**NOTE TO DRAFTER:**

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

**(2) jurisdiction-specific provisions may need to be added**

**Term SOFR**

**Last Revised August 25, 2022**

**[CRE]**

**Construction LOAN AGREEMENT**

dated as of [to be supplied]

among

**[NAME OF BORROWER]**

as Borrower

**THE LENDERS FROM TIME TO TIME PARTY HERETO**

**and**

**TRUIST BANK**

as Administrative Agent

**[and**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Letter of Credit Issuer]**

**TRUIST SECURITIES, INC.**

as Lead Arranger and Book Runner

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**IMPORTANT NOTICE**

**THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE. [Virginia loans only – also add to Notes]**

**CONSTRUCTION LOAN AGREEMENT**

THIS CONSTRUCTION LOAN AGREEMENT (this “**Agreement**”), made as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a corporation/general partnership/limited partnership/ limited liability company organized and existing under the laws of the State/Commonwealth of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), each lender from time to time party hereto (collectively, “**Lenders**” and individually, a “**Lender**”), and TRUIST BANK, a North Carolina banking corporation, in its capacity as both collateral agent and administrative agent for each of the Lenders (together with its successors and assigns in such capacity, “**Administrative Agent**”) **[and [TRUIST BANK, a North Carolina banking corporation], in its capacity as issuing bank (“Issuing Bank”)].[[2]](#footnote-3)**

RECITALS

1. Borrower has acquired the fee simple/leasehold interest in certain real estate situate in \_\_\_\_\_\_\_\_\_\_\_\_ County/City, \_\_\_\_\_\_\_\_\_\_\_\_ (the “**Land**”), and more fully described in the Security Instrument (as hereinafter defined).
2. Borrower proposes to construct certain improvements on the Land consisting of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Improvements**”) in accordance with the Plans and Specifications (as hereinafter defined).
3. Borrower has applied to the Lenders for a loan (the “**Loan**”) in the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_) to be evidenced by the Notes (as hereinafter defined) to finance the construction of the Improvements.

**[D. Borrower has also applied to the Lenders for a letter of credit facility in the maximum amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_) to be used to facilitate construction of the Improvements.]**

1. Borrower’s obligations hereunder and under the Notes are secured by, among other things, a **[Credit Line] [Deed of Trust] [Deed to Secure Debt] [Mortgage]**, Assignment, Security Agreement and Fixture Filing of even date herewith (as the same may be modified, amended and restated or supplemented from time to time, the “**Security Instrument**”) from Borrower [**to the trustee named therein** ]in favor of Administrative Agent, for the benefit of Administrative Agent and the other Secured Parties, covering Borrower’s interest in the Land and the Improvements and such other real and personal property as therein more particularly set forth (collectively, the “**Property**”).
2. The Lenders have severally agreed to make the Loan upon the terms and conditions set forth herein and in the other Loan Documents (as hereinafter defined).

**NOW, THEREFORE**, and in consideration of these presents, and in further consideration of the mutual covenants and agreements herein set forth and of the sum of Ten Dollars ($10.00) lawful money of the United States of America by each of the parties to the other paid, receipt of which is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

# DEFINITIONS; CONSTRUCTION

## **Definitions**

. In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):

**[“Accounts” shall have the meaning set forth in Section 5.18.]**

[“**Adjusted Term SOFR**” shall mean, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.][[3]](#footnote-4)

“**Administrative Agent**” shall have the meaning set forth in the introductory paragraph hereof.

“**Administrative Questionnaire**” shall mean, with respect to each Lender, an administrative questionnaire in the form provided by Administrative Agent and submitted to Administrative Agent duly completed by such Lender.

“**Affected Financial Institution**” shall mean (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affiliate**” shall mean, as to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

“**Agent Parties**” shall have the meaning set forth in Section 9.1 (c).

“**Agreement**” shall have the meaning assigned to such term in the introductory paragraph hereof.

“**Anti-Corruption Laws**” shall mean all laws, rules, and regulations of any jurisdiction applicable to the Loan Parties or any of their Subsidiaries from time to time concerning or relating to bribery or corruption.

“**Applicable Law**”shall mean all laws, statutes, codes, ordinances, rules, rulings, orders, judgments, decrees, injunctions, arbitral decisions, regulations, authorizations, determinations, directives and any other requirements and/or provisions (including building codes and zoning regulations and ordinances) of all Governmental Authorities, whether now or hereafter in force, which may be or become applicable to Borrower (or Administrative Agent or any Lender, as applicable), the relationship of lender and borrower, the Property, any of the Loan Documents, or any part of any of them (whether or not the same may be valid), and all requirements, obligations and conditions of all instruments of record applicable to the Property on the date hereof.

“**Applicable Lending Office**” shall mean, for each Lender, the “Lending Office” of such Lender (or an Affiliate of such Lender) designated in the Administrative Questionnaire submitted by such Lender or such other office of such Lender (or such Affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which its loans are to be made and maintained.

“**Applicable Interest Rate**” shall have the meaning set forth in Section 2.4.

“**Applicable Margin**”shall mean \_\_\_% per annum.

“**Appraisal**” shall have the meaning set forth in Section 3.2.

“**Approved Fund**” shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial real estate loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Approved Lease**” shall mean (i) all Leases in existence as of the Closing Date, (ii) all Leases approved by Administrative Agent pursuant to Exhibit 5.11 and (iii) all Leases that do not require approval by Administrative Agent because they satisfy the requirements set forth in Exhibit 5.11.

“**Architect**” shall mean the architect named in the Architect’s Contract, if any, or any such other architect as may be expressly consented to or approved by Administrative Agent in writing prior to Borrower’s engagement of such other architect.

“**Architect’s Contract**” shall mean the architect’s agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between Borrower, as owner, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as architect, or any contract for architectural services relating to the development of the Land and/or the construction of the Improvements made by Borrower and an architect and approved in writing by Administrative Agent, as the same may be amended from time to time with the prior written approval of Administrative Agent.

“**Arranger**” shall mean Truist Securities, Inc., in its capacity as lead arranger and bookrunner.

“**Assignment and Acceptance**” shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4(b)) and accepted by Administrative Agent, in the form of Exhibit A attached hereto or any other form approved by Administrative Agent.

“**Assignment of Contracts**” shall mean the Assignment of Contracts, Plans and Permits executed by Borrower in favor of Administrative Agent for the benefit of itself and the Secured Parties, as the same may be modified, amended, amended and restated or supplemented from time to time.

“**Assignment of Leases and Rents**” shall mean the Assignment of Leases and Rents executed by Borrower in favor of Administrative Agent for the benefit of itself and the Secured Parties, and pertaining to Leases of space at the Property, as the same may be modified, amended, amended and restated or supplemented from time to time.

“**Authorized Representative**” shall have the meaning set forth in Section 3.1(b).

“**Authorized Representative Change Notice**” shall have the meaning set forth in Section 3.1(b).

“**Available Tenor**” shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.7(e).

“**Bail-In Action**” shall mean the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” shall mean, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bank Product Obligations**” shall mean, collectively, all obligations and other liabilities of Borrower to Administrative Agent or any Affiliate of Administrative Agent in respect of any of the following services provided to Borrower by Administrative Agent or any Affiliate of Administrative Agent: (a) any treasury or other cash management services, including deposit accounts, automated clearing house (ACH) origination and other funds transfer, depository (including cash vault and check deposit), zero balance accounts and sweeps, return items processing, controlled disbursement accounts, positive pay, lockboxes and lockbox accounts, account reconciliation and information reporting, payables outsourcing, payroll processing, trade finance services, investment accounts and securities accounts, and (b) card services, including credit card (including purchasing card and commercial card), prepaid cards, including payroll, stored value and gift cards, merchant services processing, and debit card services.

“**Base Rate**” shall mean the higher of (i) the per annum rate which Administrative Agent publicly announces from time to time to be its prime lending rate, as in effect from time to time, plus \_\_\_\_\_\_\_% per annum **[Note: insert rate to approximate current loan rate (Term SOFR plus Applicable Margin), but not less than zero]**, or (ii) the Federal Funds Rate, as in effect from time to time, *plus* one-half of one percent (0.50%) per annum (any changes in such rates to be effective as of the date of any change in such rate). Administrative Agent’s prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to customers. Administrative Agent may make commercial loans or other loans at rates of interest at, above or below Administrative Agent’s prime lending rate.”

“**Benchmark**” shall mean, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.7(b).

“**Benchmark Replacement**” shall mean, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by Administrative Agent for the applicable Benchmark Replacement Date:

### the sum of (i) Daily Simple SOFR and (ii)0.11448% (11.448 basis points) and

### the sum of: (i) the alternate benchmark rate that has been selected by Administrative Agent and Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” shall mean, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“**Benchmark Replacement Date**” shall mean a date and time determined by Administrative Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” shall mean the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” shall mean, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.7 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.7.

“**Beneficial Owner**” shall mean, with respect to any amount paid hereunder or under any other Loan Document, the Person that is the beneficial owner, for U.S. federal income tax purposes, of such payment.

“**Beneficial Ownership Certification**” shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” shall mean 31 C.F.R. § 1010.230.

“**Benefit Plan**” shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**Borrower**” shall have the meaning in the introductory paragraph hereof.

“**Borrowing**” shall mean any borrowing under the Loan.

“**Budget**” shall mean the budget attached hereto as Exhibit B, as may be amended from time to time with the consent of Administrative Agent in its sole discretion.

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which commercial banks in Charlotte, North Carolina are authorized or required by law to close.

“**Broker**” shall have the meaning set forth in Section 4.20.

“**Capital Lease Obligations**” of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease (or other arrangement conveying the right to use) of real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**[“Cash Collateralize” shall mean, in respect of any Obligations, to provide and pledge (as a first priority perfected security interest) cash collateral for such Obligations in Dollars, with the Issuing Bank, and pursuant to documentation in form and substance, reasonably satisfactory to the Issuing Bank (and “Cash Collateralization” has a corresponding meaning).]**

**[**“**Cash Flow Sweep Cure**” **shall mean\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]**

**[**“**Cash Flow Sweep Event**” **shall mean\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]**

**[**“**Cash Management Agreement**” **shall mean that certain Cash Management Agreement dated as of the Closing Date, by and among Borrower, Property Manager, Administrative Agent and Truist Bank, in its capacity as depository bank.]**

“**Change in Law**” shall mean (i) the adoption of any Applicable Law after the date of this Agreement, (ii) any change in any Applicable Law, or any change in the interpretation, implementation or application thereof, by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Lender (or its Applicable Lending Office), or by such Lender’s parent corporation, if applicable, with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that for purposes of this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Change of Control**” shall mean the occurrence of any of the following events: (i) failure of \_\_\_\_\_\_\_ to own, directly or indirectly, at least \_\_\_\_\_\_\_ percent (\_\_\_%)[[4]](#footnote-5) of the voting interests and beneficial membership or partnership interests in Borrower, or (ii) failure of \_\_\_\_\_\_ to control the management, and day to day responsibilities, of Borrower; ***or [(ii) a change in the day to day control and management of Borrower or Borrower’s managing member, manager or general partner, as the case may be.*] [*revise definition specific to deal]***

“**Charges**” shall have the meaning set forth in Section 5.6.

“**Close-Out Conditions**” shall have the meaning set forth in Section 3.4.

“**Closing Date**” shall mean the date on which the conditions precedent set forth in Section 3.2 and Section 3.3 have been satisfied or waived in accordance with Section 9.2.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time.

“**Collateral**” shall mean the Property, all personalty located at the Property, and all other property of Borrower that purports to be the subject of a Lien to Administrative Agent (for the benefit of itself and the Secured Parties) to secure the whole or any part of the Obligations, and shall include, without limitation, all casualty insurance proceeds and condemnation awards with respect to the foregoing.

“**Collateral Assignment of Hedge**” shall mean a collateral assignment of a Hedging Transaction in form and substance mutually satisfactory to Borrower and Administrative Agent.

**[“Collections Account” shall have the meaning set forth in Section 5.18(a).]**

**[“Collections Account Agreement” shall mean that certain Deposit Account Control Agreement (CRE Cash Management) to be entered into among Borrower, Administrative Agent and Truist Bank, in its capacity as depository bank, relating to the Collections Account, as set forth in Section 5.18(a).]**

“**Commencement Date**” shall mean the date that is **[thirty (30)]** days following the date hereof.

“**Commitment**” shall mean, with respect to each Lender, such Lender’s obligation to make disbursements of the Loan pursuant to this Agreement, in an amount up to, but not exceeding the amount set forth for such Lender on Schedule 1 attached hereto as such Lender’s “Commitment Amount” or as set forth in the applicable Assignment and Assumption Agreement, as the same may be increased or reduced from time to time pursuant to the terms of this Agreement or as appropriate to reflect any assignments to or by such Lender effected in accordance with Section 9.4.

“**Commodity Exchange Act**” shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended and in effect from time to time, and any successor statute.

“**Communications**” shall have the meaning set forth in Section 9.1(c).

“**Completion Date**” shall mean the date that is \_\_\_\_\_\_\_\_\_\_\_\_ (\_\_) months from the **[date hereof][Commencement Date]**,as such date may be extended as the result of Force Majeure by a period not to exceed sixty (60) days, but regardless of the existence or occurrence of Force Majeure, in no event later than [**either (a)**] the Maturity Date [**or (b) the date required for such completion of construction under the \_\_\_\_\_\_\_\_\_\_\_ Permanent Loan Commitment; purchase and sale agreement; major lease(s); etc.]**.

**[“Compliance Certificate” shall mean a certificate executed on behalf of Borrower by a Responsible Officer in the form of, and containing the certifications set forth in, the certificate attached hereto as Exhibit E.]**

“**Conforming Changes**” shall mean, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.7 and other technical, administrative or operational matters) that Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Construction Contract**” shall mean the general contractor’s agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_ by and between Borrower, as owner, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as general contractor, or any contract for the development of the Land and/or the construction of the Improvements made by Borrower and a general contractor and approved in writing by Administrative Agent.

“**Construction Management Contract**” shall mean the Construction Manager’s agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between Borrower, as owner, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Construction Manager, or any contract made for management services associated with the development of the Land and/or the construction of the Improvements made by Borrower and a Construction Manager and approved in writing by Administrative Agent.

“**Construction Manager**” shall mean the construction manager named in the Construction Management Contract, if any, or any such other construction manager as may be expressly consented to or approved by Administrative Agent in writing prior to Borrower’s engagement of such other construction manager.

“**Control**” shall mean the possession of the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power, by control or otherwise. The terms “**Controlling**”, “**Controlled by**”, and “**under common Control with**” have meanings correlative thereto.

“**Corresponding Tenor**”, with respect to any Available Tenor, shall mean, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Daily Simple SOFR**” shall mean, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if Administrative Agent decides that any such convention is not administratively feasible for Administrative Agent, then Administrative Agent may establish another convention in its reasonable discretion.

[**“Debt Service” shall mean, for any period of measurement hereunder, the sum of all principal and interest payments that would be due and payable over such period of calculation with respect to the Loan, assuming amortization of the outstanding principal balance of the Loan plus any amounts remaining that may be advanced under the Loan over a [\_\_\_\_\_\_ (\_\_\_)] year period (regardless of whether such payment is required during such period under the Loan Documents) with a per annum interest rate equal to the greatest of (i) [\_\_\_\_] basis points above the ask yield of the 10 Year United States Treasury note as of the close of business on the Business Day preceding the date of calculation, as announced on Bloomberg.com or another reliable source reasonably selected by Administrative Agent, (ii) [\_\_\_\_\_\_\_ percent (\_\_\_\_\_%)], or (iii) the actual interest rate on the Loan in effect at the date of such calculation.**]

**[“Debt Service Coverage Ratio” shall mean for such period of computation, the Net Operating Income for that period, divided by Debt Service for such period.]**

“**Debt Yield**” shall mean, as of any date of determination, the ratio, expressed as a percentage, between the Net Operating Income for the twelve (12) month period preceding the date of calculation and [**the average outstanding principal balance of the Loan for such twelve (12) month period][ the outstanding principal balance of the Loan as of the date of determination**].

“**Debtor Relief Laws**”shall mean the United States Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“**Default**” shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“**Default Interest**” shall have the meaning set forth in Section 2.4(b).

“**Default Rate**” shall mean the lesser of (a) the interest rate otherwise applicable to the Loan hereunder plus an additional 4% per annum, or (b) the highest rate of interest that lenders may contract for, charge or receive from borrowers under Applicable Law for the use, forbearance or detention of money.

“**Defaulting Lender**”shall mean, subject to any provisions hereof permitting a Defaulting Lender to cure, any Lender that (a) has failed to (i) fund all or any portion of its advances required hereunder within two (2) Business Days of the date such advances were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to advances (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, **[Issuing Bank**], or any other Lender any other amount required to be paid by it hereunder [(including in respect of its participation in Letters of Credit)] within two (2) Business Days of the date when due, (b) has notified Borrower, Administrative Agent or **[Issuing Bank]** in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund an advance hereunder and states that such position is based on such Lender’s determination that a condition precedent to advances (which condition precedent together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this Subsection (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow, or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of Subsections (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to any provisions hereof permitting a Defaulting Lender to cure) as of the date established therefor by Administrative Agent in a written notice of such determination, which shall be delivered by Administrative Agent to Borrower, **[Issuing Bank]**, and each Lender promptly following such determination.

“**Distribution**” shall have the meaning set forth in Section 7.8(a).

“**Dollar(s)**” and the sign “**$**” shall mean lawful money of the United States of America.

“**Draw Request**” shall mean a properly completed and executed written application by Borrower to Administrative Agent in the form of Exhibit C attached hereto (or another form satisfactory to Administrative Agent) setting forth the amount of the Equity Deposit to be funded and/or Loan proceeds desired, and approved by the Inspector.

 “**EEA Financial Institution**” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

 “**EEA Member Country**” shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

 “**EEA Resolution Authority**” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Engineer**” shall mean the engineer named in the Engineer’s Contract, or any such other engineer as may be expressly consented to or approved by Administrative Agent in writing prior to Borrower’s engagement of such other engineer.

“**Engineer’s Contract**” shall mean that certain **[describe agreement**].

“**Environmental Indemnification Agreement**” shall mean that certain Environmental Indemnification Agreement dated as of the Closing Date, by Borrower and **[Guarantor/all guarantors of the Loan]** in favor of Administrative Agent for the benefit of itself and the Secured Parties, as the same may be modified, amended, amended and restated or supplemented from time to time.

“**Environmental Laws**” shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority and all common laws, relating in any way to human health, the environment, health and safety, preservation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

“**Environmental Liability**” shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of Borrower directly or indirectly resulting from or based upon (i) any actual or alleged non-compliance with any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) any actual or alleged exposure to any Hazardous Materials, (iv) the Release or threatened Release of any Hazardous Materials or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Equity Deposit**” shall have the meaning provided in Section 2.2(d).

“**Equity Maintenance Requirement**” shall mean the requirement that Borrower maintain a minimum capital contribution invested in the Project of at least:  (i) \_\_\_\_\_\_\_\_\_\_\_\_\_ (which amount is equal to 15% of the Property’s appraised, “as completed” value, as determined by Administrative Agent)[[5]](#footnote-6), plus (ii) any additional capital required pursuant to Section 2.2(d)(ii) hereof,  such that the Loan will not constitute an “*HVCRE ADC loan*” pursuant to Section 51 of The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).  For purposes of this definition, “capital” shall mean cash, unencumbered readily marketable assets, paid development expenses out-of-pocket, or contributed real property or improvements.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute.

“**ERISA Affiliate**” shall mean any trade or business (whether or not incorporated), which, together with Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for the purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**”shall mean (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by Borrower or any ERISA Affiliate from the PBGC or a plan administrator appointed by the PBGC of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“**Erroneous** **Payment**” has the meaning assigned to it in Section 10.18(a).

“**Erroneous** **Payment Notice**” has the meaning assigned to it in Section 10.18(a).

**[“Escrow Fund” shall have the meaning provided in Section 5.21(a).]**

“**EU Bail-In Legislation Schedule**” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Event of Default**” shall mean any of the events specified in Section 8.1.

“**Excluded Swap Obligation**” shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the Guarantee or security interest of such Guarantor becomes effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“**Excluded Taxes**” shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loan or its Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under Section 2.14) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.11, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.11 and (d) any U.S. federal withholding Taxes imposed under FATCA.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“**Federal Funds Rate**” shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by Administrative Agent. For purposes of this Agreement the Federal Funds Rate shall not be less than zero percent (0%).

“**Fee Letter**” shall mean that certain fee letter, dated as of \_\_\_\_\_\_ executed by Truist Securities, Inc. and Truist Bank and accepted by Borrower.

“**Flood Insurance Laws**” shall mean, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert –Waters Flood Insurance Reform Act of 2012, as now or hereafter in effect or any successor statute thereto, in each case, together with all statutory and regulatory provisions consolidating, amending, replacing, supplementing, implementing or interpreting any of the foregoing, as amended or modified from time to time.

“**Floor**” shall mean a rate of interest equal to [**0.00%**].[[6]](#footnote-7)

“**Force Majeure**” shall mean events occasioned by strikes, lock-outs, war or civil disturbance, natural disaster or acts of God which cause a delay in Borrower’s performance of an obligation; provided, however, [that Force Majeure shall not include any events relating to the COVID-19 virus or to any health emergencies or governmental orders, declarations, restrictions, prohibitions, or limitations relating to or resulting from the COVID-19 virus, it being acknowledged by Borrower that the COVID-19 virus and potential impacts therefrom are foreseeable at the time of entering into this Agreement and have been taken into account in setting the Completion Date and the Budget; and provided, further][[7]](#footnote-8) that Borrower must give written notice to Administrative Agent within ten (10) days after the occurrence of an event which it believes to constitute an event of Force Majeure.

“**Foreign Lender**” shall mean (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes.

“**Foreign Person**”shall mean any Person that is not a U.S. Person.

“**GAAP**” shall mean generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.2.

“**General Contractor**” shall mean the general contractor named in the Construction Contract, who is licensed to conduct business in the state where the Land is located, or such other substitute, replacement or additional general contractor as may be approved by the Required Lenders in writing prior to Borrower’s engagement of such other substitute, replacement or additional contractor.

“**Governmental Authority**” shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Guarantee**” of or by any Person (the “**guarantor**”) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly and including any obligation, direct or indirect, of the guarantor (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued in support of such Indebtedness or obligation; provided, that the term “Guarantee” shall not include endorsements for collection or deposits in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which Guarantee is made or, if not so stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term “Guarantee” used as a verb has a corresponding meaning.

“**Guarantor**”shall mean, individually and collectively, any and all present or future endorsers, guarantors, and sureties of the Obligations or any portion thereof. The initial Guarantor shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_.

“**Guaranty**” shall mean that certain \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated as of the Closing Date, by Guarantor in favor of Administrative Agent for the benefit of itself and the Secured Parties, as the same may be modified, amended, amended and restated or supplemented from time to time.

