, the full and punctual payment and performance when due of all of the Obligations, whether such Obligations would have arisen at maturity or earlier by reason of acceleration or otherwise and whether denominated as Costs, damages, principal, interest, fees or otherwise, together with all pre- and post- maturity interest thereon (including, without limitation, amounts that, but for the initiation of any proceeding under any insolvency or bankruptcy law, would become due), if one or more of the following events or conditions occurs:

### Borrower or Guarantor shall (A) voluntarily commence a case under any applicable bankruptcy, insolvency, creditors rights or other similar law now or hereafter in effect (collectively, the “**Insolvency Laws**”), (B) voluntarily make a general assignment for the benefit of creditors under any Insolvency Law, or (C) become the debtor in or subject of any involuntary case or proceeding under any Insolvency Law and any such case or proceeding shall have been facilitated, coordinated and/or directed by Borrower, Guarantor or any Affiliate or principal of Borrower or Guarantor, including Borrower, Guarantor or any Affiliate or principal of Borrower or Guarantor soliciting or causing to be solicited petitioning creditors for any involuntary petition against Borrower or Guarantor from any Person (which soliciting results in the filing of such involuntary petition against Borrower or Guarantor);

### Any enforcement of Administrative Agent’s or any Lender’s rights or remedies under the Loan Documents, or in connection with any litigation relating to the Loan Documents wherein, in either such case, Borrower or any other Liable Party (i) in bad faith interferes with, hinders or delays the exercise of Administrative Agent’s or such Lender’s remedies, (ii) contests the validity or enforceability of the Loan Documents or (iii) in bad faith asserts a claim against Administrative Agent or any Lender;

### Violation of the SPE Covenants in the Loan Documents that prohibit the amendment of the separateness provisions of Borrower’s formation documents or the termination of an independent manager (to the extent applicable), or any other violation of the SPE Covenants if such violation results in a consolidation of the Property with other property not securing the Loan; or

### Violation of any of the terms and provisions of [Section 7.1, Section 7.2 or Section 8.1(p) of the Loan Agreement or Section 6.2 of the Security Instrument [**[prohibitions of assignments and transfers by Borrower and no additional debt or encumbrances]** other than in connection with a foreclosure or other exercise of the rights of Administrative Agent or any Lender under the Loan Documents.

## **Guaranty of Performance**. [**NOTE: create separate document in VA and other confessed judgment states for performance guaranty**]

## Guarantor hereby unconditionally and irrevocably guarantees to Administrative Agent, for the benefit of itself and the Secured Parties:

### that the Improvements will be constructed in accordance with the Loan Agreement and the Plans and Specifications at a total project cost not to exceed that set forth in the Budget;

### that the Improvements will be completed and ready for occupancy, including delivery of any certificates required by law or the Loan Agreement, on or before the Completion Date required in the Loan Agreement;

### that it will ensure the performance, completion and payment of the construction of the Improvements (the “**Construction**”) and the payment of all costs of said Construction (including any and all cost overruns) and all other costs associated with the Improvements (including, without limitation, the costs of any architects’ and engineers’ fees), including any sums expended in excess of the amount of indebtedness incurred by Borrower under the Loan Agreement or with respect to the Loan, whether or not the Construction is actually completed;

### that if Administrative Agent exercises its right under the Loan Documents to take possession of the Property and complete the Construction, it will reimburse Administrative Agent for all costs and expenses incurred by Administrative Agent in excess of the applicable approved budget line items therefor (if any) in so taking possession of the Property and completing the Construction pursuant to the Plans and Specifications;

### that if any mechanics’ or materialmen’s liens should be filed, or should attach, with respect to the Property by reason of the Construction, it will cause the immediate removal of such liens, or post security against the consequences of their possible foreclosure and procure an endorsement(s) to Administrative Agent’s Title Insurance Policy insuring Administrative Agent, for the benefit of itself and the Secured Parties, against the consequences of the foreclosure or enforcement of such lien(s);

### that if any chattel mortgages, conditional vendor’s liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment delivered upon the Property and owned by Borrower, or attached to or used in connection with the Construction of the Improvements, it will cause the immediate removal of such lien(s) or post security against the consequences of their possible foreclosure and procure an endorsement(s) to Administrative Agent’s Title Insurance Policy insuring Administrative Agent, for the benefit of itself and the Secured Parties, against the consequences of the foreclosure or enforcement of such lien(s);

### that it will cause the payment of the premiums for all policies of insurance required to be furnished by Borrower pursuant to the Loan Agreement during the Construction if such premiums are not paid by Borrower; and

### the due and punctual performance and observance by Borrower of all other terms, covenants, and conditions of the Loan Agreement or changes in the terms, covenants, or conditions thereof now or hereafter made, but only to the extent such terms, covenants and conditions pertain to the lien free construction of the Improvements in accordance with the terms and conditions set forth in the Loan Agreement.

If any of such obligations of Borrower are not complied with, in any respect whatsoever, and without the necessity of any notice from Administrative Agent to Guarantor, Guarantor agrees to (A) assume all responsibility for the completion of the Improvements and, at Guarantor's own cost and expense, cause the Improvements to be fully completed in accordance with the Plans and Specifications and the Loan Documents; (B) pay all bills in connection with the Construction of the Improvements; and (C) indemnify and hold Administrative Agent and each of Lenders harmless from any and all loss, cost, liability or expense that Administrative Agent or any Lender may suffer by any reason of any such non-compliance. So long as: (X) all of such obligations are being performed by Guarantor, (Y) Guarantor shall timely cure any Default under the Loan Documents susceptible of being cured by Guarantor, and (Z) no default exists hereunder, Administrative Agent will make the Loan proceeds, insurance proceeds, if any, condemnation proceeds, if any, and surety bond proceeds, if any, available under and subject to the terms of the Loan Agreement. If after the occurrence of a default hereunder, and without limiting Administrative Agent’s or any Lender’s rights and remedies, Administrative Agent, in its sole discretion, is dissatisfied with the progress of construction by Borrower and/or Guarantor, Administrative Agent, on behalf of the Lenders, may, at its option or at the direction of the Required Lenders, complete the Improvements either before or after commencement of foreclosure proceedings or before or after exercise of any other right or remedy of Administrative Agent or any Lender against Borrower or Guarantor, with such changes or modifications in the Plans and Specifications that Administrative Agent deems necessary, and expend such sums as Administrative Agent, in its discretion, deems necessary or advisable to complete the Improvements, and Guarantor hereby waives any right to contest any such necessary expenditures. The amount of any and all expenditures made by Administrative Agent for the foregoing purposes shall bear interest from the date made until repaid to Administrative Agent, at a rate per annum equal to the interest rate provided for in the Loan Agreement and, together with such interest, shall be due and payable by Guarantor to Administrative Agent upon demand. Administrative Agent does not have and shall never have any obligation to complete the Improvements or take any such action. Furthermore, Administrative Agent shall not have any obligation to protect or insure any collateral for the Loan, nor shall Administrative Agent have any obligation to perfect its security interest in any collateral for the Loan.

## **Carry Guaranty**. Guarantor hereby unconditionally and irrevocably guarantees (without duplication of Sections 1(a), 1(b) and 1(c) above) to Administrative Agent, for the benefit of itself and the Secured Parties, the full and punctual payment of the following when due of: (i) all accrued and unpaid interest (including any interest payable at the Default Rate and interest before and after any insolvency proceeding) on the Loan and (ii) all customary or necessary operating expenses incurred in connection with the Property, including all insurance premiums, operating expenses and real estate taxes in connection with the Property (collectively, the “**Interest and Carry Obligations**”).

## **[Notwithstanding any language of this Guaranty, Guarantor’s obligations with respect to the Interest and Carry Obligations shall terminate upon the completion of a foreclosure or acceptance by Administrative Agent of a deed in lieu of foreclosure of the Property, except with respect to Interest and Carry Obligations accruing prior to such date. Provided that an Event of Default shall have occurred and is continuing, Borrower shall have the right to deliver written notice to Administrative Agent stating that Borrower has elected to trigger the tender date for the carry guaranty (such date of tender, the “Tender Date”, and such tender the “Carry Guaranty Tender”). In the event Administrative Agent receives a Carry Guaranty Tender, provided that as of the Tender Date (1) Borrower or Guarantor has delivered to Administrative Agent, a deed in form and substance acceptable to Administrative Agent, in recordable form, conveying the Property (the “Deed”), along with funds sufficient to pay the applicable taxing authorities all state and local real estate transfer taxes on the conveyance of the Property and such other returns or forms as may be required in order to enable the Deed to be recorded, (2) the Property is not in violation of applicable environmental law and Borrower or Guarantor shall have furnished to Administrative Agent an environmental assessment reasonably acceptable to Administrative Agent which discloses, as of the Tender Date, no actual (A) violation of applicable environmental laws in connection with the Property or operations thereon, or (B) presence or release of hazardous material in violation of applicable environmental law in, on, above, or under the Land that has not been fully remediated in accordance with all applicable environmental laws and (3) the Property is not subject to any material litigation (other than any material litigation instituted by the Administrative Agent or any Lender and expressly excluding any liens that have been bonded in accordance with the terms of the Loan Agreement), Guarantor shall not be liable for Interest and Carry Obligations accruing sixty (60) days after the date after the Tender Date.]**

## **Swap Exclusion**. Notwithstanding anything to the contrary contained herein, as used in this Guaranty, the term “Obligations” will not include any Excluded Swap Obligation. “**Excluded Swap Obligation**” means any Swap Obligation, if and to the extent that all or any portion of this Guaranty of such Swap Obligation is or becomes illegal under the Commodity Exchange Act (7 U.S.C. §1 *et seq.*) (as amended and, together with any successor statute, the “**Commodity Exchange Act**”), or any rule, regulation or order of the Commodities Futures Trading Commission (or the application or official interpretation of any thereof), by virtue of Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time that this Guaranty becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, the exclusion of such Swap Obligation under this Guaranty shall apply only to the portion of such Swap Obligation that is attributable to swaps for which this Guaranty is or becomes illegal. For purposes hereof, the term “**Swap Obligation**” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act. Guarantor represents and warrants that as of the date of this Guaranty Guarantor is an “eligible contract participant” as defined in the Commodity Exchange Act.