“**Hazardous Materials**” shall mean all hazardous or toxic substances, materials, mixtures, wastes or other pollutants or contaminants, including without limitation explosive or radioactive substances, petroleum or petroleum distillates, asbestos or asbestos containing materials, lead-based substances, polychlorinated biphenyls, radon gas, mold, mycotoxins and other fungi, infectious or medical wastes and all other substances or wastes of any nature, regulated pursuant to or covered by any Environmental Law.

“**Hedging Obligations**”of any Person shall mean any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedging Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (iii) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

“**Hedging Transaction**”of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any Master Agreement (as defined below) and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any similar agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Hydric Soils**” shall mean any soil type or land use category upon which building or land disturbing activities would be prohibited or special approvals, licenses or permits are required under applicable governmental requirements, including, without limitation, those imposed by the U.S. Army Corps of Engineers.

“**Immaterial Condemnation**” shall have the meaning set forth in Exhibit\_5.5.

“**Improvements**” shall have the meaning assigned to such term in the recitals to this Agreement.

“**Indebtedness**” of any Person shall mean, without duplication (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business; (iv) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (v) all Capital Lease Obligations of such Person, (vi) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (vii) all Guarantees of such Person of the type of Indebtedness described in clauses (i) through (vi) above, (viii) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (ix) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any common stock of such Person, (x) Off-Balance Sheet Liabilities and (xi) all Hedging Obligations.The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor.

“**Indemnified Taxes**” shall mean (a) Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitee**”shall have the meaning set forth in Section 9.3(b).

“**Initial [Nominal] Advance**” shall mean an initial advance of Loan Proceeds on the Closing Date in the amount of [**$10**]**[[8]](#footnote-9)** for acquisition and closing costs.

“**Inspector**” shall mean such Person or firm as Administrative Agent may from time to time appoint or designate for purposes related to the inspection of the progress of the development of the Land and the construction of the Improvements, conformity of construction with the Plans and Specifications, and for such other purposes as Administrative Agent may from time to time deem appropriate or as may be required by the terms of this Agreement.

“**Interest Period**” shall mean a period of one month; provided that:

(i) the initial Interest Period shall commence on the Closing Date, and each Interest Period occurring thereafter shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day;

(iii) any Interest Period which begins on the last Business Day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of such calendar month;

(iv) each principal installment of the Loan shall have an Interest Period ending on each installment payment date and the remaining principal balance (if any) of the Loan shall have an Interest Period determined as set forth above; and

(v) no Interest Period may extend beyond the Maturity Date.

“**Interest Reserve**” shall mean a portion of the proceeds of the Loan allocated to pay interest on the Loan, the initial amount of which shall be $\_\_\_\_\_\_\_\_\_\_.

“**IRS**”shall mean the United States Internal Revenue Service.

“**ISDA Definitions**” shall mean the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

**[“Issuing Bank” shall mean the Lender identified as Issuing Bank in the opening paragraph hereof or any other Lender, each in its capacity as an issuer of Letters of Credit pursuant to Section 2.18.]**

“**Land**” shall have the meaning assigned to such term in the recitals to this Agreement.

**[“LC Commitment” shall mean that portion of the Loan that may be used by Borrower for the issuance of Letters of Credit in an aggregate face amount not to exceed $\_\_\_\_\_\_\_\_****]**

**[“LC Disbursement” shall mean a payment made by the Issuing Bank pursuant to a Letter of Credit.]**

**[“LC Documents” shall mean all applications, agreements and instruments relating to the Letters of Credit (but excluding the Letters of Credit).]**

**[“LC Exposure” shall mean, at any time, the sum of (i) the aggregate undrawn amount of all outstanding Letters of Credit at such time, *plus* (ii) the aggregate amount of all LC Disbursements that have not been reimbursed by or on behalf of Borrower at such time. The LC Exposure of any Lender shall be its Pro Rata Share of the total LC Exposure at such time.]**

“**Lease**”shall mean any lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and every modification, amendment or other agreement relating to such lease, sublease, sub-sublease, or other agreement entered into in connection with such lease, sublease, sub-sublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“**Lender**” and “**Lenders**” shall have the respective meanings assigned to such terms in the opening paragraph of this Agreement. With respect to matters requiring the consent or approval of all Lenders at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and, for voting purposes only, “all Lenders” shall be deemed to mean “all Lenders other than Defaulting Lenders”.

**“Lender-Related Hedge Provider”** shall mean any Person that, at the time it enters into a Hedging Transaction with Borrower,[[9]](#footnote-10)(i) is a Lender or an Affiliate of a Lender and (ii) except when the Lender-Related Hedge Provider is Truist Bank or any of its Affiliates, has provided prior written notice to Administrative Agent which has been acknowledged by Borrower of (x) the existence of such Hedging Transaction and (y) the methodology to be used by such parties in determining the obligations under such Hedging Transaction from time to time. In no event shall any Lender-Related Hedge Provider acting in such capacity be deemed a Lender for purposes hereof to the extent of and as to Hedging Obligations. In no event shall the approval of any such Person in its capacity as Lender-Related Hedge Provider be required in connection with the release or termination of any security interest or Lien of Administrative Agent.

“**Lender Reply Period**” shall have the meaning set forth in Section 10.15.

**[“Letter of Credit” shall mean any stand-by letter of credit issued pursuant to Section 2.18 by the Issuing Bank for the account of Borrower pursuant to the LC Commitment.]**

“**Lien**” shall mean any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, or other arrangement having the practical effect of the foregoing or any assignment, deposit arrangement, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing).

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

“**Loan Charges**” shall have the meaning set forth in Section 9.13.

“**Loan Closing Statement**” shall mean that certain **[Loan Closing Statement and Disbursement Instructions]** dated as of the Closing Date, executed by Borrower and [***identify the escrow agent]***.

“**Loan Documents**” shall mean, collectively, this Agreement, the Notes, the Security Instrument, the Guaranty, the Environmental Indemnification Agreement, the Assignments of Leases and Rents, the Assignment of Contracts, any Subordination of Management Agreement, any Collateral Assignment of Hedge, **[the LC Documents,]** **[the Collections Account Agreement, the Cash Management Agreement, *also add, if applicable, any Intercreditor Agreement and any other tri-party agreement*]** the Loan Closing Statement, and any and all other instruments, agreements, documents and writings executed in connection with any of the foregoing.

“**Loan Party**” or “**Loan Parties**” shall mean, individually or collectively as the context permits or requires, Borrower and Guarantor(s).

**[“Loan to Value Ratio” shall mean the ratio of (a) the then existing principal balance of the Loan, to (b) the prospective market value of the Property upon stabilization.]**

**[“Major Lease”shall mean [*add deal-specific definition, if applicable*].]**

**[“Master Disbursement Sweep Account” shall have the meaning set forth in Section 5.18.]**

“**Material Adverse Effect**” shall mean, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, a material adverse change in, or a material adverse effect on, (a) with respect to the Property, (i) the value, financial condition, physical condition or operation of the Property, or (ii) the ability of Borrower to meet its contractual obligations under the Approved Leases, (b) with respect to the Loan Parties, (i) the business, results of operations, financial condition, assets, liabilities or prospects of Borrower or the Guarantor taken as a whole, or (ii) the ability of the Loan Parties to perform any of their respective obligations under the Loan Documents, or (c) the rights and remedies of Administrative Agent or the Lenders under any of the Loan Documents.

“**Maturity Date**” shall mean the earlier of (i) [**date to be supplied**][**, as such date may be extended pursuant to Section 2.4(h)**] or (ii) the date on which the principal amount of the Loan has been declared or automatically has become due and payable (whether by acceleration or otherwise).

“**Maximum Rate**” shall have the meaning set forth in Section 9.13.

“**Mechanic’s Liens**” shall have the meaning set forth in Section 5.12.

“**Multiemployer Plan**” shall have the meaning set forth in Section 4001(a)(3) of ERISA.

**[“Multi-Party Agreement” shall mean the agreement by and among Borrower, Administrative Agent, the Permanent Lender and any other parties thereto in connection with the Loan.]**

**[“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 and paying rent at the time of calculation 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 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 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]]***

**[“Non-Consenting Lender” shall have the meaning set forth in Section 2.14.]**

“**Non-Defaulting Lender**” shall mean, at any time, each Lender that is not a Defaulting Lender at such time.

“**Note**” or “**Notes**” shall mean, individually or collectively as the context permits or requires, the promissory note or promissory notes made by Borrower in favor of each Lender and evidencing that portion of the Loan owing to such Lender, which collectively equal the aggregate principal amount of the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time with the written consent of Administrative Agent.

“**Obligations**” shall mean (a) all amounts owing by Borrower to Administrative Agent or any Lender pursuant to or in connection with this Agreement or any other Loan Document, including without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), all reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to Administrative Agent or any Lender incurred pursuant to this Agreement or any other Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, (b) all Hedging Obligations owed by Borrower[[10]](#footnote-11) to any Lender-Related Hedge Provider, and (c) all Bank Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing; provided, however, that with respect to Obligations guaranteed by any Guarantor, such Obligations shall not include any Excluded Swap Obligations.

“**OFAC**” shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Off-Balance Sheet Liabilities**” of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any sale and leaseback transactions which do not create a liability on the balance sheet of such Person, (iii) any liability of such Person under any so-called “synthetic” lease transaction or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

“**Operating Account**”shall have the meaning set forth in Section 5.18.

“**Other Connection Taxes**”shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.14).

“**Participant**” shall have the meaning set forth in Section 9.4(d).

“**Participant Register**” shall have the meaning set forth in Section 9.4(d).

“**Patriot Act**” shall have the meaning set forth in Section 9.15.

“**Payment Date**” shall have the meaning set forth in Section 2.4(d).

“**Payment Office**” shall mean the office of Administrative Agent located at 303 Peachtree Street N.E., Atlanta, Georgia 30308, or such other location as to which Administrative Agent shall have given written notice to Borrower and the other Lenders.

“**PBGC**”shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA, and any successor entity performing similar functions.

“**Periodic Term SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

**[“Permanent Commitment” shall mean the commitment letter from the Permanent Lender to Borrower dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]**

**[“Permanent Lender” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]**

**[“Permanent Loan” shall mean the loan to be made by the Permanent Lender to Borrower pursuant to the Permanent Commitment.]**

“**Permitted Encumbrances**” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed as exceptions in Schedule B, or insured over by, the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent or being contested as permitted by and in accordance with the terms of the Loan Documents, (d) Approved Leases, (e) mechanics’ and materialmen’s liens and similar claims being contested in accordance with the terms of the Loan Documents, and (f) such other title and survey exceptions as Administrative Agent has approved or may approve in writing in Administrative Agent’s sole discretion, which Permitted Encumbrances in the aggregate do not materially and adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Indebtedness**” shall have the meaning set forth in Section 7.2.

“**Permitted Transfer**” shall mean, absent an Event of Default:

(a) any Transfer, directly as a result of the death of a natural person, of stock, membership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto;

(b) a Transfer by an individual of any direct or indirect interest in Borrower in connection with the estate planning by such individual to a family trust of which the transferring individual is the sole trustee and of which the transferring individual has effective control;

(c) Transfers of direct or indirect ownership interests in Borrower to a Person that is wholly owned by the transferor; and

(d) Transfers of direct or indirect ownership interests in Borrower resulting solely from the sale, transfer or issuance of shares of common stock in a Person that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange

so long as after giving effect to any and all such Transfers, (i) there is not a Change of Control, and (ii) Borrower is able to remake (and shall be deemed to have remade) the representations and warranties set forth in Section 4.18 and Section 4.19 hereof. Borrower shall give Administrative Agent written notice of any Permitted Transfer promptly following the occurrence thereof and shall, upon Administrative Agent’s written request, furnish to Administrative Agent such reasonably available information as Administrative Agent may request in order for Administrative Agent to conduct due diligence, satisfactory to Administrative Agent, regarding the foregoing.

**[In the event a Permitted Transfer would result in (i) Guarantor owning, directly or indirectly, less than [\_\_ percent (\_\_%)] of the membership interest in Borrower, or (ii) Guarantor no longer Controlling, directly or indirectly, Borrower and the Property, then as a condition to the Permitted Transfer, Borrower shall cause an Affiliate of Borrower (the “Supplemental Guarantor”) acceptable to the Required Lenders to execute and deliver to Administrative Agent a guaranty and an environmental indemnity agreement, in form and substance substantially identical to the Guaranty and Environmental Indemnification Agreement. Simultaneously with the delivery of said guaranty and environmental indemnity agreement, Borrower shall deliver, or cause to be delivered, to Administrative Agent one or more opinions of counsel in form reasonably satisfactory to Administrative Agent (such approval not to be unreasonably withheld, conditioned, or delayed) confirming due organization and authorization of the Supplemental Guarantor, due authorization and execution of said guaranty and environmental indemnity agreement, no violation of organizational documents, written agreements and applicable laws, and the enforceability of said guaranty and an environmental indemnity agreement (subject to customary qualifications, assumptions and exclusions).]**

“**Person**” shall mean any individual, partnership, limited liability company, corporation, association, joint venture, trust or other entity, or any Governmental Authority.

“**Plan**” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Plans and Specifications**” shall mean the plans and specifications prepared in connection with the development of the Land and/or the construction of the Improvements and approved in writing by Administrative Agent, including but not limited to, the plans and specifications prepared by the Architect.

“**Platform**” shall have the meaning set forth in Section 9.1 (c).

“**Post-Foreclosure Entity**” shall have the meaning set forth in Section 10.14.

“**Post-Foreclosure Plan**” shall have the meaning set forth in Section 10.14.

“**Principal**” shall have the meaning set forth in Section 5.17.

“**Proceeding**” shall mean any case, proceeding or other action under any existing or future Debtor Relief Laws.

“**Project Costs**” shall mean the costs and expenses of labor, materials, equipment, personalty and fixtures used or to be used for construction of the Improvements in accordance with the Plans and Specifications and other costs and expenses in connection with the development, construction and stabilization of the Property.

“**Property**”shall mean that certain parcel of real property known by the street address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and commonly referred to as \_\_\_\_\_\_\_\_\_\_, and all related facilities, amenities, fixtures, and personal property owned by Borrower, as further described in the Security Instrument, and any other buildings or improvements now or hereafter located or erected thereon.

“**Property Management Agreement**” shall mean the written agreement between Borrower and the Property Manager for the management of the Property, which Property Management Agreement shall be subject to Administrative Agent’s prior written approval.

“**Property Manager**” shall mean [ ], a [ ].

“**Proposed Refinance**” shall have the meaning set forth in Section 5.20.

“**Pro Rata Share**” shall mean with respect to any Lender at any time, the ratio, expressed as a percentage, of (a) the amount of such Lender’s unused Commitment and outstanding principal amount of such Lender’s portion of the Loan at such time to (b) the aggregate amount of all unused Commitments plus the total outstanding principal amount of the Loan at such time.

“**PTE**” shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Radon Report**” shall have the meaning set forth in Section 3.4.

“**Recipient**”shall mean, as applicable, (a) Administrative Agent and (b) any Lender.

“**Regulation D**” shall mean Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

“**Related Parties**” shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, managers, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Release**” shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

“**Relevant Governmental Body**” shall mean the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“**Replacement Lender**” shall have the meaning set forth in Section 2.14.

“**Required Lenders**” shall mean, at any time, Lenders holding more than 66-2/3%of the outstanding principal balance of the Loan at such time; *provided*, *however*, that (a) if any Lender shall be a Defaulting Lender at such time, then there shall be excluded from the determination of Required Lenders the principal balance of the Loan of such Defaulting Lender, and (b) at all times when two or more Lenders are party to this Agreement, the term “Required Lenders” shall in no event mean less than two Lenders.

“**Resolution Authority**” shall mean, with respect to any EEA Financial Institution, an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Responsible Officer**” shall mean any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the treasurer or a vice president of Borrower or such other representative of Borrower as may be designated in writing by any one of the foregoing with the consent of Administrative Agent; and, with respect to financial covenants only, the chief financial officer or the treasurer of Borrower.

“**Sanctioned Country**” shall mean, at any time, a country or territory that is, or whose government is, the subject or target of any Sanctions.

“**Sanctioned Person**” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“**Sanctions**” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by OFAC or the U.S. Department of State.

**“Secured Parties”** shall mean Administrative Agent, the Lenders, **[the Issuing Bank]** and the Lender-Related Hedge Providers.

“**Security Instrument**” shall have the meaning set forth in the Recitals to this Agreement.

“**SOFR**” shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Borrowing**” shall mean, as to any Borrowing, the SOFR Loans comprising such Borrowing.

“**SOFR Loan**” shall mean a Loan that bears interest at a rate based on [**Adjusted**][[11]](#footnote-12) Term SOFR.

“**Stop Notice**”shall have the meaning set forth in Section 5.12.

“**Subordination of Management Agreement**” shall mean [**any Assignment and Subordination of Management Agreement in the form of Exhibit F attached hereto (with such modifications thereto as approved by Administrative Agent) that is executed by Borrower, Property Manager and Administrative Agent after the Closing Date**][**that certain Assignment and Subordination of Management Agreement, dated as of the Closing Date and executed by Borrower, Property Manager and Administrative Agent**], as the same may be modified, amended, amended and restated, supplemented or replaced from time to time.

“**Subsidiary**” shall mean, with respect to any Person (the “**parent**”), any corporation, partnership, joint venture, limited liability company, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, partnership, joint venture, limited liability company, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power, or in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise indicated, all references to “Subsidiary” hereunder shall mean a Subsidiary of Borrower.

“**Swap Obligation**” shall mean, with respect to any Guarantor, 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.

“**Taxes**” shall mean any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Tenant**” shall mean any Person occupying all or any portion of any space in the Property pursuant to a Lease.

“**Term SOFR**” shall mean, for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day[**; provided, further, that if Term SOFR determined as provided above (shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor**].[[12]](#footnote-13)

[“**Term SOFR Adjustment**” shall mean a percentage equal to [**0.11448**]%[[13]](#footnote-14) per annum.][[14]](#footnote-15)

“**Term SOFR Administrator**” shall mean CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” shall mean the forward-looking term rate based on SOFR.

**[“Termination Fee Deposit” shall have the meaning set forth in Section 5.11.]**

“**Title Insurance Company**” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_.

“**Title Insurance Policy**” shall mean a mortgagee title insurance policy issued in the maximum principal amount of the Loan, in such form as is acceptable to Administrative Agent in its sole discretion, covering the fee estate in the Property, with such reinsurance and endorsements as Administrative Agent may require, containing no exceptions to title (printed or otherwise) which are unacceptable to Administrative Agent, and insuring that the Security Instrument is a first-priority Lien on the Property.

“**Transfer**” shall have the meaning set forth in Section 7.1.

“**UK Financial Institution**” shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**[“Unencumbered Liquid Assets” shall mean the following assets (excluding assets of any retirement plan) which (i) are not the subject of any Lien, pledge, security interest or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of the owner of the asset, (ii) are held solely in the name of Guarantor (with no other persons or entities having ownership rights therein); and (iii) may be converted to cash within five (5) days:**

* 1. **Cash or cash equivalents (i.e., bank deposits, funds in money market accounts and certificates of deposit) held in the United States and denominated in United States dollars;**
	2. **United States Treasury or other governmental agency obligations which constitute full faith and credit of the United States of America;**
	3. **Publicly traded securities; and**
	4. **Mutual funds quoted in *The Wall Street Journal* (as long as *The Wall Street Journal* continues to publish quotes for mutual funds) which invest primarily in the assets described in (a) - (c) above.]**

“**U.S. Borrower**” shall mean a Borrower that is a U.S. Person.

“**U.S. Government Securities Business Day**” shall mean any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**U.S. Person**” shall mean any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“**U.S. Tax Compliance Certificate**” shall have the meaning set forth in Section 2.11.

“**Withdrawal Liability**” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Withholding Agent**” shall mean Borrower, any other Loan Party or Administrative Agent, as applicable.

 “**Write-Down and Conversion Powers**” shall mean, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## **Accounting Terms and Determination**

. Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent (except for such changes approved by the independent public accountants of the Person for whom the financial statements are prepared) with the most recent audited consolidated financial statement of the Person for whom the financial statements are delivered pursuant to Section 4.4; provided, that if Borrower notifies Administrative Agent that Borrower wishes to amend any financial covenant hereunder to eliminate the effect of any change in GAAP on the operation of such financial covenant (or if Administrative Agent notifies Borrower that the Required Lenders wish to amend a financial covenant for such purpose), then the compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to Borrower and the Required Lenders.

## **Terms Generally**

## . The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the word “to” means “to but excluding”. Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as it was originally executed or as it may from time to time be amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) the words “hereof”, “herein” and “hereunder” and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement, (v) all references to a specific time shall be construed to refer to the time in the city and state of Administrative Agent’s principal office, unless otherwise indicated and (vi) any definition of or reference to any law shall include all statutory and regulatory provisions consolidating, amending, or interpreting any such law and any reference to or definition of any law or regulation, unless otherwise specified, shall refer to such law or regulation as amended, modified or supplemented from time to time.

## **Section 1.4**. **Rates**. Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, Term SOFR Reference Rate, [**Adjusted Term SOFR**] or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, [**Adjusted Term SOFR**], Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, [**Adjusted Term SOFR**], any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to Borrower. Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, [**Adjusted Term SOFR**] or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

# AMOUNT AND TERMS OF THE COMMITMENT

## **Commitment.**

### Each Lender severally, but not jointly with the other Lenders, agrees to lend to Borrower, subject to the terms and conditions herein set forth and in accordance with the Budget, its Pro Rata Share of the Loan; provided, however, that in no event shall the aggregate amount of all advances disbursed to Borrower hereunder **[,together with the aggregate LC Exposure,]** exceed the aggregate amount of all the Commitments, and in no event shall any Lender’s Pro Rata Share of all advances disbursed to Borrower hereunder **[,together with such Lender’s LC Exposure,]** exceed such Lender’s Commitment. Interest shall accrue and be payable only on sums advanced hereunder for the period of time outstanding. Promptly following receipt of a requisition and all other required deliveries in regard to a requested advance of the proceeds of the Loan pursuant to Article III, Administrative Agent shall advise each Lender of the details of the requested advance and such Lender’s Pro Rata Share thereof and the requested advance date. Each Lender shall make its Pro Rata Share of such advance available to Administrative Agent in the manner provided in Section 2.17. This is not a revolving facility. No amount advanced hereunder may be re-advanced once repaid.

### Each Lender shall maintain in accordance with its usual practice appropriate records evidencing the Indebtedness of Borrower to such Lender resulting from the portion of the Loan made by such Lender from time to time, including the amounts of principal and interest payable thereon and paid to such Lender from time to time under this Agreement. Administrative Agent shall maintain appropriate records in which shall be recorded (i) the Commitment of each Lender, (ii) the amount of the portion of the Loan made hereunder by each Lender, (iii) the date and amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder in respect of the Loan and (iv) both the date and amount of any sum received by Administrative Agent hereunder from Borrower in respect of the Loan and each Lender’s Pro Rata Share thereof. The entries made in such record shall be *prima facie* evidence of the existence and amounts of the obligations of Borrower therein recorded; provided that the failure or delay of any Lender or Administrative Agent in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of Borrower to repay the Loan (both principal and unpaid accrued interest) of such Lender in accordance with the terms of this Agreement.

### The obligation of Borrower to pay each Lender’s Pro Rata Share of the Loan, with interest, shall be evidenced by a Note substantially in the form of Exhibit D attached hereto and made a part hereof, with appropriate insertions. Each Lender’s Note shall be dated as of the date hereof (or as of the date of the applicable assignment pursuant to Section 9.4) and shall be payable to the order of such Lender at the times provided in the Notes, and shall be in the principal amount of such Lender’s Commitment. Lenders have no intention of making advances under the Loan in excess of the aggregate face amount of the Notes. Borrower acknowledges and agrees, however, that, if, for any reason, the outstanding principal balance of the Loan outstanding from time to time exceeds the aggregate face amount of the Notes, the excess shall bear interest at the Default Rate, shall be payable, with accrued interest, ON DEMAND and shall be secured by all of the collateral described in the Security Instrument and all other Collateral for the Loan. The Notes shall not operate as a novation of any of the Obligations or nullify, discharge, or release any such Obligations or the continuing contractual relationship of the parties hereto in accordance with the provisions of this Agreement.

## **Budget; Use of Proceeds.**

### The proceeds of the Loan shall be used by Borrower to pay those expenses related to the Loan and the Property described in the Budget (subject to the further provisions of Section 2.2(b))

### Unless approved by Administrative Agent, no advance shall be made (i) for any cost not set forth in the Budget, as the same may be amended in accordance with Section 2.2(c), or (ii) from any line item in the Budget that, when added to all prior advances from that line item, would exceed the lesser of (A) the actual cost incurred by Borrower for such line item, or (B) the sum shown in the Budget for such line item (which shall include any cost savings that have been allocated to that line item pursuant to Section 2.2(c) and any allocations from the contingency line items that have been made by Borrower in accordance herewith). Advances from any line item in the Budget for purposes other than those for which amounts are initially allocated to such line item, or changes in the relative amounts allocated to particular line items in the Budget, may only be made as permitted by Section 2.2(c) or as Administrative Agent in its good faith business judgment deems necessary or advisable.

### With the prior approval of Administrative Agent, which approval shall not be unreasonably withheld, any cost savings, realized or contracted, affecting any approved Budget category, other than the Interest Reserve, may be reallocated by Borrower to any other approved expense related to the Loan or the Property. Upon completion of the Improvements and the payment of all costs in connection therewith, any undisbursed Loan proceeds shall be allocated to the interest reserve or to such other Budget category as Administrative Agent shall approve. Each disbursement from the contingency reserve, if any, shall be subject to approval by Administrative Agent as to the amount and purpose for which such disbursement will be used. If and when the revenues derived from the Property are sufficient to pay operating expenses and all or any portion of the interest on the Loan, Administrative Agent, at its sole option, may restrict or prohibit future disbursements from the Interest Reserve to the extent such revenues are sufficient to make interest payments on the Loan.

### If at any time the unpaid costs, both direct and indirect costs and calculated on a line item by line item basis, necessary to complete the development of the Land and the construction of the Improvements exceed the undisbursed balance of the Loan or of any line item in the Budget, as determined by Administrative Agent in the reasonable exercise of its discretion, Borrower shall provide from sources other than the Loan the funds necessary: (i) to pay the total costs or the costs of the line item in the Budget which exceed the amount budgeted, as the case may be, and (ii) if such shortfall is a result of Borrower-initiated changes to the nature or scope of the project, to ensure that the Loan will not constitute an HVCRE ADC loan pursuant to Section 51 of The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Borrower shall deposit with Administrative Agent from time to time, within ten (10) days of Administrative Agent’s request, such amounts as are required by the immediately preceding sentence (the “**Equity Deposit**”). In making advances under this Agreement, Administrative Agent shall draw first upon the Equity Deposit until such sums are exhausted, and then upon the proceeds of the Loan.

### **[Provided no Event of Default shall have occurred and is continuing, to the extent the revenue for the applicable period from the Property, less the actual operating expenses for the applicable period for the Property, are insufficient to pay interest due to the Lenders under the Loan, the Lenders shall make advances of Loan proceeds available once each month therefor from the Interest Reserve (so long as the conditions to such advances have been satisfied, or waived by Administrative Agent, and sufficient funds remain in the Interest Reserve). Upon the request of Administrative Agent, Borrower shall provide a reconciliation to Administrative Agent setting forth revenue for the applicable period from the Property and the actual operating expenses, all in form and substance satisfactory to Administrative Agent. The Lenders shall have no obligation to disburse any undisbursed Loan proceeds allocated to Interest Reserve after the date which is the earlier of (a) \_\_\_\_\_\_\_ (\_\_) months from the date of this Agreement, or (b) the date Net Operating Income is sufficient to pay principal and interest then due under the Loan Documents.]**

## **Prepayments**.

### *Optional Prepayments.* Borrower shall have the right at any time and from time to time to prepay the Loan, in whole or in part, without premium or penalty, by giving irrevocable written notice (or telephonic notice promptly confirmed in writing) of its intention to prepay to Administrative Agent no later than three (3) Business Days prior to the date of such prepayment. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of the Loan or portion thereof to be prepaid. Upon receipt of any prepayment notice, Administrative Agent shall promptly notify each affected Lender of the contents thereof and of such Lender’s Pro Rata Share of any such prepayment. Such amount shall be due and payable on the date designated in such notice, together with **[any payment required pursuant to the Fee Letter and]**[[15]](#footnote-16) accrued interest to such date on the amount so prepaid in accordance with Section 2.4(a); provided that if all or any portion of the Loan is prepaid on a date other than the last day of an Interest Period applicable thereto, Borrower shall also pay all amounts required pursuant to Section 2.15. Each prepayment of the Loan shall be applied to principal installments in inverse order of maturity.

### *Mandatory Prepayments.* On the earlier of (x) the date Administrative Agent elects to require prepayment of all or a portion of the Loan in accordance with Exhibit 5.5, Section 2 or 3 hereof and (y) the next occurring Payment Date following the date on which Borrower actually receives any insurance proceeds or condemnation awards, if and to the extent Administrative Agent is not obligated hereunder to make such proceeds or awards available to Borrower for the restoration of the Property, Borrower shall prepay the outstanding principal balance of the Loan in an amount equal to one hundred percent (100%) of such proceeds or awards. Such prepayment shall be applied, first, to interest on the outstanding principal balance of the Loan that would have accrued at the Applicable Interest Rate on the amount prepaid through the end of the Interest Period in which such prepayment occurs, notwithstanding that such Interest Period extends beyond the date of prepayment, and then to all other amounts then due to Lender under this Agreement or any of the other Loan Documents and then to the outstanding principal balance of the Loan.

## **Loan Payments**.

### Subject to Section 2.7 and Section 2.8 below, Borrower shall pay interest on the Loan: at a rate per annum equal to [**Adjusted**] Term SOFR plus the Applicable Margin (such rate, or any replacement rate (including the Applicable Margin) instituted pursuant to Section 2.7, the “**Applicable Interest Rate**”).

### While an Event of Default exists or after acceleration, at the option of the Required Lenders, Borrower shall pay interest (“**Default Interest**”) on the Loan at the Default Rate.

### In the event that any payment due under the terms hereunder is not received by Administrative Agent within ten (10) days of the date such payment is due (inclusive of the date when due), Borrower shall pay to Administrative Agent a late charge equal to five percent (5%) of such payment. Such fee shall be payable on the earlier of (i) the date of demand by Administrative Agent and (ii) the date that Borrower makes the late payment.

### Interest on the principal amount of the Loan shall accrue from and including the first advance on the Loan to but excluding the date of any repayment thereof. Interest shall be payable in arrears on the **[first][last]** day of each **[calendar month][Interest Period]** (each a “**Payment Date**”), commencing on \_\_\_\_\_\_\_\_\_\_\_, and on the Maturity Date. All Default Interest shall be payable on demand.

### **[In the event that the Maturity Date is extended as hereinafter provided,]/[Commencing on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ and continuing on the same day of each and every month thereafter, to and including \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, principal shall be due and payable [in equal installments of $\_\_\_\_\_\_\_\_\_\_] [in accordance with the amortization schedule attached hereto as Annex I];]** and

### **[In addition to the monthly installments of principal and/or interest required above, [Borrower shall pay to Administrative Agent for the benefit of the Lenders any principal curtailments on the Loan required pursuant to the terms of such Section \_\_] [Borrower shall pay to Administrative Agent for the benefit of the Lenders the following principal curtailments:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ; and]**

### Unless sooner paid, the unpaid principal balance of the Loan, together with interest accrued and unpaid thereon, shall be due and payable in full on the Maturity Date.

### **[*Extension Option*. Borrower shall have \_\_\_\_\_\_\_\_\_\_ (\_\_) option[s] to extend the Maturity Date, [each] for a period of \_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_) additional months, upon the express condition for the exercise of [each] such extension option that each and all of the following conditions precedent shall have been fulfilled or complied with to the complete satisfaction of Administrative Agent in its sole and absolute discretion:**

#### Borrower shall have given Administrative Agent written notice of its intention to extend the Loan, which notice shall be given no earlier than [**one hundred twenty (120)**] days prior to the then stated Maturity Date of the Loan, and no later than [**sixty (60)**] days prior to the then stated Maturity Date of the Loan.

#### Borrower shall have paid to Administrative Agent, at the time the notice required by subsection (a) above is given, an extension fee equal to \_\_\_\_\_ of the then outstanding balance of the Loan.

#### The Title Insurance Policy, including all endorsements thereto, shall be endorsed to bring the date of the policy forward to the effective date of the applicable extension option, with no additional title change or exception except for Permitted Encumbrances or other matters approved in writing by Administrative Agent, and with such other endorsements required by Administrative Agent.

#### Except for changes disclosed to Administrative Agent in writing and approved in writing by Administrative Agent in its sole discretion, the representations and warranties made in ARTICLE IV (Representations and Warranties) shall be true and correct in all material respects on and as of the date of Borrower’s notice to Administrative Agent pursuant to clause (a) above and on and as of the effective date of the extension, with the same effect as if made on such dates.

#### No Default or Event of Default shall have occurred and be continuing.

#### **[At the time the notice required by Section 2.4(h)(i) above is given, Borrower shall have furnished Administrative Agent with a Compliance Certificate, containing calculations in reasonable detail evidencing that the [Debt Service Coverage Ratio][Debt Yield] as of the date of such notice is not less than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].**

#### Guarantor shall have affirmed its obligations under the Guaranty Agreement.

#### There shall have been no Material Adverse Effect.

#### Borrower shall have executed such supplemental documentation as Administrative Agent may reasonably require in order to evidence extension of the Maturity Date and to preserve the security of Administrative Agent pursuant to the Loan Documents and shall have paid all costs and expenses incurred in connection therewith, including Administrative Agent’s attorneys’ fees.

**Notwithstanding anything to the contrary contained in the Loan Documents, Borrower acknowledges and agrees that the Lenders shall be under no obligation to advance any undisbursed portion of the Loan during the extension term(s).]**

**[If applicable for the deal, add additional conditions, such as: (i) updated financial statements for Borrower and Guarantor, (ii) new Appraisal with ability to re-margin the loan, (iii) achievement of leasing hurdles, (iv) no further advances during extension (except for Tenant improvements and leasing commissions, if applicable).]**

### Administrative Agent shall determine the interest rate applicable to the Loan hereunder and shall promptly notify Borrower and the Lenders of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

## **Fees**

**. []** Borrower shall pay to Administrative Agent for its own account fees in the amounts and at the times previously agreed upon in writing by Administrative Agent and Borrower. Borrower shall pay on the Closing Date to Administrative Agent and its affiliates all fees in the Fee Letter that are due and payable on the Closing Date.

### **[(b) Borrower agrees to pay to Administrative Agent, for the account of the Lenders, with respect to each Letter of Credit, an annual letter of credit fee, in an amount equal to \_\_\_\_\_\_\_ percent (\_\_\_%) of the face amount of such Letter of Credit. Such fee shall be payable in advance on the date of issuance of such Letter of Credit and, thereafter, for so long as such Letter of Credit remains outstanding, on each anniversary date of the issuance of such Letter of Credit. Borrower further agrees to pay to the Issuing Bank, for its own account, a fronting fee in the amount and at the times agreed upon in writing between Borrower and the Issuing Bank, as well as the Issuing Bank’s standard fees with respect to issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Notwithstanding the foregoing, if the Required Lenders elect to increase the interest rate on the Loan to the Default Rate pursuant to Section 2.4(b), the rate per annum used to calculate the letter of credit fee as described above shall automatically be increased by 400 basis points.]**

## **Computation of Interest and Fees**

. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable (to the extent computed on the basis of days elapsed). Each determination by Administrative Agent of an interest amount or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

## **Inability to Determine Interest Rates**

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### Subject to Section 2.7(b), if Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Term SOFR” cannot be determined pursuant to the definition thereof, Administrative Agent will promptly so notify Borrower and each Lender. Upon notice thereof by Administrative Agent to Borrower, any obligation of the Lenders to make or continue all or any portion of the Loan as a SOFR Loan or to convert all or any portion of the Loan that is accruing interest by reference to the Base Rate to a SOFR Loan shall be suspended (to the extent of the affected SOFR Loans) until Administrative Agent revokes such notice. Upon receipt of such notice, (i) Borrower may revoke any pending request for a borrowing of a SOFR Loan (to the extent of the affected SOFR Loans) or, failing that, Borrower will be deemed to have converted any such request into a request for an advance (if advances are permitted) of an advance accruing at the Base Rate plus the Applicable Margin in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into a Loan accruing interest at the Base Rate plus the Applicable Margin immediately. Upon any such conversion, Borrower shall also pay any additional amounts required pursuant to Section 2.13.

### Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. No Hedging Transaction shall be deemed to be a “Loan Document” for purposes of this Section 2.7(b).

### Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

### Notices; Standards for Decisions and Determinations. Administrative Agent will promptly notify Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Administrative Agent will notify Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.7(e) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.7, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.7.

### Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

### (e) Benchmark Unavailability Period. Upon Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any pending request for an advance of the Loan of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to a loan accruing at the Base Rate plus the Applicable Margin.

## **Illegality**

**.** If any Change in Law shall make it unlawful or impossible for any Lender to make, maintain or fund the Loan at the Applicable Interest Rate and such Lender shall so notify Administrative Agent, Administrative Agent shall promptly give notice thereof to Borrower and the other Lenders, whereupon until such Lender notifies Borrower and Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to fund or maintain the Loan at the Applicable Interest Rate shall be suspended, and the Loan shall be converted to a Loan bearing interest at the Base Rate ,either (i) on the last day of the then current Interest Period if such Lender may lawfully continue to maintain the Loan at the Applicable Interest Rate to such date, or (ii) immediately if such Lender shall determine that it may not lawfully continue to maintain the Loan at the Applicable Interest Rate to such date. Notwithstanding the foregoing, the affected Lender shall, prior to giving such notice to Administrative Agent, designate a different Applicable Lending Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Lender in the good faith exercise of its discretion.

## **Increased Costs**.

### If any Change in Law shall:

#### impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

#### subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

#### impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing is to increase the cost to such Lender of making, continuing or maintaining the Loan **[or increase the cost to such Lender or the Issuing Bank of participating in or issuing any Letter of Credit]** or to reduce the amount received or receivable by such Lender **[or the Issuing Bank]**  hereunder (whether of principal, interest or any other amount), then Borrower shall promptly, upon written notice from and demand by such Lender **[or the Issuing Bank]**  on Borrower (with a copy of such notice and demand to Administrative Agent), pay to Administrative Agent for the account of such Lender, within five (5)Business Days after the date of such notice and demand, additional amount or amounts sufficient to compensate such Lender **[or the Issuing Bank, as the case may be,]** for such additional costs incurred or reduction suffered.

### If any Lender (other than a Defaulting Lender) **[or the Issuing Bank]** shall have determined that on or after the date of this Agreement any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s **[or the Issuing Bank’s]** capital (or on the capital of such Lender’s **[or the Issuing Bank’s]** parent corporation) as a consequence of its obligations hereunder **[or under or in respect of any Letter of Credit]** to a level below that which such Lender **[or the Issuing Bank]**  or such Lender’s **[or the Issuing Bank’s]** parent corporation could have achieved but for such Change in Law (taking into consideration such Lender’s **[or the Issuing**  **Bank’s]** policies or the policies of such Lender’s **[or the Issuing Bank’s]** parent corporation with respect to capital adequacy)**[by an amount deemed by such Lender to be material,][[16]](#footnote-17)** then, from time to time, within five (5) Business Days after receipt byBorrower of written demand by such Lender **[or the Issuing Bank]** (with a copy thereof to Administrative Agent), Borrower shall pay to such Lender **[or the Issuing Bank]** such additional amounts as will compensate such Lender **[or the Issuing Bank]** or such Lender’s **[or the Issuing Bank’s]** parent corporation for any such reduction suffered.

### A certificate of such Lender **[or the Issuing Bank]** setting forth the amount or amounts necessary to compensate such Lender **[or the Issuing Bank]** or such Lender’s **[or the Issuing Bank’s]** parent corporation, as the case may be, as specified in paragraph (a) or (b) of this Section 2.9 shall be delivered to Borrower (with a copy to Administrative Agent) and shall be conclusive, absent manifest error. Borrower shall pay any such Lender **[or the Issuing Bank]** such amount or amounts within ten (10) days after receipt thereof.

### Failure or delay on the part of any Lender **[or the Issuing Bank]** to demand compensation pursuant to this Section 2.9 shall not constitute a waiver of such Lender’s **[or the Issuing Bank’s]** right to demand such compensation. **[provided, that Borrower shall not be required to compensate a Lender under this Section for any increased costs or reductions incurred more than six (6) months prior to the date that such Lender notifies Borrower of such increased costs or reductions and of the Lender’s intention to claim compensation therefor; provided further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then such six-month period shall be extended to include the period of such retroactive effect.][[17]](#footnote-18)**

## **Payments Generally; Pro Rata Treatment; Sharing of Set-Offs.**

### Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, **[reimbursement of LC Disbursements]** or of amounts payable under Sections 2.9 , 2.11 or 2.15, or otherwise) prior to 12:00 noon, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Administrative Agent at its Payment Office, except that payments made pursuant to Sections 2.9 , 2.11 or 2.15 shall be made directly to the Persons entitled thereto. Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension. All payments hereunder shall be made in Dollars.

### If at any time insufficient funds are received by and available to Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied as follows: first, to all fees and reimbursable expenses of Administrative Agent then due and payable pursuant to any of the Loan Documents; second, to all reimbursable expenses of the Lenders then due and payable pursuant to any of the Loan Documents, *pro rata* to the Lenders based on their respective Pro Rata Shares of such expenses; third, to all interest and fees then due and payable hereunder, *pro rata* to the Lenders based on their respective Pro Rata Shares of such interest and fees; and fourth, to all principal of the Loan then due and payable hereunder, *pro rata* to the parties entitled thereto based on their respective *pro rata* shares of such principal.

### If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on the Loan that would result in such Lender receiving payment of a greater proportion of the aggregate amount of its portion of the Loan and accrued interest and fees thereon than the proportion received by any other Lender with respect to the Loan, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the other Lenders’ portion of the Loan to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective portions of the Loan; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this subsection shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in its portion of the Loan to any assignee or participant, other than to Borrower or any Affiliate thereof (as to which the provisions of this subsection shall apply). Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

### Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount or amounts due. In such event, if Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

## **Taxes**.

### Defined Terms. For purposes of this Section 2.11, the term “Applicable Law” includes FATCA.

### Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

### Payment of Other Taxes by Borrower. Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

### Indemnification by Borrower. Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.11) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

### Indemnification by the Lenders. Each Lender shall severally indemnify Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 9.4(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this paragraph (e).

### Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower or any other Loan Party to a Governmental Authority pursuant to this Section 2.11, Borrower or other Loan Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

### Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.11(g)(i)(A), Section 2.11(g)(i)(B) and Section 2.11(g)(v)(B)below) shall not be required if in the Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

#### Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Borrower,

##### any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

##### any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

#### in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

#### executed originals of IRS Form W-8ECI;

#### in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit 2.11A to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or W-8BEN-E; or

#### to the extent a Foreign Lender is not the Beneficial Owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.11B or Exhibit 2.11C, IRS Form W-9, and/or other certification documents from each Beneficial Owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.11D on behalf of each such direct and indirect partner;

##### any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

##### if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

### Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.11 (including by the payment of additional amounts pursuant to this Section 2.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.11 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

### Survival. Each party’s obligations under this Section 2.11 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

## **Hedging Transactions**

**.** **[Borrower may enter into a Hedging Transaction in connection with the Loan.][As promptly as practicable, and in any event within \_\_\_\_\_ days after the Closing Date, Borrower will enter into, and thereafter maintain in effect, one or more Hedging Transactions on such terms and with such parties as shall be reasonably satisfactory to Administrative Agent, the effect of which shall be to fix or limit the interest cost to Borrower with respect to at least \_\_% of the Loan.]** In the event that a Lender-Related Hedge Provider provides a Hedging Transaction to Borrower in connection with the Loan, (i) the incremental exposure to the Lender-Related Hedge Provider shall be secured by the Collateral on a pro rata and pari passu basis with the Loan and (ii) in connection with any prepayment of the Loan, Borrower shall terminate, at Borrower’s cost, the required portion of the Hedging Obligations. In the event that Borrower enters into any Hedging Transaction with a party other than Administrative Agent, Borrower shall cause a Collateral Assignment of Hedge to be duly executed by the applicable parties thereto. Nothing herein constitutes an offer or recommendation to enter into any “swap” or trading strategy involving a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act. Any such offer or recommendation, if any, will only occur after Administrative Agent or a Lender has received appropriate documentation from Borrower regarding whether Borrower is qualified to enter into a swap under Applicable Law.[[18]](#footnote-19)

## **Mitigation of Obligations**

. If any Lender requests compensation under Section 2.9, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.11, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its portion of the Loan hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable under Section 2.9 or Section 2.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all costs and expenses incurred by any Lender in connection with such designation or assignment.

## **Replacement of Lenders**

. If (a) any Lender requests compensation under Section 2.9, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.11 and such Lender has declined or is unable to designate a different lending office in accordance with Section 2.13, **[or]** (b) any Lender is a Defaulting Lender **[, or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 9.2(b), the consent of Required Lenders shall have been obtained but the consent of one or more of such other Lenders (each a “Non-Consenting Lender”) whose consent is required shall not have been obtained]**, [[19]](#footnote-20)then Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions set forth in Section 9.4(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.9 or 2.11, as applicable) and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender) (a “**Replacement Lender**”); provided that (i) Borrower shall have received the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of the portion of the Loan owed to it, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (in the case of such outstanding principal and accrued interest) and from Borrower (in the case of all other amounts), **[and]** (iii) in the case of a claim for compensation under Section 2.9 or payments required to be made pursuant to Section 2.11, such assignment will result in a reduction in such compensation or payments **[, and (iv) in the case of a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such terminated Lender was a Non-Consenting Lender]**. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

## **Funding Indemnity**

. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by Borrower pursuant to Section 2.14, then, in any such event, Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds or from any fees payable. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

## **Defaulting Lenders.**

### Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

#### Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and in Section 9.2.

#### Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 9.7 shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; second, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any portion of the Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; third, if so determined by Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender’s potential future funding obligations with respect to the Loan under this Agreement; fourth, to the payment of any amounts owing to the Lenders **[or the Issuing Bank]** as a result of any judgment of a court of competent jurisdiction obtained by any Lender **[or the Issuing Bank]** against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of the portion of the Loan in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such portion of the Loan was made at a time when the conditions set forth in Article III were satisfied or waived, such payment shall be applied solely to pay the portion of the Loan owed to all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any portion of the Loan owed to such Defaulting Lender until such time as the Loan is held by the Lenders pro rata in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed or to be owed by a Defaulting Lender pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

### Defaulting Lender Cure. If Borrower and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of the outstanding Loan of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loan to be held pro rata by the Lenders in accordance with the applicable Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender.

### **[(c) Cash Collateral. Borrower will, not later than two (2) Business Days after demand by Administrative Agent (at the direction of the Issuing Bank), (a) Cash Collateralize a portion of the obligations of Borrower to the Issuing Bank equal to such Defaulting Lender’s LC Exposure, or (b) make other arrangements satisfactory to Administrative Agent, and to the Issuing Bank, in its sole discretion to protect it against the risk of non-payment by such Defaulting Lender; provided, that no such Cash Collateralization will constitute a waiver or release of any claim Borrower, Administrative Agent, the Issuing Bank or any other Lender may have against such Defaulting Lender, or cause such Defaulting Lender to be a Non-Defaulting Lender.]**

## **Funding of Borrowings**

**.** Each Lender will make available each advance under a Loan to be made by it hereunder on the proposed date thereof by wire transfer in immediately available funds by 11:00 a.m. ([Charlotte, North Carolina/\_\_\_\_\_\_, \_\_\_\_\_\_\_ ] time) to Administrative Agent at the office specified by Administrative Agent. Administrative Agent will make such advances available to Borrower by promptly crediting the amount that it receives in like funds by the close of business on such date, to the Operating Account maintained by Borrower with Administrative Agent.

### *Presumption of Payment*. Unless Administrative Agent shall have been notified by any Lender prior to 3:00 p.m. ([Charlotte, North Carolina] [\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_] time) at least one (1) Business Day prior to the date of a Borrowing in which such Lender is to participate that such Lender will not make available to Administrative Agent such Lender’s share of such Borrowing, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date, and Administrative Agent, in reliance on such assumption, may make available to Borrower on such date a corresponding amount. If such corresponding amount is not in fact made available to Administrative Agent by such Lender on the date of such Borrowing, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest at the Federal Funds Rate until the second Business Day after such demand and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent’s demand therefor, Administrative Agent shall promptly notify Borrower, and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest at the rate specified for such Borrowing. Nothing in this subsection shall be deemed to relieve any Lender from its obligation to fund its Pro Rata Share of any Borrowing hereunder or to prejudice any rights which Borrower may have against any Lender as a result of any default by such Lender hereunder.

### *Return of Funds*. If any Lender makes available to Administrative Agent such Lender’s share of a Borrowing and such Borrowing is not then made to Borrower, Administrative Agent shall return such funds to such Lender, after deducting therefrom any unpaid obligations of such Lender hereunder.

### *Pro Rata Lending*. Each advance under the Loan **[or participation in an LC Disbursement]** shall be made by the Lenders on the basis of their respective Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in its obligations hereunder, and each Lender shall be obligated to make its Pro Rata Share of advances under the Loan **[and participation in LC Disbursements]** provided to be made by it hereunder, regardless of the failure of any other Lender to make its Pro Rata Share of advances under the Loan hereunder.

## **[Letters of Credit****.**

### ***Issuance*. During the period commencing on the date hereof and ending ten (10) Business Days prior to the Maturity Date, the Issuing Bank, in reliance upon the agreements of the other Lenders pursuant to Section 2.18(e), may, in its sole discretion, issue, at the request of Borrower, Letters of Credit for the account of** **Borrower on the terms and conditions hereinafter set forth;** **provided, that (i) each Letter of Credit shall expire on the earlier of (A) the date one year after the date of issuance of such Letter of Credit (or in the case of any renewal or extension thereof, one year after such renewal or extension) and (B) the date that is five (5) Business Days prior to the Maturity Date; (ii) each Letter of Credit shall be in a stated amount of at least $[amount]; and (iii)** **Borrower may not request any Letter of Credit, if,**  **after giving effect to such issuance** **,** **(A) the aggregate LC Exposure would exceed the LC Commitment,**  **(B) the amount of the outstanding Loan, together with the aggregate LC Exposure, would exceed the aggregate Commitments or (c) the Pro Rata Share of the Loan of any Lender, together with such Lender’s LC Exposure, would exceed such Lender’s Commitment. Each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Bank without recourse a participation in each Letter of Credit equal to such Lender’s Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit on the date of issuance. Each issuance of a Letter of Credit shall be deemed to utilize the Revolving Commitment of each Lender by an amount equal to the amount of such participation.**

### ***Manner of Application*. To request the issuance of a Letter of Credit (or any amendment, renewal or extension of an outstanding Letter of Credit),** **Borrower shall give the Issuing Bank and** **Administrative Agent irrevocable written notice at least three (3) Business Days prior to the requested date of such issuance specifying the date (which shall be a Business Day) such Letter of Credit is to be issued (or amended, extended or renewed, as the case may be), the expiration date of such Letter of Credit, the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. In addition to the satisfaction of the conditions in Article III, the issuance of such Letter of Credit (or any amendment which increases the amount of such Letter of Credit) will be subject to the further conditions that such Letter of Credit shall be in such form and contain such terms as the Issuing Bank shall approve and that** **Borrower shall have executed and delivered any additional applications, agreements and instruments relating to such Letter of Credit as the Issuing Bank shall reasonably require; provided, that in the event of any conflict between such applications, agreements or instruments and this Agreement, the terms of this Agreement shall control.**

### ***Confirmation with Administrative Agent*. At least two** **(2)** **Business Days prior to the issuance of any Letter of Credit, the Issuing Bank will confirm with** **Administrative Agent (by telephone or in writing) that** **Administrative Agent has received such notice and if not, the Issuing Bank will provide** **Administrative Agent with a copy thereof. Unless the Issuing Bank has received notice from Administrative Agent on or before the Business Day immediately preceding the date the Issuing Bank is to issue the requested Letter of Credit (1) directing the Issuing Bank not to issue the Letter of Credit because such issuance is not then permitted hereunder because of the limitations set forth in Section 2.10(a) or that one or more conditions specified in Article III are not then satisfied, then, subject to the terms and conditions hereof, the Issuing Bank shall, on the requested date, issue such Letter of Credit in accordance with the Issuing Bank’s usual and customary business practices.**

### ***Demand for Payment under a Letter of Credit*.** **The Issuing Bank shall examine all documents purporting to represent a demand for payment under a Letter of Credit promptly following its receipt thereof. The Issuing Bank shall notify** **Borrower and Administrative Agent of such demand for payment and whether the Issuing Bank has made or will make a LC Disbursement thereunder; provided, that any failure to give or delay in giving such notice shall not relieve** **Borrower of its obligation to reimburse the Issuing Bank and** **the Lenders with respect to such LC Disbursement.** **Borrower shall be irrevocably and unconditionally obligated to reimburse the Issuing Bank for any LC Disbursements paid by the Issuing Bank in respect of such drawing, without presentment, demand or other formalities of any kind. Unless** **Borrower shall have notified the Issuing Bank and** **Administrative Agent prior to 11:00 a.m. on the Business Day immediately prior to the date on which such drawing is honored that** **Borrower intends to reimburse the Issuing Bank for the amount of such drawing in funds other than from the proceeds of an advance under the Loan,** **Borrower shall be deemed to have timely given a request to** **Administrative Agent requesting** **the Lenders to make an** **advance under the Loan**  **on the date on which such drawing is honored in an exact amount due to the Issuing Bank; provided, that for purposes solely of such Borrowing, the conditions precedent set forth in Section 3.2 hereof shall not be applicable.** **Administrative Agent shall notify** **the Lenders of such advance in accordance with Section 2.1, and each Lender shall make the proceeds of its Pro Rata Share of such advance available to** **Administrative Agent for the account of the Issuing Bank in accordance with Section 2.17. The proceeds of such advance shall be applied directly by** **Administrative Agent to reimburse the Issuing Bank for such LC Disbursement.**

### ***Funding of Participations*. If for any reason an advance under the Loan may not be (as determined in the sole discretion of** **Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Lender (other than the Issuing Bank) shall be obligated to fund the participation that such Lender purchased pursuant to subsection 2.18(a) in an amount equal to its Pro Rata Share of such LC Disbursement on and as of the date which such advance should have been made. Each Lender’s obligation to fund its participation shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (i) any setoff, counterclaim, recoupment, defense or other right that such Lender or any other Person may have against the Issuing Bank or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of the**  **Commitments, (iii) any adverse change in the condition (financial or otherwise) of** **Borrower, (iv) any breach of this Agreement by** **Borrower or any other Lender, (v) any amendment, renewal or extension of any Letter of Credit or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. On the date that such participation is required to be funded, each Lender shall promptly transfer, in immediately available funds, the amount of its participation to** **Administrative Agent for the account of the Issuing Bank. Whenever, at any time after the Issuing Bank has received from any such Lender the funds for its participation in a LC Disbursement, the Issuing Bank (or** **Administrative Agent on its behalf) receives any payment on account thereof,** **Administrative Agent or the Issuing Bank, as the case may be, will distribute to such Lender its Pro Rata Share of such payment; provided, that if such payment is required to be returned for any reason to** **Borrower or to a trustee, receiver, liquidator, custodian or similar official in any bankruptcy proceeding, such Lender will return to** **Administrative Agent or the Issuing Bank any portion thereof previously distributed by** **Administrative Agent or the Issuing Bank to it.**

### ***Failure to Fund*. To the extent that any Lender shall fail to pay any amount required to be paid pursuant to paragraphs 2.18(d)** **or 2.18(e) of this Section on the due date therefor, such Lender shall pay interest to the Issuing Bank (through** **Administrative Agent) on such amount from such due date to the date such payment is made at a rate per annum equal to the Federal Funds Rate; provided, that if such Lender shall fail to make such payment to the Issuing Bank within three (3) Business Days of such due date, then, retroactively to the due date, such Lender shall be obligated to pay interest on such amount at the Default Rate.**

### ***Cash Collateral*. If any Event of Default shall occur and be continuing, on the Business Day that** **Borrower receives notice from** **Administrative Agent or the Required Lenders demanding that its reimbursement obligations with respect to the Letters of Credit be Cash Collateralized pursuant to this paragraph,** **Borrower shall deposit in an account with** **Administrative Agent, in the name of** **Administrative Agent and for the benefit of the Issuing Bank and** **the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid fees thereon; provided, that such obligation to Cash Collateralize the reimbursement obligations of** **Borrower with respect to the Letters of Credit shall become effective immediately, and such deposit shall become immediately due and payable, without demand or notice of any kind, upon the occurrence of any Event of Default with respect to** **Borrower described in Section 8.1(i) or Section 8.1(j). Such deposit shall be held by** **Administrative Agent as collateral for the payment and performance of the obligations of** **Borrower under this Agreement.** **Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Borrower agrees to execute any documents and/or certificates to effectuate the intent of this paragraph. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of** **Administrative Agent and at** **Borrower’s risk and expense, such deposits shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by** **Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it had not been reimbursed and to the extent so applied, shall be held for the satisfaction of the reimbursement obligations of** **Borrower for the LC Exposure at such time or, if the maturity of the Loan has been accelerated, with the consent of the Required Lenders, be applied to satisfy other obligations of** **Borrower under this Agreement and the other Loan Documents. If** **Borrower is required to Cash Collateralize its reimbursement obligations with respect to the Letters of Credit as a result of the occurrence of an Event of Default, such cash collateral so posted (to the extent not so applied as aforesaid) shall be returned to** **Borrower within three** **(3)** **Business Days after all Events of Default have been cured or waived.**

### ***Letter of Credit Report*. Upon the request of any Lender, but no more frequently than quarterly,** **the Issuing Bank shall deliver (through** **Administrative Agent) to each Lender and** **Borrower a report describing the aggregate Letters of Credit then outstanding. Upon the request of any Lender from time to time, the Issuing Bank shall deliver to such Lender any other information reasonably requested by such Lender with respect to each Letter of Credit then outstanding.**

### ***Unconditional Reimbursement Obligation*.** **Borrower’s obligation to reimburse LC Disbursements hereunder shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever and irrespective of any of the following circumstances:**

#### **Any lack of validity or enforceability of any Letter of Credit or this Agreement;**

#### **The existence of any claim, set-off, defense or other right which** **Borrower or any Affiliate of** **Borrower may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such beneficiary or transferee may be acting), any Lender (including the Issuing Bank) or any other Person, whether in connection with this Agreement or the Letter of Credit or any document related hereto or thereto or any unrelated transaction;**

#### **Any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;**

#### **Payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document to the Issuing Bank that does not comply with the terms of such Letter of Credit;**

#### **Any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.18(i), constitute a legal or equitable discharge of, or provide a right of setoff against,** **Borrower’s obligations hereunder; or**

#### **The existence of a Default or an Event of Default.**

**Neither** **Administrative Agent, the Issuing Bank,** **the Lenders nor any Related Party of any of the foregoing shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to above), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided, that the foregoing shall not be construed to excuse the Issuing Bank from liability to** **Borrower to the extent of any actual direct damages (as opposed to special, indirect (including claims for lost profits or other consequential damages), or punitive damages, claims in respect of which are hereby waived by** **Borrower to the extent permitted by** **Applicable Law****) suffered by** **Borrower that are caused by the Issuing Bank’s failure to exercise due care when determining whether drafts or other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree, that in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised due care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.**

### ***Governance*. Unless otherwise expressly agreed by the Issuing Bank and** **Borrower when a Letter of Credit is issued and subject to** **Applicable Laws****, (i) each standby Letter of Credit shall be governed by the “International Standby Practices 1998” (ISP98) (or such later revision as may be published by the Institute of International Banking Law & Practice on any date any Letter of Credit may be issued), (ii) each documentary Letter of Credit shall be governed by the Uniform Customs and Practices for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (or such later revision as may be published by the International Chamber of Commerce on any date any Letter of Credit may be issued) and (iii)** **Borrower shall specify the foregoing in each letter of credit application submitted for the issuance of a Letter of Credit.]**

# DISBURSEMENTS

## **Draw Requests.**

### [**No Draw Request shall be required for the Initial [Nominal] Advance on the Closing Date.**] At least ten (10) Business Days before the requested date of each other advance made under the Budget from the Equity Deposit or the Loan, Borrower shall deliver a Draw Request signed by Borrower’s Authorized Representative to Administrative Agent, together with such additional information (such as paid receipts, invoices, statements of accounts, etc.) as Administrative Agent may reasonably require to assure that amounts requisitioned are to be used to reimburse Borrower for costs previously paid by Borrower or to pay costs incurred by Borrower which are due and owing, together with AIA Application for Payment Form G702 and G703 and such schedules, affidavits, releases, waivers, statements, invoices, bills and other documents, certificates and information satisfactory to Administrative Agent as Administrative Agent shall request supporting such use of funds. Borrower shall be entitled to an advance only in an amount approved by Administrative Agent in accordance with the terms of this Agreement and the other Loan Documents. Lenders shall not be required to make advances more frequently than once each calendar month. Administrative Agent shall provide each Lender with a copy of the Draw Request and AIA Document G-702 and G-703 and, to the extent available, the Inspector’s report described in Section 3.1(c) below promptly upon receipt by Administrative Agent hereunder.

### The following individuals are authorized by Borrower to sign Draw Requests and to approve payments of principal, interest and/or fees to be debited from Borrower’s Operating Account:

Authorized Individual Title

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

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

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

Each of the foregoing individuals referred to herein as an “**Authorized Representative**.” Borrower may designate additional individuals as Authorized Representatives, or relieve individuals of their status as Authorized Representatives, by delivering a duly authorized and executed written notice thereof to Administrative Agent, such written notice to be in form and substance satisfactory to Administrative Agent in its discretion and accompanied by such evidence of due authorization thereof as Administrative Agent may require (any such written notice an “**Authorized Representative Change Notice**”). An Authorized Representative Change Notice will be effective only with respect to Draw Requests and approvals from and after the date of Administrative Agent’s written acknowledgement of receipt thereof.

### Following receipt and approval of a Draw Request, all supporting documentation and information required by Administrative Agent, and receipt and approval of a written report from the Inspector satisfactory to Administrative Agent (including as to the matters described in clauses (h) and (i) of Section 3.3), Administrative Agent will determine the amount of any advance Lenders shall make in accordance with this Agreement, the Loan Documents, the Budget and the following standards: (i) for construction work **[other than Tenant improvement work]**, advances on the basis of **[\_\_\_\_\_\_\_ percent (\_\_\_\_%)]** of the costs shown on the application for payment from the General Contractor reviewed and approved by Administrative Agent showing work or material in place on the Improvements that comply with the terms of the Loan Documents, minus all previous advances and all amounts required to be paid by Borrower, as described in the Budget, **[(ii) for Tenant improvement work, advances on the basis of [\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_%)] of the costs shown for each lease in the application for payment from the General Contractor reviewed and approved by Administrative Agent for the work or material in place that complies with the terms of the Loan Documents, provided that [if required by Administrative Agent], (A) an application for payment may be submitted only after all Tenant improvements have been completed, [(B) the amount of the requested advance does not exceed the $\_\_\_\_\_\_\_\_ per square foot allowance provided in the Budget], (C) all provisions of the Loan Documents have been satisfied, (D) the term of the applicable lease has commenced, and (E) Administrative Agent has received from the applicable Tenant a Tenant estoppel certificate and a subordination and attornment agreement in form satisfactory to Administrative Agent and]**, and(iii) for soft costs, advances on the basis of **[one hundred percent (100%)]** of such costs in accordance with the Budget. The final retainage for the direct costs of construction will be retained until each of the conditions precedent to the final advance of the Loan proceeds set forth in Section 3.4 (Conditions Precedent to Final Advance) shall have been satisfied to the complete satisfaction of Administrative Agent; provided, however, that, so long as no Default or Event of Default exists, the retainage held with respect to any subcontractor, laborer or materialman who has completed its work or services; whose work or services has been accepted and approved by Administrative Agent; and who has delivered to Administrative Agent a final waiver of liens, may be requisitioned by Borrower and disbursed at the discretion of Administrative Agent.

### Notwithstanding anything contained herein to the contrary, no advances shall be made for building materials or furnishings that are not yet incorporated into the Improvements unless (i) Borrower has good title to the stored materials and the stored materials are components in a form ready for incorporation into the Improvements and will be incorporated within a period of forty-five (45) days, (ii) the stored materials are in Borrower’s possession and satisfactorily stored on the Land or such materials are satisfactorily stored at such other site as Administrative Agent may approve, (iii) the stored materials are protected and insured against theft and damage in a manner and amount satisfactory to Administrative Agent, (iv ) the stored materials have been paid for in full or will be paid for with the funds to be advanced and all lien rights and claims of the supplier have been released or will be released upon payment with the advanced funds and (v) Administrative Agent for the benefit of Lenders has or will have upon payment with the advanced funds a perfected, first priority security interest in the stored materials. The aggregate amount of advances for stored materials that have not yet been incorporated into the Improvements shall not exceed \_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_) at any time.

### Lenders shall, only upon the satisfaction, as determined by Administrative Agent in its good faith business judgment, of all applicable conditions of this Agreement and the Loan Documents, be required to make the requested advance to Borrower (in the amount determined by Administrative Agent in accordance with the preceding paragraph (b)) on a Business Day within ten (10) Business Days after such satisfaction of all conditions precedent. Each requisition, and Borrower’s acceptance of any advance, shall be deemed to ratify and confirm, as of the date of the requisition and the advance, respectively, that (i) all representations and warranties in ARTICLE IV (Representations and Warranties), elsewhere herein and in the other Loan Documents remain true and correct in all material respects (unless such representations and warranties are qualified by materiality or a Material Adverse Effect, in which case such representations and warranties shall be true and correct in all respects), and all covenants and agreements in the Loan Documents remain satisfied in all material respects (unless such covenants or agreements are qualified by materiality or a Material Adverse Effect, in which case such covenants or agreements shall be satisfied in all respects), (ii) there is no uncured Default or Event of Default existing under the Loan Documents, (iii) all conditions to the advance, whether or not evidence thereof is required by Administrative Agent, are satisfied, (iv) the AIA Document G702 and G703 (or other similar forms approved by Administrative Agent in its good faith business judgment) forms executed by each contractor and approved by the Architect, together with all schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents, certificates and information submitted for the requisition are complete and correct, and in all respects what they purport and appear to be for the amount and period applicable to the requisition, (v) all advances previously made to Borrower were disbursed, and the proceeds of the advance requested in the requisition will be disbursed, for the payment of costs and expenses specified in the requisition and for no other purpose, (vi) after the advance, all obligations for work and other costs heretofore incurred by Borrower in connection with the construction of the Improvements and which are due and payable will be fully paid and satisfied, and (vii) any unadvanced portion of the Loan to which Borrower is entitled, plus the portions of the total cost of the construction of the Improvements which are to be paid by Borrower from other funds, that in Administrative Agent’s good faith business judgment are available, set aside and committed, is or will be sufficient to pay the actual unpaid total cost of the construction of the Improvements.

## **Conditions Precedent to Initial [Nominal] Advance [and any Letter of Credit]**

**.** The following shall be conditions precedent to the closing of the Loan and the Initial [**Nominal**] Advance **[and the issuance of any Letter of Credit]**:

### The Notes, the Security Instrument and the other Loan Documents shall have been properly executed and delivered to Administrative Agent. The Security Instrument shall be acknowledged and recorded in the appropriate public office or delivered to a representative of the title company for recording and payment shall have been made for all conveyancing and recording fees in connection with the settlement of the Loan, and for any transfer or documentary stamp taxes due under any federal, state or municipal law.

### Administrative Agent shall have received a paid Title Insurance Policy or a valid and enforceable commitment to issue the same.

### Administrative Agent shall have received advice, in form and substance and from a source satisfactory to Administrative Agent, to the effect that a search of the applicable public records discloses no conditional sales contracts, chattel mortgages, leases of personalty, financing statements, title retention agreements, mechanics liens, tax liens or other liens or encumbrances filed or recorded against the Property except such as Administrative Agent shall have approved.

### Administrative Agent shall have received certificates of insurance (in form and substance satisfactory to Administrative Agent) evidencing that all policies of insurance required by the terms hereof and by the other Loan Documents are in full force and effect issued by a company or companies satisfactory to Administrative Agent and in form and amount satisfactory to Administrative Agent, together with copies of all such policies. Without limitation of the foregoing, if any portion of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, then Borrower shall have complied with the provisions of Section 5.5.

### Administrative Agent shall have received and approved an appraisal of the Property, in form and substance satisfactory to Administrative Agent (an “**Appraisal**”), [confirming that the minimum “as stabilized” value of the Property will not result in the ratio of (i) the maximum amount of the Loan to (ii) the minimum “as stabilized” value of the Property reflected in such Appraisal exceeding \_\_\_\_\_\_\_\_ percent (\_\_%)].