## **Generally**. This is a guaranty of payment and performance and not of collection. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against Borrower or any other person (including, without limitation, other guarantors, if any), nor against the collateral for the Loan. Guarantor waives any right to require that an action be brought against Borrower or any other person or to require that resort be had to any collateral for the Loan or to any balance of any deposit account or credit on the books of Administrative Agent or any Lender in favor of Borrower or any other person. In the event, on account of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, Borrower shall be relieved of or fail to incur any debt, obligation or liability as provided in the Loan Documents, Guarantor shall nevertheless be fully liable therefor. In the event of a default under the Loan Documents which is not cured within any applicable grace or cure period, Administrative Agent and each Lender shall have the right to enforce its rights, powers and remedies (including, without limitation, foreclosure of all or any portion of the collateral for the Loan) thereunder or hereunder, in any order, and all rights, powers and remedies available to Administrative Agent and each Lender in such event shall be non-exclusive and cumulative of all other rights, powers and remedies provided thereunder or hereunder or by law or in equity. If the Costs and/or Obligations guaranteed hereby are partially paid or discharged by reason of the exercise of any of the remedies available to Administrative Agent or any Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Costs and/or Obligations, even though any rights which Guarantor may have against Borrower may be destroyed or diminished by the exercise of any such remedy. Guarantor shall be liable for the payment and performance of the Obligations, as set forth in this Guaranty, as a primary obligor and for the payment of any sums expended by Administrative Agent or any Lender as set forth in the preceding sentence. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Administrative Agent or any Lender to take prior recourse or proceedings against any collateral, security or Person whomsoever. [include any applicable state specific statutory references to suretyship laws/waivers].[[1]](#footnote-1) All payments, whether voluntary or involuntary, received by the Administrative Agent or any Lender with respect to the Obligations from any source other than Guarantor, including, without limitation, payments from Borrower or any other guarantor and amounts received from any Collateral may, for purposes of determining Guarantor’s obligations under this Guaranty, be applied to the Obligations in such order as the Administrative Agent may from time to time determine in its sole discretion. Without limiting the foregoing, the Administrative Agent may apply such payments first to Obligations that are not guaranteed by Guarantor until such Obligations are paid in full before applying such payments to Obligations that are guaranteed by Guarantor.

# **Indemnity**. Without limiting the generality of Section 1 hereof, Guarantor shall indemnify, defend (with counsel acceptable to Administrative Agent) and save harmless Administrative Agent and each Lender from and against all damages, losses, liabilities, obligations, penalties, claims, demands, defenses, judgments, suits, proceedings, penalties, expenditures, costs, disbursements and expenses (including, without limitation, court costs and attorneys’ and experts’ fees and expenses) of any kind or nature whatsoever which may, at any time or from time to time, be imposed upon, incurred by or asserted or awarded against Administrative Agent or any Lender by reason of, or arising from or out of, Administrative Agent’s or such Lender’s enforcement (or attempted enforcement) of this Guaranty or any of the other Loan Documents.

# **Reinstatement of Obligations**. This Guaranty shall continue to be effective, or be reinstated automatically, as the case may be, if at any time payment, in whole or in part, of any of the obligations guaranteed hereby is rescinded or otherwise must be restored or returned by Administrative Agent or any Lender (whether as a preference, fraudulent conveyance or otherwise) upon or in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, Guarantor or any other person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, Guarantor or any other person or for a substantial part of Borrower’s, Guarantor’s or any of such other person’s property, as the case may be, or otherwise, all as though such payment had not been made. Guarantor further agrees that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including, without limitation, reasonable legal fees and expenses) incurred by or on behalf of Administrative Agent in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, the payment of which is covered by Guarantor’s indemnity pursuant to Section 2 above.

# **Waivers by Guarantor**. To the extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of:

## Any right to require Administrative Agent or any Lender to proceed against Borrower or any other person or to proceed against or exhaust any security held by Administrative Agent or any Lender at any time or to pursue any other remedy in Administrative Agent’s or any Lender’s power or under any other agreement before proceeding against Guarantor hereunder;

## The defense of the statute of limitations in any action hereunder**;**

## Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Administrative Agent, on behalf of itself and Lenders, to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

## Demand, presentment for payment, notice of nonpayment, intent to accelerate, acceleration, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, any Lender, any endorser or creditor of Borrower or of Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or any Lender;

## Any defense based upon an election of remedies by Administrative Agent or any Lender;

## Any right or claim of right to cause a marshalling of the assets of Guarantor;

## Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty;

## Any duty on the part of Administrative Agent or any Lender to disclose to Guarantor any facts Administrative Agent or such Lender may now or hereafter know about Borrower or the Property, regardless of whether Administrative Agent or such Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower, of the condition of the Property and of any and all circumstances bearing on the risk that liability may be incurred by Guarantor hereunder;

## Any lack of notice of disposition or of manner of disposition of any collateral for the Loan;

## Any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the Loan Documents;

## To the extent permitted by law, lack of commercial reasonableness in dealing with the collateral for the Loan;

## Any deficiencies in the collateral for the Loan or any deficiency in the ability of Administrative Agent or any Lender to collect or to obtain performance from any persons or entities now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

## Any assertion or claim that the automatic stay provided by 11 U.S.C. § 362 (arising upon the voluntary or involuntary bankruptcy proceeding of Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Administrative Agent or any Lender to enforce any of its rights, whether now or hereafter required, which Administrative Agent or any such Lender may have against Guarantor or the collateral for the Loan;

## Any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court, whether pursuant to the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise; and

## Any action, occurrence, event or matter consented to by Guarantor under Section 7(i) hereof, under any other provision hereof, or otherwise.

### In addition, Guarantor expressly agrees that Guarantor shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage, security deed, deed of trust or other security interest securing the Obligations, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. Guarantor hereby irrevocably waives reliance on any anti-deficiency statute, through subrogation or otherwise, and any such statute shall in no way affect or impair Guarantor’s obligations and liabilities hereunder.

# **Financial Condition of Guarantor**. As used in this Section, “**Financial Statements**” means, in accordance with the requirements of this Section, a balance sheet, income statement, statements of cash flow and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity. Guarantor hereby covenants and agrees, from the date hereof and until the Obligations and any Costs have been indefeasibly paid in full and all other obligations hereunder shall have been performed and discharged, to:

## duly pay and discharge all liabilities to which Guarantor is subject or which are asserted against Guarantor, prior to the date when any fine, late charge or other penalty for late payment may be imposed, except to the extent that such liabilities would not reasonably be expected to result in a material adverse change in the financial condition of Guarantor and are being contested in good faith and by appropriate and lawful proceedings diligently conducted and for which such reserve or other appropriate provisions have been made;

## provide or cause to be provided to Administrative Agent, with sufficient copies for each Lender, the following:

 (i) Financial Statements of Guarantor for each fiscal year of Guarantor, as soon as reasonably practicable and in any event within *[ninety (90)]* calendar days after the close of each fiscal year.

### Copies of filed federal income tax returns of Guarantor for each taxable year, within twenty (20) days after filing.

### From time to time promptly after Administrative Agent’s or any Lender’s request, such additional information, reports and statements regarding the business operations and financial condition of Guarantor as Administrative Agent may reasonably request.

###  [(c) *insert any applicable guarantor financial covenants – net worth, liquidity, etc., to be tested [monthly/quarterly/annually].* No later than thirty (30) days after the end of each [month/quarter/year], Guarantor shall deliver to Administrative Agent a certificate (1) signed on behalf of the Guarantor by the principal executive officer or the principal financial officer of the Guarantor and (2) confirming that the financial covenant(s) set forth in this subsection has been satisfied for such period.

All Financial Statements shall be in form and detail satisfactory to Administrative Agent and shall contain or be attached to the signed and dated written certification of Guarantor in form specified by Administrative Agent to certify that the Financial Statements are furnished to Administrative Agent and Lenders in connection with the extension of credit by Administrative Agent and Lenders and constitute a true and correct statement of Guarantor's financial condition and operating results. All certifications and signatures on behalf of Guarantor shall be made by a representative of the entity satisfactory to Administrative Agent. All fiscal year-end Financial Statements of Guarantor shall be reviewed and certified, without any qualification or exception not acceptable to Administrative Agent, by independent certified public accountants acceptable to Administrative Agent, and shall contain all reports and disclosures required by generally accepted accounting principles or other accounting methods as mutually agreed upon by Guarantor and Administrative Agent for a fair presentation.

Acceptance of any Financial Statement by Administrative Agent, whether or not in the form prescribed herein, shall be relied upon by Administrative Agent and Lenders in the administration, enforcement, and extension of the Obligations.

Guarantor hereby warrants and represents unto Administrative Agent and each Lender that any and all financial statements and other financial data which have heretofore been given by Guarantor to Administrative Agent or any Lender with respect to Guarantor did fairly and accurately present the financial condition of Guarantor as of the effective date thereof.

# **Representations, Warranties, and Covenants of Guarantor**. Guarantor hereby represents, warrants, and covenants that (a) **[the shareholders, members or other beneficial owners of Guarantor have][Guarantor has]** a direct or indirect financial interest in the Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty has been duly authorized, executed and delivered, and constitutes the valid and legally binding obligation of Guarantor, enforceable in accordance with its terms; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law, any order of any court or governmental agency, the Guarantor’s charter documents and **[by-laws][partnership agreement][operating agreement]** of Guarantor or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) **[Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full power and authority to enter into and perform this Guaranty]**; (e) Guarantor will indemnify Administrative Agent and each Lender from any loss, cost or expense as a result of any representation or warranty of Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) as of the date hereof, there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor, which would have a material and adverse effect on Guarantor’s ability to perform its obligations under this Guaranty; (g) all financial statements and information heretofore furnished to Administrative Agent by Guarantor do, and all financial statements and information hereafter furnished to Administrative Agent by Guarantor will, fully and accurately as of their dates, present the condition (financial or otherwise) of Guarantor and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Administrative Agent, and as of the date hereof, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Administrative Agent, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not knowingly engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) none of Administrative Agent or any Lender has any duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to perform the guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Security Instrument and the other Loan Documents. Guarantor's representations, warranties and covenants are a material inducement to Administrative Agent and each Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Obligations.

# **General Provisions**.

## Fully Recourse. All of the terms and provisions of this Guaranty are recourse obligations of Guarantor.

## Obligations. Guarantor hereby acknowledges that Guarantor’s guaranty is not secured by the Security Instrument or the other Loan Documents and that Administrative Agent would not make the Loan but for the personal liability undertaken by Guarantor herein.

## Survival. This Guaranty shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Administrative Agent or any Lender under the Security Instrument or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof.