### **[Administrative Agent shall have confirmed that the maximum amount of the Loan shall not [(i) exceed \_\_\_\_\_\_\_ percent (\_\_\_%) of Project Costs,[[20]](#footnote-21) (ii) result in a ratio of Net Operating Income divided by Debt Service of less than [\_\_\_\_\_\_\_\_\_], or (iii) result in a Debt Yield of less than \_\_\_\_\_\_\_%]. [For purposes of this clause (f) only, “Net Operating Income” will be based on [insert any applicable term sheet adjustments].]**

### Administrative Agent shall have received from Borrower a complete set of the Plans and Specifications signed and sealed by the Architect, together with written evidence, in form and substance satisfactory to Administrative Agent, to the effect that the Plans and Specifications are satisfactory to Borrower, the General Contractor, the Construction Manager, the Inspector and, to the extent required by Applicable Law or any effective restrictive covenant, have been approved by all Governmental Authorities having or claiming jurisdiction and by the beneficiary of any such restrictive covenant, respectively.

### Administrative Agent shall have received and approved fully executed copies of the Construction Contract, Construction Management Contract, the Architect’s Contract [**and of all executed subcontracts**][[21]](#footnote-22) as well as (i) any information regarding the General Contractor, the Construction Manager, the Architect and any subcontractor which Administrative Agent has requested and (ii) (A) consents of such contracting parties to the collateral assignment to Administrative Agent of such contracts and the agreement of each such contracting party to complete work under the applicable contract at the request of Administrative Agent and (B) agreements of such contracting parties subordinating all rights, liens, claims and charges that such contracting parties may have or acquire against Borrower or the Improvements to the rights, liens and security interests of Administrative Agent and Lenders, each to be in form and substance satisfactory to Administrative Agent.

### Administrative Agent shall have received and approved a copy of a current survey of the Land certified to Administrative Agent and to the Title Insurance Company and any recorded subdivision plat of the Land. Such survey will be dated within sixty (60) days of the date of this Agreement.

### Administrative Agent shall have received an approved site plan for the Improvements approved by all appropriate Governmental Authorities.

### Administrative Agent shall have received from Borrower written evidence, in form and substance satisfactory to Administrative Agent, from all Governmental Authorities having or claiming jurisdiction to the effect that all building, construction and other permits required in connection with the development of the Land and the construction of the Improvements have been validly issued, that all fees and bonds required in connection therewith have been paid in full or posted, as the circumstances may require, and that the Improvements meet all parking and zoning requirements and all sewer and storm drain requirements.

### Administrative Agent shall have received from Borrower written evidence, in form and substance satisfactory to Administrative Agent, from all municipalities and utility companies having or claiming jurisdiction, that all utility services required by the Plans and Specifications or otherwise necessary for the development of the Land and the construction of the Improvements and the operation thereof for their intended purpose after completion are available for connection and use at the boundaries of the Land, including, without limitation, telephone service, water supply, storm and sanitary sewer facilities, natural gas and electric facilities, and of the capacity and intent of such municipalities and utility companies to provide such utility services.

### Administrative Agent shall have received and approved a cost breakdown in trade form showing subcontractors and material suppliers.

### Administrative Agent shall have received and approved a report setting forth the monthly projected advances of the Loan throughout the construction period and a construction progress schedule in form and substance satisfactory to Administrative Agent, calling for the completion of the Improvements by a date no later than the Completion Date.

### Administrative Agent shall have received from Borrower written evidence, in form and substance satisfactory to Administrative Agent, to the effect that no construction work of any kind has commenced upon the Land and no materials have been placed or stored upon the Land prior to the recordation of the Security Instrument among the real property records where the Land is located unless all liens, claims or encumbrances that may exist presently or may arise hereafter resulting from the same shall be fully insured against by the Title Insurance Company and, as applicable, Borrower has complied with the requirements of Section 3.5.

### Administrative Agent shall have received and approved evidence that the General Contractor carries public liability and property damage insurance and workers’ compensation insurance in form, amounts and issued by companies acceptable to Administrative Agent.

### Administrative Agent shall have received appropriate information on past and present environmental, health and safety conditions at the Property, including without limitation, a Phase I environmental site assessment report for the Property that complies with the most recent ASTM 1527 standard, and (ii) is prepared by an environmental consultant acceptable to Administrative Agent, and any further environmental assessment, testing, analysis, or reporting deemed necessary or desirable by Administrative Agent. Administrative Agent may, based on site conditions, require appropriate documentation from an appropriate Governmental Authority on the current status and future activities and actions concerning environmental conditions at the Property.

### Administrative Agent shall have received evidence acceptable in all respects that the Improvements (including Tenant improvements), when constructed, will comply with all legal requirements regarding access and facilities for handicapped or disabled persons, including, without limitation and to the extent applicable, The Federal Architectural Barriers Act (42 U.S.C. § 4151 et seq.), The Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.), The Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), The Rehabilitation Act of 1973 (29 U.S.C. § 794) and any applicable state statutes relating to access and facilities for handicapped or disabled persons.

### Administrative Agent shall have received and approved soil reports which shall (i) demonstrate that the soil and geotechnical conditions of the Land are suitable for the construction of the Improvements and other activities contemplated on the Property and (ii) evidence to Administrative Agent’s satisfaction that there are no Hydric Soils on the Land.

### Administrative Agent shall have received and approved performance and labor and material payment bonds covering the General Contractor and those subcontractors designated by Administrative Agent, from a corporate surety acceptable to Administrative Agent and in dual obligee form, naming Administrative Agent, on behalf of the Lenders, as dual obligee, together with written evidence, in form and substance satisfactory to Administrative Agent that all fees and premiums due on account thereof have been paid in full.

### Administrative Agent shall have received and approved evidence of the existence, good standing, authority and capacity of Borrower and Guarantor and their respective constituent partners, members, managers and owners to execute, deliver and perform their respective obligations to Administrative Agent and Lenders under the Loan Documents, including: (i) for each partnership (including a joint venture or limited partnership): (A) a true and complete copy of an executed partnership agreement or limited partnership agreement, and all amendments thereto; (B) for each limited partnership, a copy of the certificate of limited partnership and all amendments thereto accompanied by a certificate issued by the appropriate governmental official of the jurisdiction of formation that the copy is true and complete, and evidence Administration Agent requires of registration or qualification to do business in the state where Borrower’s principal place of business is located and the state where the Land is located, and (C) a partnership affidavit certifying who will be authorized to execute or attest any of the Loan Documents, and a true and complete copy of the partnership resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; (ii) for each corporation: (A) a true and complete copy of its articles of incorporation and by‑laws, and all amendments thereto, a certificate of incumbency of all of its officers who are authorized to execute or attest to any of the Loan Documents, and a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; and (B) certificates of existence, good standing and qualification to do business issued by the appropriate governmental officials in the state of its formation and, if different, the state in which the Land is located; (iii) for each limited liability company or limited liability partnership: (A) a true and complete copy of the articles of organization and operating agreement, and all amendments thereto, a certificate of incumbency of all of its members who are authorized to execute or attest to any of the Loan Documents, and a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; and (B) certificates of existence, good standing and qualification to do business issued by appropriate governmental officials in the state of its formation and, if different, the state in which the Land is located; (iv) for each entity or organization that is not a corporation, partnership, limited partnership, joint venture, limited liability company or limited liability partnership, a copy of each document creating it or governing the existence, operation, power or authority of it or its representatives and (v) all other certificates, resolutions and consents required by Administrative Agent, in its good faith business judgment, applicable to the foregoing.

### Administrative Agent, for the benefit of itself and the Lenders, shall have received and approved an opinion of counsel for Borrower as to Borrower’s good standing, formation, power and authority, to the validity, binding effect and enforceability of the Loan Documents, and such other items as Administrative Agent may reasonably require.

### Administrative Agent shall have received and approved copies of all executed Leases and contracts of sale of the Property or of any portion thereof.

### Administrative Agent shall have received financial statements for Borrower and Guarantor for their most recently ended fiscal year and current fiscal period (prepared in compliance with the requirements set forth in \_\_\_\_\_\_\_\_\_\_\_).

### Administrative Agent shall be satisfied that Borrower has paid all fees, costs and expenses (including fees and costs of Administrative Agent’s counsel) then required to be paid pursuant to this Agreement and all other Loan Documents.

### Administrative Agent shall have received a flood hazard certification with respect to the Property, and, if applicable, evidence of flood insurance coverage conforming to the requirements ofExhibit 5.5 hereof, along with an executed Certificate of Flood Insurance Compliance in the form attached hereto as Exhibit 3.1.

### **[Administrative Agent shall have received and approved the Permanent Commitment and an executed Multi-Party Agreement.]**

### At least five (5) days prior to the date of this Agreement, Administrated Agent shall have received all documentation and other information required by bank regulatory authorities or reasonably requested by Administrative Agent or any Lender under or in respect of applicable “know your customer” and anti-money laundering legal requirements including the Patriot Act and, if Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to Borrower.

### Administrative Agent shall have received such other documents and certificates as Administrative Agent may reasonably request from Borrower, Guarantor and any other Person, in form and content satisfactory to Administrative Agent.

## **Conditions Precedent to All Advances [and Letters of Credit]**

**.** The Lenders shall not be obligated to make any advance of the Loan proceeds **[or issue any Letter of Credit]** unless the conditions described in Section 3.2 (Conditions Precedent to Initial **[Nominal]** Advance **[and any Letter of Credit]**) and the following additional conditions shall have been satisfied:

### In the case of any advance of Loan proceeds (other than the Initial [**Nominal**] Advance), Administrative Agent shall have received a Draw Request and all other items described in Section 3.1.

### **[In the case of any Letter of Credit, Administrative Agent shall have received a letter of credit request and all other items required by Section 2.18.]**

### Prior to the first advance of Loan proceeds **[(other than the Initial (Nominal) Advance)]**, Administrative Agent shall have received reasonably satisfactory evidence of a minimum **[cash equity investment in the project] [equity investment in the project consisting of cash and/or the appraised value of contributed real property]** by an equity provider satisfactory to Administrative Agent in an amount not less than $[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].[[22]](#footnote-23)

### Administrative Agent shall have received a notice of title continuation or an endorsement to the Title Insurance Policy theretofore delivered, indicating that since the last preceding advance, there has been no change in the status of title and no other exceptions not theretofore approved by Administrative Agent, which endorsement shall have the effect of advancing the effective date of the Title Insurance Policy to the date of the advance **[or Letter of Credit]** then being made and increasing the coverage of the Title Insurance Policy by an amount equal to the advance **[or Letter of Credit]** then being made if the Title Insurance Policy does not by its terms provide for such an increase. **[Note: modify if necessary for jurisdiction specifics]**

### Unless the same have been bonded or released of record as provided in Section 3.5, covered by the Title Insurance Policy in a manner acceptable to Administrative Agent or otherwise satisfied and released to the satisfaction of Administrative Agent, no lien for the performance of work or supplying of labor, materials or services shall have been filed against the Land.

### No Default or Event of Default shall have occurred and be continuing.

### The Improvements shall not have been materially damaged by fire or other casualty unless Administrative Agent shall have received Insurance Proceeds sufficient in the judgment of Administrative Agent to effect a satisfactory restoration of the Improvements in accordance with the terms of the Loan Documents.

### Administrative Agent shall have received written evidence, in form and substance satisfactory to Administrative Agent, to the effect that all work requiring inspection by Governmental Authorities having or claiming jurisdiction has been duly inspected and approved by such Governmental Authorities and by any rating or inspection organization, bureau, association or office having or claiming jurisdiction.

### Administrative Agent shall be satisfied, based upon the advice of the Inspector, that the Improvements can be completed by a date no later than the Completion Date with the balance of the Loan proceeds then held by the Lenders and available for advance pursuant to the terms of this Agreement and other funds which Administrative Agent is reasonably satisfied are available to Borrower.

### Administrative Agent shall have received a confirmation from the Inspector that, to the best of such party’s knowledge, information and belief, construction is in accordance with the Plans and Specifications, the quality of the work for which the advance is being requested is in accordance with the applicable contract, the amount of the advance requested represents work in place based on on-site observations and the data comprising the requisition, any contract change orders presented are appropriate in cost and scope and in accordance with the terms of this Agreement, the work has progressed in accordance with the Construction Contract and schedule, the undisbursed amount of the Construction Contract is sufficient to complete the remaining contracted work, and the applicable contractor is entitled to the payment of the amount certified.

### **[Administrative Agent shall have received from Borrower a foundation survey made immediately after, but in no event later than ten (10) days after, the completion of the entire foundation of each building or structure of the Improvements, satisfactory to Administrative Agent.]**

### **[Administrative Agent shall have received within thirty-five (35) days after the pouring of any concrete for any of the Improvements a report satisfactory to Administrative Agent of the results of concrete tests at the time the concrete is poured.]**

### **[Within ten (10) days after the compaction of any soil for construction, a report satisfactory to Administrative Agent of the results of soil tests.]**

### No condition or situation shall exist at the Land which, in the reasonable determination of Administrative Agent, constitutes a danger to or impairment of the Property or presents a danger or hazard to the public.

### The representations and warranties made in ARTICLE IV (Representations and Warranties), elsewhere in this Agreement and in the other Loan Documents shall be true and correct in all material respects (unless such representations and warranties are qualified by materiality or a Material Adverse Effect, in which case such representations and warranties are true and correct in all respects) on and as of the date of the advance with the same effect as if made on such date.

### All terms and conditions of the Loan Documents **[and the Permanent Commitment]** required to be met as of the date of the applicable advance shall have been met to the complete satisfaction of Administrative Agent. **[Without limitation of the foregoing, if requested by Administrative Agent Borrower shall provide to Administrative Agent confirmation from the Permanent Lender of the satisfaction of such conditions.]**

### In the reasonable judgment of Administrative Agent, all work completed at the time of the application for an advance has been performed in a good and workmanlike manner and all materials and fixtures required under this Agreement or the Construction Contract to have been furnished and installed at that stage of construction have been furnished and installed.

### Borrower shall have funded the Equity Deposit if and to the extent required pursuant to Section 2.2(d).

### All amounts previously advanced under the Loan have been used and paid by Borrower in compliance with the Budget, and Borrower has provided the documents required by Section 3.5 with respect thereto.

### With respect to each advance of Loan proceeds to pay General Contractor, Administrative Agent shall have received original applications for payments in form reasonably acceptable to Administrative Agent and approved by the Inspector, containing a break down by trade and/or other categories reasonably acceptable to Administrative Agent, executed and certified by General Contractor and the Architect, accompanied by invoices or subcontractor pay applications, as applicable.

### If there are Leases in existence on the date of any such advance **[or Letter of Credit]**, Administrative Agent shall have received and approved copies of such leases **[and shall have received an estoppel certificate and a subordination agreement from each Tenant of the Property] *– Note: revise if necessary per deal terms;***

### No event or circumstance that has a Material Adverse Effect shall have occurred;

### [**Borrower shall have delivered, or caused to be delivered, to Administrative Agent the post-closing items set forth on the Loan Closing Statement on a date that is no later than the dates specified in the Loan Closing Statement for the delivery of such items, as such dates may be extended in Administrative Agent’s discretion.**]

### Administrative Agent shall have received such other documents and certificates as Administrative Agent may reasonably request from Borrower, Guarantor and any other person or entity, in form and content satisfactory to Administrative Agent.

## **Construction Close-Out Deliveries and Conditions Precedent to Final Advance**

**.** Borrower shall satisfy the following additional conditions (the “**Close-Out Conditions**”) no later than sixty (60) days following issuance by the applicable Government Authority of final certificates of occupancy, or equivalent documentation, for the Improvements **[(provided that item (k) below shall in all events be satisfied prior to any Tenant moving into the Improvements)].** Administrative Agent and the Lenders shall not be obligated to make the final advance of the Loan proceeds unless the conditions described in Section 3.3 (Conditions Precedent to All Advances **[and Letters of Credit]**) and the Close-Out Conditions shall have been satisfied.

Close-Out Conditions:

### Administrative Agent shall have received the final “as built” survey.

### Administrative Agent shall have received written evidence, in form and substance satisfactory to Administrative Agent, including a certificate of the Inspector and a Certificate of Substantial Completion (AIA Form G704 or equivalent) signed by the Architect, the General Contractor and Borrower, to the effect that the Improvements have been completed in accordance with the Plans and Specifications.

### The Title Insurance Policy for the Security Instrument shall be endorsed to remove any exception for [survey] [mechanic’s or materialmen’s liens] or pending disbursements, with no additional title change or exception objectionable to Administrative Agent, other than Permitted Encumbrances.

### Administrative Agent shall have received evidence satisfactory to it that all Applicable Laws have been satisfied, including receipt by Borrower of all necessary governmental licenses, certificates and permits (including 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.

### All terms and conditions of the Loan Documents required to be met as of the date of the final advance of the Loan proceeds shall have been met to the complete satisfaction of Administrative Agent.

### **[If applicable, evidence satisfactory to Administrative Agent that Permanent Lender has approved the completed Improvements, and written confirmation to Administrative Agent from Permanent Lender that all conditions precedent to the initial funding of the Permanent Loan have been fulfilled as required by the Permanent Loan Commitment.]**

### All final waivers of liens of the General Contractor, subcontractors, laborers and material suppliers have been furnished to Administrative Agent or, as to any disputed lien or claim of lien, a bond in form and substance acceptable to Administrative Agent has been provided or sufficient funds to cover it remain undisbursed and available for such purposes under the Budget or are placed in escrow with an escrow agent satisfactory to Administrative Agent.

### Administrative Agent shall be satisfied that Borrower’s insurance complies in all respects with the provisions of Section 5.5 (including, without limitation, as to the replacement of “builder’s risk” insurance with casualty or physical damage insurance).

### If applicable and to the extent not previously delivered, Administrative Agent shall have received and approved a copy of each Lease of any portion of the Property and shall have received (i) an estoppel certificate and a subordination agreement from each applicable Tenant of the Property [Note: revise if necessary per deal terms] and (ii) written confirmation by each Tenant having the right or obligation to do so under its Lease that such Tenant has approved the completed Improvements.

### Administrative Agent shall have received a copy of any final punch list, together with a report from Borrower as to the status of the listed items, and shall have established a hold-back from the final advance, in an amount satisfactory to it, with respect to any such items. Any such hold back shall be advanced only upon completion of all such punch list items to the satisfaction of Administrative Agent and subject to the absence of any Default or Event of Default and the satisfaction of any other conditions precedent as Administrative Agent shall deem necessary or appropriate.

### **[Prior to any Tenant moving into the Improvements, Borrower shall provide to Administrative Agent a radon gas test measurement report and conclusion in form and substance reasonably acceptable to Administrative Agent (a “Radon Report”). The Radon Report shall be prepared by a radon service professional who meets state-specific requirements for providing such Radon Reports, and shall be conducted in accordance with testing protocol approved by Administrative Agent. If the Radon Report demonstrates that the radon gas level for a building exceeds the Environmental Protection Agency standard for radon action or remediation then in effect, Borrower shall, at its sole cost and expense, install a mitigation system and/or equipment to address the issues set forth in the Radon Report and shall provide a follow-up Radon Report to confirm effectiveness.] *include this provision for multifamily, day care and senior housing projects IF the Truist loan closer advises that Truist REVAL is requiring radon testing for the specific project***

### **[At the time that 75% of the maximum Loan proceeds have been advanced by Administrative Agent and the Lenders, but in all events prior to the final advance of Loan proceeds, the Collections Account and the Master Disbursement Sweep Account shall have been established by Borrower as required pursuant to Section 5.18(a) hereof, Borrower shall have executed and delivered to Administrative Agent the Collections Account Agreement in form attached hereto as Exhibit “   ”, and Borrower shall provide and/or execute such other information and documentation as required by Administrative Agent to establish such Accounts.]**

 **[Notwithstanding the foregoing, if the Improvements consist of multiple buildings, then Borrower shall satisfy item[s] (h) [and (k)] of the Close-Out Conditions on a per building basis; i.e., no later than sixty (60) days following issuance by the applicable Government Authority of a final certificate of occupancy, or equivalent documentation, for a particular building, Borrower shall satisfy item[s] (h) [and (k)] of the Close-Out Conditions for that building.]** ***include this provision for any project with multiple buildings, so that permanent casualty insurance and radon testing, if required, are provided on a per building basis***

## **Releases of Liens**

**.** Before making any advance of the Loan proceeds, Administrative Agent may require Borrower to obtain from the General Contractor and from all subcontractors and suppliers acknowledgments of payment and releases of liens and rights to claim liens for work performed or materials delivered through the date of the last preceding advance and concurrently with the final advance. All such acknowledgments and releases shall be in form and substance satisfactory to Administrative Agent and the Title Insurance Company.

## **Trust Funds**

**.** Borrower will receive the advances to be made hereunder and will hold the same as a trust fund for the purpose of paying the costs of the development of the Land and the construction of the Improvements in accordance with the Budget and Borrower agrees not to expend any part of the proceeds of the Loan for any purpose except in connection with the uses and purposes provided for in this Agreement without the prior written consent of Administrative Agent.

## **Advances to Pay Principal, Interest and Other Amounts**

**.** At the option of Administrative Agent, Administrative Agent may apply amounts due hereunder to the satisfaction of the conditions of the Loan Documents and any amounts so applied shall be part of the Loan and shall be secured by the Security Instrument. At the option of Administrative Agent, and without limiting the generality of the foregoing, Administrative Agent, on behalf of the Lenders, may pay directly from the Loan proceeds all principal and interest payments payable by Borrower in connection with the Loan and all costs, fees and expenses payable by Borrower hereunder, in each case, as and when due and payable, and following the occurrence of an Event of Default may make advances under the Loan as and when Administrative Agent deems necessary or desirable to preserve or protect the Loan collateral or any portion thereof (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvements, maintenance, repair, sale and disposition and including those made for such purposes directly to the General Contractor, the Construction Manager, the Title Insurance Company, any subcontractor or materialman, or to any of them jointly). The execution hereof by Borrower shall, and hereby does, constitute an irrevocable authorization to so advance the proceeds of the Loan. No further direction or authorization from Borrower shall be necessary with respect to such advances and all such advances shall satisfy pro tanto the obligations of Borrower hereunder and shall be secured by the Security Instrument as fully as if made to Borrower, regardless of the disposition thereof by the party or parties to whom such advance is made. Each Lender shall immediately upon request by Administrative Agent pay to Administrative Agent its Pro Rata Share of any such advance. Such advances shall be payable on demand and, if not sooner demanded, shall be repayable as part of the Loan.

## **Deposit Account**

**.** Borrower shall establish and maintain a special account with Administrative Agent into which advances funded directly to Borrower (but no other funds), excluding direct disbursements made by Administrative Agent on behalf of Lenders pursuant to this Agreement, shall be deposited, and against which checks shall be drawn only for the payment of costs specified in the Budget, which special account shall not be used for any other purpose. Borrower hereby irrevocably authorizes Administrative Agent to deposit each advance requested by Borrower to the credit of Borrower in that account. Advances may also be made, in addition to other methods contemplated herein, at Administrative Agent’s option, by direct or joint check payment, to any or all Persons entitled to payment for work or services performed or materials furnished in connection with the Improvements or the Loan, or by having the proceeds thereof made available to the Title Insurance Company (or its agent) for disbursement. Neither Administrative Agent nor any Lender shall be required to, or shall have any responsibility to, supervise the proper application or distribution of funds to third parties.

## **Liability of Administrative Agent and the Lenders**

**.** Administrative Agent and the Lenders shall in no event be responsible or liable to any Person other than Borrower for the disbursement of or failure to disburse the Loan proceeds or any part thereof and neither the General Contractor, Construction Manager nor any subcontractor, laborer or material supplier shall have any right or claim against Administrative Agent and the Lenders under this Agreement or the administration thereof.

## **Delivery of Documents**

. All of the Loan Documents, certificates, legal opinions and other documents and papers referred to in this Article, unless otherwise specified, shall be delivered to Administrative Agent for the account of each Lender and in sufficient counterparts or copies for each Lender and shall be in form and substance satisfactory in all respects to Administrative Agent.

# REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and each Lender as follows:

## **Existence; Power**

. Borrower (i) is duly organized, validly existing and in good standing as a [corporation][limited liability company]under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required.

## **Organizational Power; Authorization**

. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party are within such Loan Party’s organizational powers and have been duly authorized by all necessary organizational, and if required, **[stockholder][member][partner]**, action. This Agreement has been duly executed and delivered by Borrower, andconstitutes, and each other Loan Document to which any Loan Party is a party, when executed and delivered by such Loan Party, will constitute, valid and binding obligations of Borrower or such Loan Party (as the case may be), enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity.

## **Governmental Approvals; No Conflicts**

. The execution, delivery and performance by Borrower of this Agreement, and by each Loan Party of the other Loan Documents to which it is a party (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except those as have been obtained or made and are in full force and effect or where the failure to do so, individually or in the aggregate, could not reasonably be expected to havea Material Adverse Effect, (b) will not violate any Applicable Law or the charter, by-laws or other organizational documents of Borrower or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, material agreement or other material instrument binding on Borrower or any of its assets or give rise to a right thereunder to require any payment to be made by Borrower and (d) will not result in the creation or imposition of any Lien on any asset of Borrower, except Liens (if any) created under the Loan Documents.

## **Financial Statements**

. Borrower has furnished to each Lender the **[audited]** annual financial statements of Borrower for the years ended [**date**] and [**date**]. Such financial statements fairly present the financial condition of Borrower as of such dates and the consolidated results of operations for such periods in conformity with GAAP consistently applied. Since [**date of last audit**], there have been no changes with respect to Borrower which have had or couldreasonably be expected to have, singly or in the aggregate, a Material Adverse Effect.[[23]](#footnote-24)

## **Litigation**

. No litigation, investigation or proceeding of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of Borrower, threatened against or affecting Borrower (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (ii) which in any manner draws into question the validity or enforceability of this Agreement or any other Loan Document. Borrower is not contemplating either the filing of a petition by it under any Debtor Relief Law or the liquidation of all or a major portion of its assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it.

## **Compliance with Laws and Agreements**

. Borrower and the Property are in compliance with (a) all Applicable Laws, judgments, decrees and orders of any Governmental Authority, including without limitation all Environmental Laws, in all material respects, and (b) all indentures, agreements, Leases, or other instruments binding upon it or them, except, in the case of this clause (b), where non-compliance, either singly or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All approvals under Applicable Laws have been obtained and are valid and in full force and effect. [**None of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards.**]

## **Investment Company Act, Etc.**

 Borrower is not (a) an “investment company”, as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt.

## **Taxes**

**.** Borrower has timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which Borrower has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of Borrower in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

## **Defaults**

**.** Borrower represents and warrants that no Default or Event of Default has occurred and is continuing.

## **Margin Regulations**

. None of the proceeds of the Loan will be used, directly or indirectly, for “purchasing” or “carrying” any “margin stock” within the respective meanings of each of such terms under Regulation U or for any purpose that violates the provisions of Regulation T, Regulation U or Regulation X. Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying “margin stock”.

## **ERISA**

. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans.

## **Disclosure**

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### To Borrower’s knowledge, no statement of fact madeby or on behalf of Borrower inthis Agreement or inanyof the other Loan Documents contains any untrue statement of a materialfact or omits to state any material fact necessary to make statements contained herein ortherein not misleading. There is no fact presently known to Borrower which has not been disclosed to Administrative Agent which is reasonably likely to result in a Material Adverse Effect, as far as Borrower can reasonably foresee.

### As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

## **Labor Relations**

. There are no strikes, lockouts or other material labor disputes or grievances against Borrower, or, to Borrower’s knowledge, threatened against or affecting Borrower, and no significant unfair labor practice, charges or grievances are pending against Borrower, or to Borrower’s knowledge, threatened against it before any Governmental Authority. All payments due from Borrower pursuant to the provisions of any collective bargaining agreement have been paid or accrued as a liability on the books of Borrower, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

## **No Subsidiaries**

**.** Borrower does not have any Subsidiaries.

## **Insolvency**

. After giving effect to the execution and delivery of the Loan Documents and the making of the Loan under this Agreement, Borrower will not be “insolvent”, within the meaning of such term as defined in Section 101 of the United States Code, as amended from time to time, to be unable to pay its debts generally as such debts become due, or have unreasonably small capital to engage in any business or transaction, whether current or contemplated.

## **Single Purpose Entity**

. Until the Obligations have been paid in full, Borrower hereby represents, warrants and covenants that Borrower is, shall be and shall continue to be a single purpose entity as described in Section 5.17 hereof. If Borrower consists of more than one Person, each such Person shall be a single purpose entity.

## **Other Agreements**

. Borrower is not a party to any agreement or instrument or subject to any court order, injunction, permit or restriction which might reasonably be expected to have a Material Adverse Effect on the Property or the business, properties, assets, operations or condition (financial or otherwise) of Borrower. Borrower is not in violation of any agreement, which violation would have a Material Adverse Effect on the Property, Borrower, or Borrower’s business, properties, assets, operations or condition (financial or otherwise).

## **OFAC**

. The Loan Parties have implemented and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Loan Parties, their Subsidiaries and Affiliates and their respective directors, officers and employees and to the knowledge of the Loan Parties, their agents, are in compliance with Anti-Corruption Laws and applicable Sanctions. None of (a) the Loan Parties, any Subsidiary or Affiliate thereof or any of their respective directors, officers or employees, or (b) to the knowledge of the Loan Parties, any agent of the Loan Parties or any Subsidiary or Affiliate that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Loan, **[Letter of Credit**], use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

## **Patriot Act**

**.** Neither any Loan Party nor any of its Subsidiaries is an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act or any enabling legislation or executive order relating thereto. Neither any Loan Party nor any of its Subsidiaries is in violation of (a) the Trading with the Enemy Act, (b) any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. None of the Loan Parties (i) is a blocked person described in Section 1 of Executive Order 13224 of the President of the United States or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

## **Brokerage**

**.** Borrower has not dealt with any brokers or “finders” in connection with the Loan **[other than \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Broker”),]** and no brokerage or “finders” fees or commissions are payable by or to any Person [other than the Broker], in connection with the Loan**. [Borrower has paid in full all fees, commissions and any and all other compensation due to the Broker in connection with the transaction on or prior to the Closing Date.]**

## **Reserved.**

## **Property Specific Representations****.**

### *Title.* Borrower has good, marketable, insurable and indefeasible fee simple title to the Property, subject to no liens or other encumbrances except Permitted Encumbrances, and there are no defaults by Borrower under any of the Permitted Encumbrances, which violation might reasonably be expected to have a Material Adverse Effect on the Property, Borrower or Borrower’s business, properties, assets, operations or condition (financial or otherwise).

### *Separate Tax Parcel; Special Assessments*. The Property is comprised of one (1) or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrower’s knowledge, proposed, special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

### *Transfer and Mortgage Taxes*. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid under Applicable Law in connection with the transfer of the Property to Borrower have been paid or are being paid simultaneously herewith. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid under Applicable Law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously herewith.

### *Purchase Options.* There are no outstanding options to purchase, rights of first refusal to purchase or rights of first offer to purchase affecting any part of the Property.

### *Zoning.* Except as may be set forth in any zoning report delivered to Administrative Agent in connection with the closing of the Loan, the anticipated use of the Property complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Land, and no special use permits are required for the current or anticipated use of the Property that have not been obtained.

### *Easement Rights.* Borrower has been granted all easements appropriate for the current use and operation of the Property, and any mortgage liens now or hereafter affecting any land burdened by such easements are subordinate to such easements.

### *Utilities; Access.* All utility and municipal services necessary for the development of the Land, the construction of the Improvements and the use and occupancy of the Property (including, without limitation, telephone service, water supply, storm and sanitary sewer facilities, natural gas and electric facilities) are available and have sufficient capacity to operate the Property for its proposed use. All impact, connection or other requisite fees for such services have been paid. The Property has direct physical access to and from at least one public road. Borrower represents and warrants that all roads and other accesses necessary for the development of the Land and the construction of the Improvements and full utilization thereof for their intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate Governmental Authorities or have been dedicated to public use and accepted by such Governmental Authorities or have been made available pursuant to one of the Permitted Encumbrances and all necessary steps have been taken by Borrower or such Governmental Authorities to assure the complete construction and installation thereof by a date sufficient to ensure the timely completion of the Improvements and in no event later than the Completion Date.

### *Other Liens.* Borrower represents and warrants that except as otherwise provided in the Loan Documents, Borrower has made no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a Lien on the Property.

## **Construction Specific Representations.**

### *Plans and Specifications*. Borrower represents and warrants that to the extent required by Applicable Law or any effective restrictive covenant the Plans and Specifications have been approved by all Governmental Authorities having or claiming jurisdiction and by the beneficiary of any such restrictive covenant.

### *Building Permits; Other Permits*. Borrower represents and warrants that all building, construction and other permits necessary or required in connection with the development of the Land and the construction of the Improvements have been validly issued and all fees and bonds required to be paid or posted in connection therewith have been paid or posted, as the circumstances may require.

### **[*Permanent Commitment*. Borrower represents and warrants that the Permanent Commitment is in full force and effect and all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied as of the date this representation is deemed to be given shall have been satisfied.]**

### *Budget*. Borrower represents and warrants that (1) the Budget has been prepared by Borrower and (2) the Budget includes all costs expected to be incurred incident to the Loan and to the construction of the Improvements in accordance with the Plans and Specifications, after taking into account the requirements of this Agreement, including “hard” and “soft” costs, fees and expenses.

## **Affirmation of Representations and Warranties**

**.** Each Draw Request and the receipt of the funds requested thereby, **[and each request for the issuance of a Letter of Credit hereunder and the acceptance of the issuance thereof]** shall constitute an affirmation that the foregoing representations and warranties of Borrower are true and correct as of the date thereof.

# AFFIRMATIVE COVENANTS

Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

## **Notices of Material Events**

. Borrower will furnish to Administrative Agent and each Lender prompt written notice of the following:

### the occurrence of any Default or Event of Default;

### the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of Borrower, affecting Borrower which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

### the occurrence of any event or any other development by which Borrower (i) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) becomes subject to any Environmental Liability, (iii) receives written notice of any claim with respect to any Environmental Liability, or (iv) becomes aware of any basis for any Environmental Liability and in each of the preceding clauses, which individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

### the occurrence of any ERISA Event that could reasonably be expected to result in liability of Borrower;

### any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect; and

### any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section shall be accompanied by a written statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

## **Existence; Conduct of Business**

. Borrower will do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business and will continue to engage in the same business as presently conducted.

## **Compliance with Laws, Etc.**

Borrower will comply in all material respects with all laws, rules, regulations and requirements of any Governmental Authority applicable to its business and the Property. The Loan Parties will maintain in effect and enforce policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

## **Payment of Obligations**

**.** Borrower will pay and discharge at or before maturity, all of its obligations and liabilities (including without limitation all tax liabilities and claims that could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) Borrower has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

## **Insurance, Casualty and Condemnation.**

### Borrower shall maintain insurance in accordance with the requirements of Exhibit 5.5 and shall comply with the terms and conditions of Exhibit 5.5 with respect to casualty and condemnation and the other matters addressed therein.

### Borrower will take all actions required under the Flood Insurance Laws and/or requested by Administrative Agent to assist in ensuring that each Lender is in compliance with the Flood Insurance Laws applicable to the Collateral, including providing Administrative Agent with the address of all improvements and other structures on the Property, and, to the extent required, obtaining flood insurance for such improvements, property, structures and contents (or applicable portion thereof) prior to such assets becoming Collateral (if applicable at such time), and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Insurance Laws.

## **Taxes; Charges**

**.** Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any and all Taxes that may become a Lien upon the Property or become payable during the term of the Loan (“**Charges**”), and will promptly furnish Administrative Agent with evidence of such payment. Borrower shall not suffer or permit the joint assessment of the Property with any other real property constituting a separate tax lot or with any other real or personal property. Provided, however, that Borrower may contest the validity of such Charges so long as (i) Borrower notifies Administrative Agent that it intends to contest such claim or demand, (ii) Borrower provides Administrative Agent with an indemnity, bond or other security (including any reserve account established by Borrower) reasonably satisfactory to Administrative Agent (including an endorsement to the Title Insurance Policy insuring against such Charge) or otherwise in accordance with Applicable Laws against such Charge, including interest and penalties, (iii) Borrower shall promptly upon final determination thereof pay the amount of any such Charge, together with all costs, interest and penalties which may be payable in connection therewith, (iv) such proceeding shall suspend the collection of such contested Charge from the Property, and (v) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of (1) the Maturity Date, or (2) the date on which the Property is scheduled to be sold for non-payment.

## **Taxes on Security**

**.** Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Notes or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or any Lender. If there shall be enacted any law (1) deducting the Loan from the value of the Property for the purpose of taxation, (2) affecting any Lien on the Property, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Administrative Agent, on demand, all taxes, costs and charges for which Administrative Agent or any Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Administrative Agent may declare all amounts owing under the Loan Documents to be due and payable on a date not less than one hundred twenty (120) days after the delivery of notice thereof to Borrower.

## **Books and Records**

. Borrower will keep properbooks of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the financial statements of Borrower as required by this Agreement.

## **Visitation and Inspection**

**.** Borrower will permit any representative of Administrative Agent or any Lender to visit and inspect the Property, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants, all at such reasonable times and as often as Administrative Agent or any Lender may reasonably request after reasonable prior notice to Borrower; provided that if an Event of Default has occurred and is continuing, no prior notice shall be required.

## **Maintenance of Property**

**.** Borrower will observe and comply in all material respects with all Applicable Laws applicable to the ownership, use and operation of the Property. Borrower shall maintain the Property in good condition as a \_\_\_\_\_\_\_\_\_\_ and promptly repair any damage or casualty thereto. Borrower shall permit Administrative Agent and its representatives and employees, upon reasonable prior notice to Borrower, to enter upon and inspect the Property and conduct such environmental and engineering studies as Administrative Agent may require; provided, that such inspections and studies do not materially interfere with the use and operation of the Property or the rights of Tenants. Except during the occurrence and continuance of an Event of Default, invasive testing shall require the reasonable approval of Borrower.

## **Leasing Requirements.**

### Borrower shall comply with the terms and conditions of Exhibit 5.11 with respect to the matters described therein.

### **[Borrower shall deposit with Administrative Agent on the date of Borrower’s receipt thereof any and all termination fees or other similar funds paid by a Tenant in connection with any Tenant’s election to exercise an early termination option contained in its respective Lease or otherwise at the Property (the “Termination Fee Deposit”). Administrative Agent shall have the right, in its sole and absolute discretion, to either (a) make the Termination Fee Deposit available to reimburse Borrower for Tenant improvements and leasing commissions paid with respect to reletting the vacated space at the Property which shall be disbursed in Administrative Agent’s sole discretion or (b) apply the Termination Fee Deposit to repay a portion of the outstanding principal balance of the Loan.]**

## **Mechanic’s Liens and Stop Notices**

**.** Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a mechanic’s or materialman’s or similar Lien and/or notice of pendency of action (each, a “**Mechanic’s Lien**”) being filed or recorded against Property or the assertion of a stop notice or similar claim (“**Stop Notice**”) against Loan proceeds, and shall defend, indemnify and hold Administrative Agent and the Lenders harmless from all Mechanic’s Liens and Stop Notices. If any Mechanic’s Liens are filed, recorded or otherwise asserted against any portion of the Property, or if any such Stop Notices are asserted against Loan proceeds, Borrower shall, within ten (10) days of written demand, discharge or cause to be discharged such Mechanic’s Lien and/or Stop Notice, and shall promptly obtain the dismissal of any proceedings for the enforcement thereof. Notwithstanding anything to the contrary contained herein or in any other Loan Documents, Borrower may contest in good faith the validity of any Mechanic’s Lien or Stop Notice so long as (1) Borrower notifies Administrative Agent that it intends to contest such Mechanic’s Lien or Stop Notice, (2) Borrower provides Administrative Agent with either (i) an endorsement to the Title Insurance Policy (insuring against such Mechanic’s Lien and/or Stop Notice), (ii) a release bond or (iii) other security, in each case in such form and amount as are reasonably satisfactory to Administrative Agent, including Administrative Agent’s estimate of interest, penalties and attorneys’ fees, (3) such proceeding shall suspend the collection of such contested claim from the Property, (4) Borrower is diligently contesting the same by appropriate legal proceedings in good faith, at its own expense, and on its own behalf and on behalf of the Lenders (or Administrative Agent, as may be applicable) and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of the Maturity Date or the date on which the Property is scheduled to be sold for non-payment, and (5) Borrower timely pays any award, judgment or settlement in favor of such Mechanic’s Lien or Stop Notice claimant.

## **Appraisal**

**.** Administrative Agent may from time to time obtain a new or updated Appraisal prepared in accordance with its instructions from a third party appraiser satisfactory to it and engaged by it. Borrower shall only be obligated to reimburse to Administrative Agent the cost of such a new or updated Appraisal once in any twenty-four (24) month period, unless an Event of Default has occurred and is continuing, in which case Borrower shall reimburse to Administrative Agent the cost of any and all new and updated Appraisals obtained by Administrative Agent. Administrative Agent shall provide a copy of any new or updated Appraisal to Borrower only if Borrower covered the cost of such new or updated Appraisal.

## **Representations and Warranties**

**.** Borrower will cause all representations and warranties to remain true and correct at all times while any portion of the Loan remains outstanding.

## **Estoppel Certificates**

. Borrower, within ten (10) days after request, shall furnish to Administrative Agent a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Administrative Agent reasonably may request. Notwithstanding the foregoing, in no event shall Administrative Agent be permitted to ask Borrower for such written statement more than once per calendar year.

## **Further Assurances**

**.** Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Security Instruments and other documents), which may be required under any Applicable Law, or which Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created by the Loan Documents or the validity or priority of any such Lien, all at the expense of Borrower. Borrower also agrees to provide to Administrative Agent, from time to time upon request, evidence reasonably satisfactory to Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Loan Documents.

## **Single Purpose Entity**

**.** Borrower covenants and agrees that its organizational documents shall provide that it has not since its date of formation, and shall not, and that the organizational documents of its general partner(s), if Borrower is a partnership, or its managing member(s), if Borrower is a limited liability company with multiple members (in each case, “Principal”) shall provide that it has not since the date of its formation and shall not:

### with respect to Borrower, engage in any business or activity other than the acquisition, development, ownership, disposition, operation, leasing, managing and maintenance of the Property, and entering into the Loan Documents, and activities incidental thereto and with respect to Principal, engage in any business or activity other than the ownership of its interest in Borrower, and activities incidental thereto;

### with respect to Borrower, acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the ownership or operation of the Property and with respect to Principal, acquire or own any material asset other than its interest in Borrower and incidental personal property;

### merge into or consolidate with any Person or, to the fullest extent permitted by Applicable Law, dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

### other than Principal’s ownership interest in Borrower, own any Subsidiary or make any investment in, any Person without the prior written consent of Administrative Agent;

### commingle its assets with the assets of any of its members, general partners, Affiliates, principals or of any other Person, participate in a cash management system with any other Person or fail to use its own separate stationery, telephone number, invoices and checks;

### with respect to Borrower, incur any Indebtedness or Guarantees, other than (1) the Obligations, and (2) Permitted Indebtedness;

### (i) fail to maintain its records (including financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and Affiliates of Borrower or of Principal, as the case may be, the Affiliates of a member, general partner or principal of Borrower or of Principal, as the case may be, and any other Person, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other Person or (iii) include the assets or liabilities of any other Person on its financial statements;

### enter into any contract or agreement with any member, general partner, principal or Affiliate of Borrower or of Principal, as the case may be (other than a business management services agreement with an Affiliate of Borrower, provided that (i) such agreement is acceptable to Administrative Agent, (ii) the manager, or equivalent thereof, under such agreement holds itself out as an agent of Borrower and (iii) the agreement meets the standards set forth in this subsection (h) following this parenthetical), except upon terms and conditions that are commercially reasonable, fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or Affiliate of Borrower or of Principal, as the case may be;

### fail to correct any known misunderstandings regarding the separate identity of Borrower, or of Principal, as the case may be, or any member, general partner, principal or Affiliate thereof or any other Person;

### guarantee or become obligated for the debts of any other Person or hold itself out to be responsible for the debts of another Person;

### make any loans or advances to any third party, including any member, general partner, principal or Affiliate of Borrower or of Principal, as the case may be, or any member, general partner, principal or Affiliate thereof, and shall not acquire obligations or securities of any member, general partner, principal or Affiliate of Borrower or Principal, as the case may be, or any member, general partner, or Affiliate thereof;

### fail to file its own tax returns or be included on the tax returns of any other Person except as required by Applicable Law or to the extent it is a “disregarded entity” for tax purposes;

### fail either to hold itself out to the public as a legal entity separate and distinct from any other Person and not as a division or part of any other entity or to conduct its business solely in its own name or a name franchised or licensed to it by an entity other than an Affiliate of Borrower or of Principal, as the case may be, in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower or Principal, as the case may be, is responsible for the debts of any third party (including any member, general partner, principal or Affiliate of Borrower, or of Principal, as the case may be, or any member, general partner, principal or Affiliate thereof);

### provided that the Property generates sufficient operating income to cause the same, fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

### share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or Affiliate of Borrower or of Principal, as the case may be, (ii) any Affiliate of a general partner, principal or member of Borrower or of Principal, as the case may be, or (iii) any other Person;

### fail to allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

### pledge its assets for the benefit of any other Person, and with respect to Borrower, other than with respect to the Loan;

### fail to maintain a sufficient number of employees, if any, in light of its contemplated business operations;

### fail to hold its assets in its own name;

### fail to consider the interests of its creditors in connection with all corporate, limited liability company, limited partnership or trust, as applicable, actions to the extent permitted by Applicable Law;

### have any of its obligations guaranteed by an Affiliate; and

### if Borrower is a Delaware limited liability company or Delaware limited partnership, without the prior written consent of Administrative Agent, Borrower will not divide or effect a divisional merger into two or more entities, and the organizational documents of Borrower shall provide that all members or partners of Borrower waive any right to such division or divisional merger.