## Subordination; No Recourse Against Administrative Agent or Lenders. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

## (i) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing the same shall, at all times, be subordinate in all respects to the Obligations and to all liens, security interests and rights now or hereafter existing to secure the Obligations;

## (ii) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Obligations have been fully and finally performed;

## (iii) Guarantor hereby assigns and grants to Administrative Agent, for the benefit of itself and the Secured Parties, a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Administrative Agent shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Obligations have been fully and finally performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 7(d), Guarantor shall pay the same to Administrative Agent, for the benefit of itself and the Secured Parties, immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Administrative Agent, for the benefit of itself and the Secured Parties, and shall have absolutely no dominion over the same except to pay it immediately to Administrative Agent, for the benefit of itself and the Secured Parties; and

## (iv) Guarantor shall promptly upon request of Administrative Agent from time to time execute such documents and perform such acts as Administrative Agent may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 7(d), including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Administrative Agent of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty. Further, Guarantor shall not have any right of recourse against Administrative Agent or any Lender by reason of any action Administrative Agent or any Lender may take or omit to take under the provisions of this Guaranty or under the provisions of any of the Loan Documents.

## Subrogation. Notwithstanding the satisfaction by Guarantor of any liability hereunder, Guarantor shall not have any right of subrogation, contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to the assets or property of Borrower or to any collateral for the Loan, or to participate in any way in the indebtedness of Borrower to Lender, or in any right, title or interest in and to any security or right of recourse for the indebtedness of Borrower to Lender, until all indebtedness of Borrower to Lender, including the Obligations, has been fully and finally paid. In connection with the foregoing, Guarantor expressly waives in favor of Administrative Agent, for the benefit of itself and the Secured Parties, any and all rights of subrogation to Administrative Agent or any Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Administrative Agent or any Lender may have against Borrower and any right to participate in any collateral for the Loan, until the full and final payment of all indebtedness of Borrower to Lender, including the Obligations. This waiver is given to induce each Lender to make the Loan to Borrower as evidenced by the Notes.

## Reservation of Rights. Nothing contained in this Guaranty shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Administrative Agent or any Lender may have against Borrower, Guarantor or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. §9601 et seq.), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

## Disclosure of Information. Guarantor authorizes Administrative Agent to disclose the financial records of Guarantor to each Lender and subsidiary or affiliate of Administrative Agent and each Lender, any of their respective subsidiaries or affiliates, or to any advisory firm engaged, by Administrative Agent or any Lender. Administrative Agent and each Lender may disclose any Guarantor financial information to any regulatory body having jurisdiction over Administrative Agent or such Lender, to any agent or attorney of Administrative Agent or such Lender, to any actual or prospective purchaser, transferee, assignee or participant of all or any portion of Administrative Agent’s or such Lender’s rights with respect to the Loan, and in such other circumstances and to such other parties as necessary or appropriate in Administrative Agent’s or such Lender’s reasonable judgment.

## Rights Cumulative; Payments. Administrative Agent’s and each Lender’s rights under this Guaranty shall be in addition to all rights of Administrative Agent and each Lender under the Loan Agreement, the Notes, the Security Instrument and the other Loan Documents. Further, payments made by Guarantor under this Guaranty shall not reduce in any respect Borrower’s obligations and liabilities under the Loan Agreement, the Notes, the Security Instrument and the other Loan Documents.

## No Limitation on Liability. Guarantor hereby consents and agrees that Administrative Agent may at any time and from time to time without further consent from Guarantor do, permit or cause any of the following events, and the liability of Guarantor under this Guaranty shall be unconditional and absolute and shall in no way be impaired or limited by the occurrence of any of the following events, whether occurring with or without notice to Guarantor or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension or renewal of the Notes; (ii) any sale, assignment or foreclosure of the Loan (or any portion thereof), the Loan Agreement, the Notes, the Security Instrument or any of the other Loan Documents or any sale or transfer of the Property; (iii) any change in the composition of Borrower, including, without limitation, the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Guarantor herein or by Borrower in any of the Loan Documents; (v) the release of Borrower or of any other person or entity from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Administrative Agent’s or any Lender’s voluntary act or otherwise; (vi) the release or substitution in whole or in part of any security for the Loan; (vii) Administrative Agent’s failure to record the Security Instrument or to file any financing statement (or Administrative Agent’s improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan; (viii) the modification of the terms of any one or more of the Loan Documents; or (ix) the taking or failure to take any action of any type whatsoever. No such action which Administrative Agent or any Lender shall take or fail to take in connection with the Loan Documents or any collateral for the Loan, nor any course of dealing with Borrower or any other person, shall limit, impair or release Guarantor’s obligations hereunder, affect this Guaranty in any way or afford Guarantor any recourse against Administrative Agent or any Lender. Nothing contained in this Section shall be construed to require Administrative Agent or any Lender to take or refrain from taking any action referred to herein.

## Entire Guaranty; Amendment; Severability. This Guaranty contains the entire agreement between Guarantor, Administrative Agent and the Lenders, respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Guaranty to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

## Governing Law; Binding Effect; Waiver of Acceptance. The construction, validity and performance of this Guaranty and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of \_\_\_\_\_\_\_\_ applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and any applicable law of the United States of America. To the fullest extent permitted by law, Guarantor hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Guaranty. This Guaranty shall bind Guarantor and the respective heirs, personal representatives, successors and assigns of Guarantor and shall inure to the benefit of Administrative Agent, for itself and Lenders, and the officers, directors, shareholders, agents and employees of Administrative Agent and Lenders and their respective heirs, successors and assigns. Notwithstanding the foregoing, Guarantor shall not assign any of its rights or obligations under this Guaranty. Guarantor hereby waives any acceptance of this Guaranty by Administrative Agent and each Lender, and this Guaranty shall immediately be binding upon Guarantor.

## Notices. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed in the manner set forth in the Loan Agreement, addressed to Borrower and Administrative Agent as provided in the Loan Agreement, and addressed to Guarantor at the address set forth opposite Guarantor’s name below, or at any other address specified in a notice given by such party to the other parties not less than ten (10) days prior to the effective date of the address change. This section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

## No Waiver; Time of Essence. The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Guaranty is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof.

## Captions for Convenience. The captions and headings of the sections and paragraphs of this Guaranty are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

## Attorneys’ Fees. In the event it is necessary for Administrative Agent or any Lender to retain the services of an attorney or any other consultants in order to enforce this Guaranty, or any portion thereof, Guarantor agrees to pay to Administrative Agent and any such Lender any and all costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred by Administrative Agent or any such Lender as a result thereof and such costs, fees and expenses shall be included in Costs.

## Successive Actions. A separate right of action hereunder shall arise each time Administrative Agent acquires knowledge of any matter indemnified or guaranteed by Guarantor under this Guaranty. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Guarantor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

## Reliance. Lenders would not make the Loan to Borrower without this Guaranty. Accordingly, Guarantor intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

## Submission to Jurisdiction; WAIVER OF JURY TRIAL.

### Guarantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the nonexclusive jurisdiction of any state or federal court in the County of \_\_\_\_\_\_ in the State of \_\_\_\_\_\_, and waives personal service of any and all process upon Guarantor and agrees that all such service of process may be made by certified or registered mail directed to Guarantor at the address set forth on the signature page hereof, but service so made shall be deemed to be completed only upon actual receipt thereof. Guarantor waives any objection to jurisdiction and venue of any action instituted against Guarantor as provided herein and agrees not to assert any defense based on lack of jurisdiction or venue. Guarantor acknowledges and agrees that the venues provided above are the most convenient forum for Administrative Agent, the Lenders, Borrower and Guarantor. Nothing contained herein shall prevent Administrative Agent from bringing any action, enforcing any award or judgment or exercising any rights against any party individually, against any security or against any property of any party within any other county, state or other foreign or domestic jurisdiction.

### ADMINISTRATIVE AGENT, LENDERS AND GUARANTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTY OR ANY CONDUCT, ACT OR OMISSION OF ADMINISTRATIVE AGENT OR GUARANTOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ADMINISTRATIVE AGENT OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

## Waiver by Guarantor. Guarantor covenants and agrees that, upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Guarantor shall not seek or cause Borrower or any other person or entity to seek a supplemental stay or other relief, whether injunctive or otherwise, pursuant to 11 U.S.C. § 105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law, (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Administrative Agent to enforce any rights of Administrative Agent and the other Lenders against Guarantor or the collateral for the Loan by virtue of this Guaranty or otherwise.

## No Petition. Guarantor hereby covenants and agrees that it will not at any time institute against Borrower, or join in any institution against Borrower of, any bankruptcy proceedings under any United States federal or state bankruptcy or similar law.

## Joint and Several Liability. Notwithstanding anything to the contrary contained herein, if there is more than one signatory to this Guaranty, the representations, warranties, covenants and agreements made by Guarantor herein, and the liability of Guarantor hereunder, are and shall be joint and several.

## Counterparts. This Guaranty may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages. It shall not be necessary in making proof of this Guaranty to produce or account for more than one such counterpart for each of the parties hereto. Delivery by facsimile or electronic transmission by any of the parties hereto of an executed counterpart of this Guaranty shall be as effective as an original executed counterpart hereof and shall be deemed a representation that an original executed counterpart hereof will be delivered. Each counterpart hereof shall be deemed to be an original and shall be binding upon all parties, their successors and assigns.

## Interpretation. The term “Lender” shall be deemed to include any subsequent holder(s) of any Note or any portion thereof or interest therein. The term “Administrative Agent” shall be deemed to include Administrative Agent and its successors and assigns under the Loan Agreement and the other Loan Documents. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other genders. Captions and headings in this Guaranty are for convenience only and shall not affect the construction of this Guaranty. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms “herein”, “hereof” “hereto”, “hereunder” and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms “include” and “including” shall be interpreted as if followed by the words “without limitation”. All references in this Guaranty to sums denominated in dollars or with the symbol “$” refer to the lawful currency of the United States of America, unless such reference specifically identified another currency. The Loan Documents are for the sole benefit of Administrative Agent, for the benefit of itself and the Secured Parties, and Borrower and are not for the benefit of any third party except as expressly provided herein.

## **[Marital and Residency Status.** Guarantor represents and warrants that he is (i) an unmarried individual, (ii) a married individual and neither he nor his spouse resides in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin and Puerto Rico) or (iii) a married individual and he and/or his spouse resides in a community property state (as listed in clause (ii) immediately above); provided that, if clause (iii) of this Section 7(x) is now or hereafter applicable to Guarantor, Guarantor shall deliver an executed Spousal Consent and Waiver from his spouse in the form attached hereto as Exhibit A.][[2]](#footnote-2)

THIS GUARANTY REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

**[Add State specific protections, including any necessary modification of the spousal consent language above]**

[Signatures Appear on Following Page]

 IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty Agreement under seal as of the day and year first written above.