 Borrower covenants and agrees to at all times comply with the terms of its organizational documents.

## **[Depository Collateral Accounts.**

### **Borrower shall be required to maintain all accounts of Borrower associated with the Property with Administrative Agent. On or prior to the date hereof, Borrower has opened an operating account with Administrative Agent through which all rents, receipts and payments with respect to the Property shall be processed, designated as account number \_\_\_\_\_\_\_\_\_\_\_\_ (“Operating Account”). The Operating Account shall be subject to set-off upon the occurrence of an Event of Default. Borrower shall have complete and unrestricted access to the funds in the Operating Account and the proceeds thereof prior to the occurrence of an Event of Default.**

### **Upon the occurrence of an Event of Default, Administrative Agent may, at its election, establish a deposit account in the name and tax ID number of Borrower with Administrative Agent, into which funds from the Operating Account may be transferred (the “Master Disbursement Sweep Account”); provided that Administrative Agent shall have the right to entitle such account with such other designation as Administrative Agent may select in its sole discretion. Administrative Agent shall have sole control over, and the sole right to withdraw funds from, the Master Disbursement Sweep Account.**

### **Borrower hereby pledges and assigns to Administrative Agent (for the ratable benefit of the Lenders), and grants to Administrative Agent (for the ratable benefit of the Lenders) a first priority security interest in, all funds at any time on deposit in the Operating Account, the Master Disbursement Sweep Account, and all other accounts of Borrower maintained with Administrative Agent (collectively, the “Accounts”) as additional Collateral for the Loan. Borrower will take, or authorizes Administrative Agent to take, all actions necessary to maintain in favor of Administrative Agent (for the ratable benefit of the Lenders) a perfected first priority security interest in the Accounts, including, without limitation, filing UCC‑1 financing statements and continuations thereof. All monies now or hereafter deposited into the Accounts shall be deemed additional security for the Loan. Borrower shall not, further pledge, assign or grant any security interest in the Accounts, or permit any Lien to attach thereto, except a Permitted Encumbrance. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the Uniform Commercial Code. 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 Uniform Commercial Code as in effect in the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]). Without limitation of the foregoing, upon the occurrence of an Event of Default, Administrative Agent shall have the right to apply funds in the Accounts to one or more of the following items, in Administrative Agent’s sole discretion, (i) to reduce the outstanding principal balance of the Loan, (ii) to pay debt service, fees and costs due under the Loan Documents, (iii) to the payment of real estate taxes and/or insurance premiums for the Property, (iv) to fund a segregated escrow account to pay costs to lease the Property and (v) to increase the balance of the Operating Account; provided, however, that Borrower shall remain liable at all times for all of the foregoing payment obligations, regardless of whether there are sufficient funds therefor in the Accounts.]**

*Or*

**[Section 5.18. Cash Management.**

### **Borrower shall be required to maintain all accounts of Borrower associated with the Property with Administrative Agent. Without limitation of the foregoing, Borrower shall have established and shall maintain (i) its primary operating account for the Property with Administrative Agent, designated as account number \_\_\_\_\_\_\_\_\_\_\_\_ (the “Operating Account”), (ii) a restricted depository account with Administrative Agent, to be established at the time that 75% of the maximum Loan proceeds have been advanced by Administrative Agent and the Lenders, into which Tenants will be directed by Borrower to pay rents by ACH payment or wire transfer (the “Collections Account”), and (iii) a restricted collateral account with Administrative Agent, to be established at the time that 75% of the maximum Loan proceeds have been advanced by Administrative Agent and the Lenders (the “Master Disbursement Sweep Account”; and together with the Collections Account, the Operating Account and all other accounts maintained by Borrower in connection with the Loan, the “Accounts”). The Accounts shall not be co-mingled with each other or any other accounts or investments of Borrower or its owners or Affiliates. At the time of establishment of the Collections Account, Borrower shall execute and deliver to Administrative Agent the Collections Account Agreement in form attached hereto as Exhibit “\_\_\_\_”. Borrower shall cause all income relating to the Property to be transferred to and deposited in the Collections Account subject to the Collections Account Agreement and the Cash Management Agreement. Borrower shall pay for all expenses of opening and maintaining the Accounts.**

### **Prior to a Cash Flow Sweep Event, funds will be transferred on a daily basis from the Collections Account to the Operating Account pursuant to the terms of the Cash Management Agreement. Upon the occurrence of a Cash Flow Sweep Event, control over funds in the Collections Account shall shift to Administrative Agent and funds in the Collections Account shall be directed to the Master Disbursement Sweep Account and applied in accordance with the terms of the Cash Management Agreement. Upon the occurrence of a Cash Flow Sweep Cure and provided that no other Cash Flow Sweep Event or any Event of Default exists, Administrative Agent will return control of the Collections Account to Borrower and any funds remaining in the Master Disbursement Sweep Account shall be transferred to the Collections Account.**

### **Borrower hereby grants to Administrative Agent, for the ratable benefit of the Lenders, a first priority security interest in each of the Accounts and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Administrative Agent, for the ratable benefit of the Lenders, a perfected first priority security interest in the Accounts, including, without limitation, executing and filing UCC financing statements and continuations thereof. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the Uniform Commercial Code. 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 Uniform Commercial Code as in effect in the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]).]**

## **Construction Related Covenants**

### Commencement of Construction. On or prior to the Commencement Date, Borrower shall commence to construct the Improvements upon the Land and will prosecute the same in good faith with diligence and continuity in accordance with the Plans and Specifications.

### Approval of Construction; Permits. No work associated with the development of the Land or the construction of the Improvements shall be commenced by Borrower unless and until the Plans and Specifications have been approved by Administrative Agent [and the Permanent Lender] and any Tenant required by Administrative Agent or the applicable lease and, to the extent required by Applicable Law or any effective restrictive covenant, by all Governmental Authorities having or claiming jurisdiction and by the beneficiary of any such restrictive covenant, and unless and until all building, construction and other permits necessary or required in connection with the development of the Land and the construction of the Improvements have been validly issued and all fees and bonds required in connection therewith have been paid or posted, as the circumstances may require.

### Completion of Construction. Construction of the Improvements shall be completed by Borrower on or before the Completion Date, free and clear of all liens and claims of liens for materials supplied and for services or labor performed in connection with the construction of the Improvements.

### Compliance with Laws; Encroachments. The Improvements shall be constructed in accordance with all Applicable Law. The Improvements shall be constructed entirely on the Land and shall not encroach upon any easement or right-of-way, or upon the land of others. Construction of the Improvements shall occur wholly within all applicable building restriction lines and set-backs, however established, and shall be in strict compliance with all applicable use or other restrictions and the provisions of any prior agreements, declarations, covenants and all applicable zoning and subdivision ordinances and regulations.

### Surveys. Upon Administrative Agent’s request following an Event of Default and upon the completion of the construction of the Improvements, Borrower shall furnish Administrative Agent with a survey in accordance with Administrative Agent’s current survey requirements and with a current certification to Administrative Agent, for the benefit of itself and the Lenders, by a registered land surveyor of the jurisdiction in which the Land is located. If any such survey required by Administrative Agent shows any matters not approved by Administrative Agent, Borrower shall remove such matters that are not approved within thirty (30) days after notice thereof by Administrative Agent to Borrower. Borrower shall also furnish an original print thereof to the Title Insurance Company and such survey shall not be sufficient for the purposes of this Agreement unless and until the Title Insurance Company shall advise Administrative Agent, by endorsement to the Title Insurance Policy or otherwise, that the survey discloses no violations, encroachments or other variances from applicable set-backs or other restrictions except such as Administrative Agent and its counsel shall approve.

### Inspections; Cooperation; Payment of Inspector. Borrower shall permit Administrative Agent and its duly authorized representatives (including, without limitation, the Inspector) and any Lender to enter upon the Land, to inspect the Improvements and any and all materials to be used in connection with the development of the Land and/or the construction of the Improvements, to conduct such environmental and engineering studies as Administrative Agent may reasonably require (provided that the same shall be conducted so as not to materially interfere with the use and operation of the Property), to examine all detailed plans and shop drawings and similar materials as well as all records and books of account maintained by or on behalf of Borrower relating thereto and to take extracts therefrom and to discuss the affairs, finances and accounts pertaining to the Loan and the Improvements with representatives of Borrower and with the General Contractor, the Architect, the Engineer and the Construction Manager. Borrower shall at all times cooperate and shall use it best efforts to cause the General Contractor, the Architect, the Engineer and the Construction Manager and each and every one of its subcontractors and materialmen to cooperate with Administrative Agent and its duly authorized representatives (including, without limitation, the Inspector) in connection with or in aid of the performance of Administrative Agent’s functions under this Agreement. Without limitation of the foregoing, Borrower expressly authorizes Administrative Agent to contact the General Contractor, the Architect, the Engineer, the Construction Manager, any contractor, subcontractor, material supplier, or surety or any Governmental Authority to verify or discuss any information disclosed pursuant to this Agreement or any other information that Administrative Agent may reasonably require. The fees of any Inspector engaged or employed by Administrative Agent in connection with or in aid of the performance of Administrative Agent’s functions under this Agreement shall be paid by Borrower.

### Vouchers and Receipts. Borrower shall furnish to Administrative Agent, promptly on demand, any contracts, bills of sale, statements, receipted vouchers or agreements pursuant to which Borrower has any claim of title to any materials, fixtures or other articles delivered or to be delivered to the Land or incorporated or to be incorporated into the Improvements. Borrower shall furnish to Administrative Agent, promptly on demand, a verified written statement, in such form and detail as Administrative Agent may require, showing all amounts paid for labor and materials and all items of labor and materials furnished or to be furnished for which payment has not been made and the amounts to be paid therefor.

### Performance of Contracts; Payments for Labor and Materials. Borrower shall perform, in a timely manner, all of Borrower’s obligations under the Construction Contract and any and all other contracts and agreements relating to the construction of the Improvements. If the General Contractor shall have defaulted under the Construction Contract, which default Administrative Agent, in its sole discretion, shall deem substantial, Borrower, within ten (10) days following written notice from Administrative Agent, shall exercise any resulting right or remedy to which it may be entitled thereunder. Borrower shall pay when due all bills for services or labor performed and materials supplied in connection with the development of the Land and the construction of the Improvements, except for bills being contested in accordance with the terms of the Loan Documents. In the event Borrower fails to discharge or bond any Mechanics’ Lien pursuant to Section 5.12, Administrative Agent, on behalf of the Lenders, may, at its option, in addition to, and not in limitation of, all other rights and remedies of Administrative Agent and the Lenders in the Event of Default by Borrower, and without regard to the priority of said Mechanics’ Lien, pay the same, and all amounts expended by Administrative Agent and the Lenders for such purpose shall constitute loans to Borrower and shall be secured by the Security Instrument and the other Loan Documents, and be due and payable forthwith by Borrower to Administrative Agent on behalf of the Lenders with interest thereon at the Default Rate. **[*Add for projects located in North Carolina:* Borrower shall notify Administrative Agent of the name and contact information of Borrower’s lien agent (chosen from among the list of registered lien agents maintained by the North Carolina Department of Insurance) as required under N.C.G.S. Sections 44A-11.1 and 11.2 and will provide notice to Administrative Agent of any change in or replacement of Borrower’s lien agent or any change in the contact information of Borrower’s lien agent. Borrower shall at all times conspicuously post at the Property, and update and provide upon request, Borrower’s lien agent name and contact information. Borrower shall direct its lien agent to give prompt written notice to Administrative Agent, at the address set forth in Section 9.1, of any potential lien claimants that have given notice to the lien agent. Borrower shall at all times comply with all requirements of Chapter 44A of the North Carolina General Statutes. As used in this Section, the term “lien agent” shall have the meaning ascribed to such term in N.C.G.S. Sections 44A-7 and 11.2.]**

### Correction of Construction Defects. Promptly following any demand by Administrative Agent, Borrower shall correct or cause the correction of any structural defects in the Improvements and any material departures or deviations from the Plans and Specifications not approved in writing by Administrative Agent.

### Conditional Sales. Borrower shall not incorporate in the Improvements any property acquired under a conditional sales contract, or lease, or as to which the vendor retains title or a security interest, without the prior written consent of Administrative Agent.

### Disclosure of Contractors. Borrower shall disclose to Administrative Agent, upon request, the names of all persons with whom Borrower has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials therefor.

## **Right of First Refusal**.

 Administrative Agent shall have a right of first refusal to provide permanent financing to refinance and repay this Loan. If Borrower proposes to refinance the Loan with a third party lender (a “**Proposed Refinance**”), Borrower will give Administrative Agent notice of the terms of the Proposed Refinance, and Administrative Agent will have fifteen (15) days after receipt of such notice to notify Borrower whether Administrative Agent will exercise its right of first refusal and refinance the Loan on the same term and conditions as the Proposed Refinance, subject to completion of underwriting, final credit approval and satisfaction of closing conditions. Borrower acknowledges that Administrative Agent has no obligation to make such loan. If Administrative Agent exercises its right of first refusal, Borrower shall close on such permanent financing with Administrative Agent. If Borrower does not receive notice from Administrative Agent within such fifteen (15) day period that Administrative Agent has elected to exercise its right of first refusal, then Borrower may proceed with the Proposed Refinance on the terms set forth in the notice provided to Administrative Agent. If Borrower does not close on the Proposed Refinance on the terms set forth in the notice provided to Administrative Agent within a period of one hundred eighty days, then this Section 5.20 shall continue to apply to any desire by Borrower to enter into another loan.

***And/or***

**[Section 5.20. Right of First Offer**. **Prior to seeking proposals for permanent financing to refinance and repay this Loan, Borrower will first notify Administrative Agent of its intention to obtain permanent financing. Notice from Borrower will (i) contain the material economic terms which Borrower would, in good faith, expect to receive in the market for loans similar in type to the permanent loan being sought, and (ii) offer to Administrative Agent the opportunity to consider whether or not Administrative Agent will provide the permanent loan on material economic terms substantially similar to the material economic terms contained in Borrower’s notice or on different mutually agreed terms. Borrower acknowledges that Administrative Agent has no obligation to make any loan to refinance this Loan. Borrower will, in good faith, consider any such proposal for permanent financing that may be provided by Administrative Agent.]**

# FINANCIAL COVENANTS AND REPORTING

## **Financial Statements and Other Information**

. Borrower will deliver to Administrative Agent and each Lender:

### as soon as available and in any event withinforty-five (45) days after the end of each fiscal quarter of Borrower, a copy of the rent roll (along with[***include for multifamily projects:* ,only if specifically requested by Administrative Agent,**] complete copies of all Leases entered into by Borrower during such fiscal quarter), any notice received during such fiscal quarter by Borrower from a Tenant regarding an alleged default by Borrower that remains uncured, and a receivables aging in sufficient detail;

### as soon as available and in any event within thirty (30) days after the end of each fiscal quarter of Borrower, a balance sheet of Borrower, and an operating statement for the Property on a year-to-date basis, all certified by Borrower;

### after completion of the Improvements, as soon as available and in any event within ninety (90) days after the end of each fiscal year of Borrower, a detailed operating budget for the next fiscal year forecasting revenue, operating costs and capital expenses for the Property, which operating budget shall be subject to the approval of Administrative Agent;

### within thirty (30) days after the date of filing, the federal and state income tax returns for Borrower for the year in question as well as any requests for extensions filed in connection therewith;

### as soon as available and in any event within one hundred eighty (180) days after the end of each fiscal year of Borrower, financial statements for Borrower for the fiscal year then ended, including, but not limited to a balance sheet, income statement, statement of cash flows, and notes to financial statements;

### such other reports, data, information and certificates as Administrative Agent may reasonably request with respect to Borrower, the Property and the Improvements; and

### information and documentation reasonably requested by Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act or other applicable anti-money laundering laws.

## **Equity Maintenance**. Borrower shall satisfy the Equity Maintenance Requirement at all times during the term of the Loan, until such time as the Required Lenders in their sole discretion may determine that the Required Lenders are permitted to reclassify the Loan as a non-HVCRE ADC loan pursuant to Section 51 of The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Within ten (10) Business Days of Administrative Agent’s request from time to time, Borrower shall provide a certification to Administrative Agent, in form and substance acceptable to Administrative Agent, confirming Borrower’s compliance with the provisions of this Section 6.2, supported by appropriate calculations and documentation.

## **[Debt Yield**

**. Within thirty (30) days after the end of each Fiscal Year, Borrower shall deliver to Administrative Agent a Compliance Certificate setting forth the Debt Yield calculated as of the last day of such Fiscal Year. In the Event the Debt Yield is less than \_\_\_\_\_ percent (\_\_\_.0%), as determined by Administrative Agent in its sole discretion, Borrower shall be required to prepay the Loan within thirty (30) days of notice of the failure to meet the required Debt Yield in an amount that would result in a Debt Yield of \_\_\_\_\_ percent (\_\_.0%).]**

# NEGATIVE COVENANTS

Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

## **Due on Sale and Encumbrance; Transfers of Interests**

**.** Without the prior written consent of Administrative Agent, which may be withheld in its sole discretion, the Loan shall become due and payable upon the occurrence of any Transfer (as defined below), except for Permitted Encumbrances and Permitted Transfers. Without limiting the foregoing, other than with respect to a Permitted Transfer, without the prior written consent of Administrative Agent:

### neither Borrower nor any other Person having a legal or beneficial ownership or economic interest in Borrower shall: (i) Transfer, directly or indirectly, any interest in the Property or any part thereof, any Collateral or any other asset of Borrower, or mortgage, pledge or assign any other asset of Borrower, except for Permitted Encumbrances; (ii) further encumber, alienate, grant a lien or grant any other interest in the Property or any part thereof, whether voluntarily or involuntarily, except for Permitted Encumbrances; (iii) enter into any easement or other agreement granting rights in, or restricting the use or development of, the Property, except for Permitted Encumbrances; or (iv) permit any partition of the Property;

### except for a Permitted Transfer, neither Borrower nor any other Person having a beneficial ownership or economic interest in Borrower shall Transfer, directly or indirectly, any ownership or economic interest in Borrower, or encumber, alienate, grant a lien or grant any other interest in any ownership or economic interest in Borrower, whether voluntarily or involuntarily; and

### no new general partner, limited partner, manager or member having the ability to control the affairs of Borrower shall be admitted to or created in Borrower (nor shall any existing general partner, controlling limited partner, manager, managing member or controlling member withdraw from Borrower), and no change in Borrower’s organizational documents relating to control over Borrower and/or the Property shall be effected that would have the effect of changing the control, direct or indirect, of Borrower.

As used in this Section and in the definition of Permitted Transfer, the term “**Transfer**” shall include the sale, transfer, conveyance, mortgage, pledge or assignment of (i) the Property or any part thereof, or any direct legal or beneficial interest therein; or (ii) any ownership interest in Borrower, or any direct or indirect owner of Borrower, direct or indirect, legal or equitable. In connection with any Transfer that is permitted hereunder, Borrower and any transferee shall cooperate and comply (at Borrower’s or such transferee’s expense) with all necessary “know your customer” or other similar checks under all Applicable Laws applicable to Administrative Agent and/or the other Lenders. The term “**Transfer**” shall not include leasing of space within the Property, so long as Borrower complies with the provisions of the Loan Documents relating to such leasing activity.

## **Limitation on Indebtedness**

. Borrower (and each general partner in Borrower, if any) shall not, without the prior consent of Administrative Agent, incur any Indebtedness other than (a) the Loan, (b) customary trade debt, account payables, financing for equipment, supplies and personal property or leasing commissions in the ordinary course of its business of owning and operating the Property, provided that such debt (i) is not evidenced by a note, (ii) is paid at least five (5) days prior to delinquency, and (iii) is payable to trade creditors and in amounts as are normal and reasonable under the circumstances, and (c) Hedging Obligations related to the Loan to the extent required or permitted hereunder (“**Permitted Indebtedness**”).

## **Liens**

**.** Borrower will not create, incur, assume or suffer to exist any Lien on any of its assets or property now owned or hereafter acquired, except:

### Liens securing the Obligations;

### Permitted Encumbrances;

### purchase money Liens upon or in any fixed or capital assets to secure the purchase price or the cost of construction or improvement of such fixed or capital assets or to secure Indebtedness incurred solely for the purpose of financing the acquisition, construction or improvement of such fixed or capital assets (including Liens securing any Capital Lease Obligations); provided that (i) any such Lien secures Indebtedness permitted by Section 7.2, (ii) any such Lien attaches to such asset concurrently or within 90 days after the acquisition or the completion of the construction or improvements thereof, (iii) any such Lien does not extend to any other asset, and (iv) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets; and

### extensions, renewals, or replacements of any Lien referred to in subsections (b) through (c) of this Section; provided that the principal amount of the Indebtedness secured thereby is not increased and that any such extension, renewal or replacement is limited to the assets originally encumbered thereby.

## **Control; Management**

**.** Borrower shall not, without the prior written consent of Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed): (i) execute the Property Management Agreement, (ii) upon execution of an approved Property Management Agreement, surrender, terminate or cancel the Property Management Agreement, or otherwise replace Property Manager, or enter into any other management agreement or leasing agreement with respect to the Property; (ii) reduce or consent to the reduction of the term of the Property Management Agreement; (iii) increase or consent to the increase of the amount of any charges under, or Borrower’s obligations under, the Property Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Property Management Agreement in any material respect. The Property Manager (and any successor that may be approved by Administrative Agent) shall hold and maintain all necessary licenses, certifications and permits required by Applicable Law. Borrower shall fully perform all of its covenants, agreements and obligations under the Property Management Agreement and shall cause the Property Manager to enter into a Subordination of Management Agreement upon execution of the Property Management Agreement. Without Administrative Agent’s prior approval, no management fee payable to a Property Manager which is an Affiliate of Borrower may exceed [**three percent (3%)]** of actual operating revenues.

## **Transactions with Affiliates**

. Without the prior written consent of Administrative Agent, Borrower shall not engage in any transaction affecting the Property with an Affiliate of Borrower, except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm’s-length transaction with an unrelated third party.

## **Government Regulation**

. Borrower will not (a) be or become subject at any time to any foreign asset control, anti-terrorism, money laundering or other similar law, regulation or list of any Governmental Authority of the United States (including, without limitation, the OFAC list) that prohibits or limits the Lenders or Administrative Agent from making any advance or extension of credit to Borrower or from otherwise conducting business with the Loan Parties, or (b) fail to provide documentary and other evidence of the identity of the Loan Parties  as may be requested by any Lender or Administrative Agent at any time to enable the Lenders or Administrative Agent to verify the identity of the Loan Parties or to comply with any Applicable Law, including, without limitation, Section 326 of the Patriot Act at 31 U.S.C. Section 5318. The Loan Parties will not, directly or indirectly, use the proceeds of the Loan [**or Letter of Credit**], or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loan [**and Letter of Credit**], whether as underwriter, advisor, investor, or otherwise). No part of the proceeds of the Loan [**or Letter of Credit**] will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of applicable Anti-Corruption Laws.