 **GUARANTOR:**

**Note to drafter: include jurisdiction-appropriate notary block, unless (1) a Truist representative will witness execution of the guaranty, or (2) borrower’s counsel’s legal opinion expressly covers execution (i.e., without a carveout for genuineness of signatures).**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_\_\_\_)

 ) to-wit:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_\_\_\_)

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_

Registration Number”\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Affix Notarial Seal]

Address for notices:

With a copy to:

 ***[SIGNATURE PAGE TO GUARANTY AGREEMENT]***

**[EXHIBIT A]**

**SPOUSAL CONSENT AND WAIVER**

The undersigned, who is the spouse of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“**Guarantor**”), hereby acknowledges and consents to the foregoing Guaranty (“**Guaranty**”) and acknowledges and agrees that Administrative Agent and the Lenders may look to the assets of Guarantor to satisfy the claims of Administrative Agent and the Lenders against Guarantor under the Guaranty, which assets shall include all community property in which the undersigned may otherwise have an interest. The undersigned further waives and releases any and all right, title and interest, by virtue of his/her marital status or community property rights or otherwise, that he/she may have in the assets of Guarantor, including such community property in which the undersigned may otherwise have an interest, and further acknowledges and agrees that Administrative Agent’s and the Lenders’ claims against Guarantor under the Guaranty are, in all events, first and prior to any interest that the undersigned otherwise would have had in the assets of Guarantor in the absence of this Spousal Consent and Waiver.

The undersigned hereby affirms that he/she has read and understands the contents of the foregoing Guaranty given by his/her spouse. The undersigned acknowledges and further affirms that he/she was duly advised to seek the advice of independent counsel as to this Spousal Consent and Waiver and that the former had sufficient opportunity and time in which to obtain such advice.

IN WITNESS WHEREOF, the undersigned has executed this Spousal Consent and Waiver as of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], 20[\_\_].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name:

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_\_\_\_\_\_\_ )

 ) SS

COUNTY OF \_\_\_\_\_\_\_\_\_ )

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (insert name of individual signing document).

|  |  |
| --- | --- |
| Date:  |  *Official Signature of notary* |
|  |  |
|  |  Notary's printed or typed name, Notary Public |

RIDER TO GUARANTY AGREEMENT DATED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, 20\_\_\_

CONDITIONS FOR REDUCTION OF GUARANTOR’S LIABILITY FOR PRINCIPAL UNDER THE LOAN UNDER SECTION 1(A) (GUARANTY OF PAYMENT)

1. Notwithstanding the language of Section 1(a) of this Guaranty, Guarantor’s obligations under Section 1(a) of this Guaranty with respect to the repayment of principal of the Loan shall not at any time exceed the applicable Principal Obligation Amount. The applicable Principal Obligation Amount shall be reduced as provided in this Rider. Administrative Agent will determine whether the conditions for reduction of the Principal Obligation Amount have been satisfied or not, in each instance reasonably promptly upon Guarantor’s written request and at Guarantor’s sole cost and expense, but not more often than once per calendar quarter. Administrative Agent will provide such determination in writing in each instance. Such determination by Administrative Agent shall be conclusive and binding in the absence of manifest error. No such reduction of the Principal Obligation Amount shall be effective unless and until the First Reduction Conditions or Second Reduction Conditions, as applicable shall have been satisfied and Administrative Agent shall have given written confirmation of such reduction to Guarantor.

Notwithstanding the foregoing and regardless of whether the First Reduction Conditions or Second Reduction Conditions are met, Guarantor shall at all times remain liable for all other Obligations, including, without limitation, (i) the punctual payment of all interest which Borrower is obligated to pay, pursuant to any of the Loan Documents, including any interest accruing at any specified default or past due rate, whether accruing before or after maturity or default, and also including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding, and (ii) the punctual payment of all interest, prepayment premiums, fees, late charges, costs, expenses and indemnification indebtedness and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of any Hedging Transaction, as the same may from time to time be amended, supplemented, restated or otherwise modified which may now or hereafter be due or owing, until the Obligations are paid and satisfied in full. No obligations of Guarantor under this Guaranty shall be limited in any manner except as specifically provided in this Rider. For avoidance of doubt, the reduction of the Principal Obligation Amount as provided in this Rider shall not apply to the obligations of Guarantor under Sections 1(b) or 1(c) of this Guaranty.

1. The “First Reduction Conditions” shall be satisfied upon compliance with the following conditions in a manner acceptable to Administrative Agent acting in good faith:
	1. There is no Default (as defined in the Loan Agreement) or Event of Default (as defined in the Loan Agreement) existing on the Determination Date;
	2. There has been no material adverse change in the financial condition of Borrower, Guarantor or the Property;
	3. Administrative Agent shall have received evidence that the Property shall have achieved [Debt Yield/DSC/LTV – fact specific] ;

(d) **[Borrower has received all necessary governmental licenses, certificates and permits (including all certificates of occupancy) with respect to completion, use, occupancy and operation of Improvements, together with evidence satisfactory to Administrative Agent that all such licenses, certificates and permits are in full force and effect and have not been revoked, canceled or modified and all conditions to final advance in Loan Agreement have been satisfied or waived by Administrative Agent];** and

**(e)** [**Borrower has established all accounts required by [Section 5.18(a)] of the Loan Agreement and has executed and delivered to Administrative Agent the Collections Account Agreement as required by the terms of the Loan Agreement] *include for construction loans that have a cash management feature***

1. The “Second Reduction Conditions” shall be satisfied upon compliance with the following conditions in a manner acceptable to Administrative Agent acting in good faith:
	1. There is no Default (as defined in the Loan Agreement) or Event of Default (as defined in the Loan Agreement) existing on the Determination Date;
	2. There has been no material adverse change in the financial condition of Borrower, Guarantor or the Property; and
	3. Administrative Agent shall have received evidence that the Property shall have achieved [Debt Yield/DSC/LTV – fact specific].
2. The “Principal Obligation Amount” is hereby defined to mean:
	1. At any time during the period before the First Reduction Conditions have been satisfied, the maximum principal amount of the Loan;
	2. At any time during the period after the First Reduction Conditions have been satisfied and before the Second Reduction Conditions have been satisfied, a principal amount of the Loan equal to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_)[could state by reference to percentage but fixed amount is strongly preferred: \_\_\_\_\_\_\_\_\_\_ (\_\_\_%)of the Outstanding Principal Balance of the Loan, together with all of the Interest, Fees and Costs]; and
	3. At any time during the period after the Second Reduction Conditions have been satisfied, a principal amount of the Loan equal to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_)($\_\_\_\_\_\_\_\_\_)[could state by reference to percentage but fixed amount is strongly preferred: \_\_\_\_\_\_\_\_\_\_ (\_\_\_%)of the Outstanding Principal Balance of the Loan, together with all of the Interest, Fees and Costs].
3. Any capitalized term used and not defined in this Rider shall have the meaning given to such term in the Loan Agreement. In addition, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

“Debt Yield” means (i) Net Operating Income, divided by (ii) the outstanding principal balance of the Loan as of the Determination Date.

“Determination Date” means any date as of which Administrative Agent makes a determination regarding Borrower’s satisfaction or failure to satisfy the requirements of the First Reduction Conditions or the Second Reduction Conditions, respectively.

[“Net Operating Income” shall mean for any period (i) annualized revenue from existing Tenants pursuant to Approved Leases that are in occupancy of their demised premises or Approved Leases if the Tenants have not yet occupied their demised premises or are in a free rent period (excluding, non-recurring income, revenue from month-to-month Leases and revenue from Approved Leases (a) expiring by their terms within six (6) months, and (b) for which the Tenant is in monetary default under such Lease and the applicable cure or grace period has expired or is in bankruptcy), together with parking revenues, less (ii) the greater of (a) operating expenses based on the most recent twelve (12) month period adjusted to reflect insurance premiums based on insurance coverage required by Administrative Agent and projected property taxes for the upcoming tax period or (b) annualized operating expenses of $\_\_\_\_\_\_\_\_\_\_.  For covenant and underwriting purposes, (i) calculation of operating expenses shall include (a) an assumed management fee equal to the greater of (1) [three percent (3.0%)] of Borrower’s effective gross income, or (2) the actual management fee payable under the approved property management agreement, and (b) structural reserves at $0.\_\_\_ per net rentable square feet, and (ii) the calculation of annualized revenues shall include an assumed vacancy rate equal to the greater of (a) [ten (10%) percent], or (b) the actual vacancy rate of the Property.  The calculation of operating expenses shall exclude depreciation, amortization, income taxes, debt service and partnership expenses. *[office / retail definition]*

*or*

 “Net Operating Income” shall mean for any period (a) annualized gross revenue from the Property, including, but not limited to, rents, reimbursements and other charges paid on a cash basis from existing Tenants pursuant to Leases then in existence (based on the most recent [three] calendar month period), less (b) annualized operating expenses (based on the most recent [three] calendar month period adjusted to reflect projected property taxes for the upcoming tax period). For covenant and underwriting purposes, (i) calculation of operating expenses shall include (a) an assumed management fee equal to the greater of (1) [3%] of gross revenues from the Property, or (2) the actual management fee payable under the approved Property Management Agreement, and (b) annual replacement reserves in the amount equal to $\_\_\_\_ multiplied by the number of units constructed on the Property, and (ii) the calculation of annualized revenues shall include an assumed vacancy rate equal to the greater of (a) \_\_\_\_\_ (\_\_%) percent, (b) market vacancy rate as determined by the appraisal, or (c) the actual vacancy rate of the Property. The calculation of operating expenses shall exclude depreciation, amortization, income taxes, debt service and partnership expenses. *[multifamily definition]]*

## Notwithstanding the foregoing, the reduction of Guarantor’s obligation under this Agreement, if any, pursuant to the terms of this Rider shall not impair or reduce Guarantor’s obligations under any of the other Loan Documents, including but not limited to, the Environmental Indemnification Agreement.

1. **Insert for North Carolina-governed documents: Guarantor hereby specifically waives the benefits of N.C.G.S. Section 26-7, et. seq. to the extent applicable.**

**Insert for Georgia-governed documents the following parenthetical: (including without limitation, the provisions of Section 10-7-24 of the Official Code of Georgia Annotated).** [↑](#footnote-ref-1)
2. Spousal consent language if Guarantor is an individual. [↑](#footnote-ref-2)