## **Hedging Transactions**

. Borrower will not enter into any Hedging Transactions, other than (a) Hedging Transactions required or allowed by Section 2.12 and (b) Hedging Transactions entered into in the ordinary course of business to hedge or mitigate risks to which Borrower is exposed in the conduct of its business or the management of its liabilities. Solely for the avoidance of doubt, Borrower acknowledges that a Hedging Transaction entered into for speculative purposes or of a speculative nature (which shall be deemed to include any Hedging Transaction under which Borrower is or may become obliged to make any payment (i) in connection with the purchase by any third party of any common stock or any Indebtedness or (ii) as a result of changes in the market value of any common stock or any Indebtedness) is not a Hedging Transaction entered into in the ordinary course of business to hedge or mitigate risks.

## **Limitations on Distributions**.

### Following the occurrence and during the continuance of any Event of Default or any monetary or other material Default, Borrower shall not distribute any money or other property to any partner or other direct or indirect owner of Borrower, whether in the form of return of capital contributions or earnings, income or other proceeds from the Property, nor shall Borrower repay any principal or interest on any loan or other advance made to Borrower by any partner or other direct or indirect owner of Borrower, nor shall Borrower loan or advance any funds to any such partner or other direct or indirect owner of Borrower (any of the foregoing, a “**Distribution**”).

### Borrower shall not at any time make a Distribution that would violate Borrower’s Equity Maintenance Requirement as set forth in Section 6.2. Within ten (10) Business Days of Administrative Agent’s request from time to time, Borrower shall provide a certification to Administrative Agent, in form and substance acceptable to Administrative Agent and supported by appropriate documentation, confirming that Borrower has not made any Distribution prohibited by this Section 7.8(b). For the avoidance of doubt, this Section 7.8(b) shall not be deemed to restrict Distributions by Borrower of Net Operating Income generated by the Project, provided Borrower continues to satisfy the covenant in Section 6.2.

## **Impairment of Security**

. Borrower shall take no action which shall impair in any manner the value of the Property or the validity, priority or security of the Security Instrument.

## **Conditional Sales**

. Borrower shall not incorporate in the Property any property acquired under a conditional sales contract, or lease, or as to which the vendor retains title or a security interest, without the prior written consent of Administrative Agent.

## **Special Covenants**. Borrower shall not make any amendment to Borrower’s bylaws, operating agreement or partnership agreement or the organizational documents of any member or partner of Borrower or any managing member or general partner, as applicable, of such member, in each case from the form thereof previously provided to Administrative Agent.

## **Construction Related Negative Covenants.**

### *Changes to Plans and Specifications*. Borrower shall not permit any material changes in the Plans and Specifications, including, without limitation, any change by altering or adding to the work to be performed, orders for extra work, any change which will result in a material net construction cost increase or a material net cumulative construction cost decrease, or any change in the design concept for the Improvements, without the prior written consent of Administrative Agent and under such reasonable conditions as Administrative Agent may then establish. **[except that, notwithstanding the foregoing, Borrower may make changes to the Plans and Specifications if and to the extent that the cost of any single change does not exceed $\_\_\_\_\_\_\_\_\_\_\_ and the aggregate amount of all such changes and extras (whether positive or negative) does not exceed $\_\_\_\_\_\_\_]**.

### *Budget*. Borrower shall not amend, modify or supplement the Budget except as permitted pursuant to Section 2.2(b).

### *Bonds*. Borrower shall not do or permit to be done anything that would affect the coverage or indemnities provided for pursuant to the provisions of any performance bond, labor and material payment bond or any other bond required pursuant to the provisions of the Loan Documents.

### *Material Agreements*. Borrower shall not enter into, amend in any material respect (provided that Borrower shall provide Administrative Agent a copy of any amendments, whether or not material) or terminate the Construction Contract, the Construction Management Contract or any other material agreement providing for the construction, development, management, leasing or operation of the Property without the prior written consent of Administrative Agent (approval of any such other material agreement not to be unreasonably withheld by Administrative Agent). For purposes of this Section 7.12(d), “material agreement” shall mean any agreement which cannot, by its terms, be terminated upon thirty days’ notice, or which involves annual expenditures (on an actual or projected basis) in excess of $\_\_\_\_\_\_\_\_.

# EVENTS OF DEFAULT

## **Events of Default**

. The term “Event of Default”, as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

### *Payment at Maturity.* Borrower shall fail to pay all outstanding Obligations on the Maturity Date.

### *Other Payment Defaults*. Borrower shall fail to pay (i) any principal of the Loan **[or any reimbursement obligation in respect of any LC Disbursement]** when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise, or (ii) any interest on the Loan or any fee or any other amount payable under this Agreement or any other Loan Document (except amounts described under the preceding clause (b)(i) or subsection (a) of this Section), when and as the same shall become due and payable, and as to any such failure described in this clause (b)(ii), such failure shall continue unremedied for a period of three (3) Business Days.

### *Representations and Warranties.* Any representation or warranty made or deemed made by or on behalf of a Loan Party in or in connection with this Agreement or any other Loan Document (including the Schedules attached thereto), or in any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document submitted to Administrative Agent or the Lenders by any Loan Party or any representative of any Loan Party pursuant to or in connection with this Agreement or any other Loan Document shall prove to be incorrect in any material respect when made or deemed made or submitted.

### *Certain Covenants.* Borrower shall fail to observe or perform any covenant or agreement contained in Section 5.1, Section 5.12, Section 5.17, Section 6.1, Section 6.2, Section 6.3 and Article VII; or a Guarantor shall fail to observe or perform any covenant or agreement contained in Section **[5]** of the Guaranty. ***[reference financial reporting obligations and financial covenants of guarantor]***

### *Compliance with Covenants.* Borrower shall fail to observe or perform any covenant or agreement contained in this Agreement or in any of the other Loan Documents (other than those referred to in other clauses of this Section 8.1), and the continuance of such failure for thirty (30) days (or such shorter period provided in any other Loan Document) after the earlier to occur of (i) Borrower’s knowledge of such failure or (ii) notice by Administrative Agent to Borrower; provided, however, that, subject to any shorter period for curing any failure by Borrower as specified in any of the other Loan Documents, Borrower shall have an additional period of time as is reasonably necessary to cure such failure if: (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure cannot reasonably be cured within thirty (30) days; (3) Borrower is diligently undertaking to cure such default; and (4) Borrower has provided Administrative Agent with security reasonably satisfactory to Administrative Agent against any interruption of payment or impairment of Collateral as a result of such continuing failure; provided, however that such additional cure period shall not exceed sixty (60) days**.**

### *Insurance*. Borrower shall fail to maintain insurance as required under Section 5.5 of this Agreement.

### *Damage to Collateral*. There occurs any uninsured or inadequately insured damage in excess of $100,000 to or loss, theft or destruction in excess of $100,000 of any of the Collateral.[[24]](#footnote-25)

### *Voluntary Proceeding*. A Loan Party shall (i) commence a voluntary case or other Proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any Proceeding or petition described in clause (i) of this subsection, (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for such Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such Proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing.

### *Involuntary Proceeding.* An involuntary Proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for a Loan Party or for a substantial part of its assets, and in any such case, such Proceeding or petition shall remain undismissed for a period of sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered.

### *Inability to Pay Debts*. A Loan Party shall become unable to pay, shall admit in writing its inability to pay, or shall fail to pay, its debts as they become due.

### *ERISA Event*. An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect.

### *Monetary Judgments.* Anyjudgment or order for the payment of money in excess of $100,000.00 in the aggregate shall be rendered against a Loan Party, and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be a period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

### *Non-Monetary Judgments.* Anynon-monetaryjudgment or order shall be rendered against a Loan Party that could reasonably be expected to have a Material Adverse Effect, and there shall be a period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

### *Levy.* Any execution or attachment shall be levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

### *Other Indebtedness.* A Loan Party (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of, or premium or interest on, any indebtedness that is outstanding, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing such indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to such indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of such indebtedness; or any such indebtedness shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease such indebtedness shall be required to be made, in each case prior to the stated maturity thereof; or a default shall occur under any other mortgage, deed to secure debt, deed of trust or security agreement conveying or encumbering the Property, including any Permitted Encumbrances.

### *Change of Control*. Any Change of Control shall occur unless expressly and in writing consented to by the Required Lenders.

### *Transfers.* The Transfer of all or any part or the Property, or any interest therein, or of any direct or indirect interest in Borrower, in any such case in violation of Section 7.1 of this Agreement.

### *Validity of Loan Documents.* Any of the Loan Documents ceases to be a legal, valid and binding agreement enforceable against any Loan Party in accordance with the terms of such Loan Document or is in any way terminated (except in accordance with its terms) or becomes or is declared ineffective or inoperative or is in any way challenged or contested by a Loan Party, or any Affiliate of a Loan Party, or ceases to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby.[[25]](#footnote-26)

### *Death or Incompetency of Guarantor.* The death or declaration of incompetency of any Guarantor that is a natural person unless within thirty (30) days after the death or declaration of incompetency of such Guarantor, a substitute guarantor acceptable to the Lenders shall have executed a supplemental Guaranty, Environmental Indemnification Agreement and other documentation in form and substance acceptable to the Required Lenders.

### *Material Adverse Effect*. There occurs any event or circumstance that has a Material Adverse Effect.

### **[*Major Lease Default*. Any Tenant operating under a Major Lease shall have defaulted under its lease, which default Administrative Agent, in its sole discretion, shall deem significant.]**

### *Progress of Construction*. Except for delays caused by Force Majeure, development of the Land or construction of the Improvements is not carried on in good faith and with reasonable dispatch or is abandoned or discontinued for a period of more than twenty (20) consecutive days.

### *Conditions Precedent to Any Advance*. Except for delays caused by Force Majeure, Borrower shall be unable to satisfy any condition precedent to its right to receive an advance of the Loan proceeds for a period in excess of thirty (30) days.

### *Completion of Construction*. The Improvements, in the exclusive judgment of Administrative Agent, are not or cannot be completed on or before the Completion Date.

### **[*Permanent Commitment*. An event of default shall have occurred under the terms of the Permanent Commitment.]**

## **Remedies**

**.** Upon the occurrence of an Event of Default (other than an event with respect to Borrower described in clause (h) or (i) of Section 8.1), and at any time thereafter during the continuance of such Event of Default, Administrative Agent at its election may (but shall not be obligated to) without the consent of the Required Lenders, and shall at the direction of the Required Lenders, without notice, exercise any and all rights and remedies afforded by this Agreement, the other Loan Documents, Applicable Law, equity or otherwise, including (a) declaring the Obligations immediately due and payable; (b) reducing any claim to judgment; (c) obtaining appointment of a receiver (to which Borrower hereby consents) and/or judicial or nonjudicial foreclosure under the Security Instrument; (d) terminating the Lenders’ Commitments; (e) in its own name on behalf of the Lenders or in the name of Borrower, entering into possession of the Property, leasing and operating the Property, performing all work of constructing the Improvements; and (f) setting-off and applying, to the extent thereof and to the maximum extent permitted by Applicable Law, any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Administrative Agent or any Lender to or for the credit or account of Borrower against the Obligations **[and (g) requiring that the LC Reimbursement Obligations be Cash Collateralized as provided in Section \_\_\_\_]**; provided that, if an Event of Default specified in either clause (h) or (i) of Section 8.1 shall occur, the principal of the Loan then outstanding, together with accrued interest thereon, and all fees, and all other Obligations shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

Borrower hereby appoints Administrative Agent as Borrower’s attorney-in-fact, which power of attorney is irrevocable and coupled with an interest, with full power of substitution if Administrative Agent so elects, to do any of the following in Borrower’s name upon the occurrence of an Event of Default: (i) endorse the name of Borrower on any checks or drafts representing proceeds of any insurance policies, or other checks or instruments payable to Borrower with respect to the Property; (ii) prosecute or defend any action or proceeding incident to the Property; (iii) pay, settle, or compromise all bills and claims regarding the Property; (iv) perform the obligations and exercise the rights of Borrower under all Leases, guaranties and other agreements to which it is a party or by which the Property is bound, enter into Leases, guaranties and other agreements regarding the Property and pay all leasing, operating and capital expenses of the Property; and (v) take over and use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the improvements located on the Property. Neither Administrative Agent nor any Lender shall have any liability to Borrower for the sufficiency or adequacy of any such actions taken by Administrative Agent.

In addition to the foregoing and to any rights or remedies available to it and the Lenders under the Security Instrument or any of the other Loan Documents, upon the occurrence of, and during the continuance of any Event of Default, Administrative Agent (after giving any notice to Borrower required under Applicable Law or under the Loan Documents) shall have the right to enter into possession of the Property and perform any and all work and labor necessary to complete the development of the Land and the construction of the Improvements (whether or not in accordance with the Plans and Specifications) and to employ watchmen to protect the Property and the Improvements. All sums expended by Administrative Agent and the Lenders for such purposes shall be deemed to have been advanced to Borrower under the Notes and shall be secured by the Security Instrument. For this purpose, Borrower hereby constitutes and appoints Administrative Agent, on behalf of the Lenders, its true and lawful attorney-in-fact with full power of substitution to complete the work in the name of Borrower, and hereby empowers said attorney or attorneys as follows:

### To use any funds of Borrower including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the development of the Land and the construction of the Improvements, whether or not in the manner called for in the Plans and Specifications;

### To make such additions, changes and corrections to the Plans and Specifications which shall be necessary or desirable in the judgment of Administrative Agent to complete the development of the Land and the construction of the Improvements;

### To employ such contractors, subcontractors, agents, architects and inspectors as Administrative Agent deems necessary or desirable for said purpose;

### To pay, settle or compromise all existing bills and claims which are or may be liens against the Property, or may be necessary or desirable for the completion of the work or the clearance of title to the Property;

### To execute all applications and certificates which may be required in the name of Borrower; and

### To do any and every act with respect to the development of the Land and the construction of the Improvements which Borrower may do or have done in its own behalf.

It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. Said attorney-in-fact shall also have the power to prosecute and defend all actions or proceedings in connection with the development of the Land and the construction of the Improvements and to take such actions and to require such performance as Administrative Agent may deem necessary.

## **Application of Proceeds from Collateral**

**.** All proceeds from each sale of, or other realization upon, all or any part of the Collateral by Administrative Agent after an Event of Default arises shall be applied as follows:

### first, to reimburse Administrative Agent and Lenders **[and the Issuing Bank]** for out-of-pocket costs, expenses and disbursements, including without limitation, reasonable attorneys’ fees and legal expenses, incurred by Agent or Lenders **[or the Issuing Bank]** in connection with realizing on any Collateral or collection of any obligations of Loan Parties under any of the Loan Documents, including advances made subsequent to an Event of Default by Agent or any Lender for the maintenance, preservation, protection or enforcement of, or realization upon, any Collateral, advances for impositions, insurance, repairs and the like and reasonable expenses incurred to sell or otherwise realize on, or prepare for sale or other realization on, any of the Collateral, until the same shall have been paid in full;

### second, to the fees and other reimbursable expenses of Administrative Agent then due and payable pursuant to any of the Loan Documents, until the same shall have been paid in full;

### third, to the repayment of all Obligations (excluding Bank Product Obligations), in the order determined by Administrative Agent in its discretion as to principal, interest, fees or other amounts, until the same shall have been paid in full;

### fourth, to the repayment of all Bank Product Obligations, until the same shall have been paid in full; and

### fifth,to the extent any proceeds remain, to Borrower or as otherwise provided by a court of competent jurisdiction.

All amounts allocated pursuant to the foregoing clause third to the Lenders as a result of amounts owed to the Lenders under the Loan Documents shall be allocated among, and distributed to, the Lenders *pro rata* based on their respective Pro Rata Shares. Notwithstanding the foregoing, (a) no amount received from any Guarantor (including any proceeds of any sale of, or other realization upon, all or any part of the Collateral owned by such Guarantor) shall be applied to any Excluded Swap Obligation of such Guarantor and (b) Hedging Obligations shall be excluded from the application described above if Administrative Agent has not received written notice thereof, together with such supporting documentation as Administrative Agent may request, from the Lender-Related Hedge Provider. Each Lender-Related Hedge Provider that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent pursuant to the terms of Article X hereof for itself and its Affiliates as if a “Lender” party hereto.

# MISCELLANEOUS

## **Notices.**

### Written Notices.

#### Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, as follows:

To Borrower:

To Administrative Agent: Truist Bank

 CIG-CRE Loan Admin Atlanta Office

 303 Peachtree Street NE, 3rd Floor

 Mail Code GA-ATL-803-05-03-40

 Atlanta, GA 30308

 Email: CIG-CRELegalNotices@Truist.com

 and

 **[Name and address of Truist Relationship Manager]**

With a copy to (for

information purposes only): Truist Bank
 Agency Services
 303 Peachtree Street, N.E. / 25th Floor
 Atlanta, Georgia 30308
 Attention: Doug Weltz
 Facsimile Number: (404) 221-2001

and

**[Name and address of counsel representing Truist Bank]**

**[If to Issuing Bank: Truist Bank**

 **Attn: Standby Letter of Credit Dept.**

**245 Peachtree Center Avenue N.E., 17th FL**

**Atlanta, GA  30303**

**Telephone: 800-951-7847]**

To any other Lender: the address set forth in the Administrative Questionnaire
or the Assignment and Acceptance executed by such
Lender

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall be effective, when transmitted by overnight delivery, one (1) Business Day after the date on which the notice is deposited with a recognized overnight courier service; if faxed, when transmitted in legible form by facsimile machine; or if mailed, upon the third (3rd) Business Day after the date deposited into the mails or if hand-delivered, upon delivery; provided, that notices delivered to Administrative Agent shall not be effective until actually received by Administrative Agent at its address specified in this Section 9.1.

#### Any agreement of Administrative Agent or any Lender herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of Borrower. Administrative Agent and each Lender shall be entitled to rely on the authority of any Person purporting to be a Person authorized by Borrower to give such notice and Administrative Agent and the Lenders shall not have any liability to Borrower or other Person on account of any action taken or not taken by Administrative Agent or any Lender in reliance upon such telephonic or facsimile notice. The obligation of Borrower to repay the Loan and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of Administrative Agent or any Lender to receive written confirmation of any telephonic or facsimile notice or the receipt by Administrative Agent or any Lender of a confirmation which is at variance with the terms understood by Administrative Agent and such Lender to be contained in any such telephonic or facsimile notice.

### Electronic Communications.

#### Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e‑mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified Administrative Agent that it is incapable of receiving notices by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

#### Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

### Platform.

#### Borrower agrees that Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “Platform”).

#### The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications that are the result of the inadequacy of the Platform. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to Borrower or the other Loan Parties, any Lender or any other Person for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower’s, any Loan Party’s or Administrative Agent’s transmission of Communications through the Platform. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

## **Waiver; Amendments**.

### No failure or delay by Administrative Agent or any Lender in exercising any right or power hereunder or under any other Loan Document, and no course of dealing between Borrower and Administrative Agent or any Lender**,** shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power hereunder or thereunder. The rights and remedies of Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies provided by Applicable Law. No waiver of any provision of this Agreement or of any other Loan Document or consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be permitted by subsection (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of any advance under the Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether Administrative Agent or any Lender may have had notice or knowledge of such Default or Event of Default at the time.

### Administrative Agent and the Lenders shall be entitled to amend (whether pursuant to a separate intercreditor agreement or otherwise) any of the terms, conditions or agreements set forth in Article X or as to any other matter in the Loan Documents respecting payments to Administrative Agent or the Lenders or the required number of Lenders to approve or disapprove any matter or to take or refrain from taking any action, without the consent of Borrower or any other Person or the execution by Borrower or any other Person of any such amendment or intercreditor agreement. Subject to the foregoing, Administrative Agent may amend or waive any provision of this Agreement or any other Loan Document, or consent to any departure by any party to the Loan Documents therefrom, which amendment, waiver or consent is intended to be within Administrative Agent’s discretion or determination, or otherwise in Administrative Agent’s reasonable determination shall not have a Material Adverse Effect; provided, however, that otherwise no such amendment, waiver or consent shall be effective unless in writing, signed by the Required Lenders and Borrower or the applicable party to the Loan Documents, as the case may be, and acknowledged by Administrative Agent, and each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; and provided, further, that, in addition to the consent of the Required Lenders, no such amendment, waiver or consent shall:

#### increase the Commitment of any Lender without the written consent of such Lender;

#### reduce the principal amount of the Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby;

#### postpone the date fixed for any payment of any principal of, or interest on, the Loan or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby; provided, however, that Administrative Agent, without the consent of any Lender, may waive any obligation of a Loan Party to pay interest at the Default Rate and/or late charges for periods of up to thirty (30) days, and only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate or late charges thereafter, or to amend the definition of “Default Rate” or “late charges”;

#### change Section 2.10(b) or (c) in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender;

#### change any of the provisions of this subsection (b) or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender;

#### release any Guarantor or limit the liability of any Guarantor under the Guaranty, without the written consent of each Lender;

#### release any material portion of the Collateral securing any of the Obligations or agree to subordinate any Lien in such Collateral to any other creditor of Borrower, without the written consent of each Lender.

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights, duties or obligations of Administrative Agent, without the prior written consent of Administrative Agent.

### Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended, and amounts payable to such Lender hereunder may not be permanently reduced, without the consent of such Lender (other than reductions in fees and interest in which such reduction does not disproportionately affect such Lender). Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of Borrower and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitment of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Sections 2.9, 2.11 and 9.3), such Lender shall have no other commitment or other obligation hereunder and such Lender shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

Notwithstanding anything to the contrary herein, Administrative Agent may, with the consent of Borrower only, amend, modify or supplement any Loan Document to cure any obvious ambiguity, omission, mistake, defect or inconsistency.

## **Expenses; Indemnification**.

### Borrower shall pay (i) all reasonable, out-of-pocket costs and expenses of Administrative Agent and its Affiliates (including, without limitation, the reasonable fees, charges and disbursements of outside counsel and the allocated cost of inside counsel) in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Loan Document shall be consummated), **[(ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder]** and **[(ii)(iii)]** all out-of-pocket costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of outside counsel and the allocated cost of inside counsel) incurred by Administrative Agent or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section 9.3, or in connection with the Loan made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loan.

### Borrower shall indemnify Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all costs, losses, liabilities, claims, damages and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, which may be incurred by or asserted against any Indemnitee arising out of, in connection with or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any other agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of any of the transactions contemplated hereby, (ii) the Loan **[or Letter of Credit]** or any actual or proposed use of the proceeds therefrom **[including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit]**, (iii) any non-compliance with any Environmental Laws, (iv) any actual or alleged presence or Release of Hazardous Materials on or from the Property or any liability related in any way to Borrower or the Property, or (v)any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such costs, losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (x) the gross negligence or willful misconduct of such Indemnitee or (y) a claim brought by Borrower or any other Loan Party against an Indemnitee for a material breach of such Indemnitee’s obligations hereunder or under any other Loan Document.

### Borrower shall pay, and hold Administrative Agent and each of the Lenders harmless from and against, any and all present and future stamp, documentary, and other similar taxes with respect to this Agreement and any other Loan Documents, any Collateral described therein, or any payments due thereunder, and save Administrative Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission to pay such taxes.

### To the extent that Borrower fails to pay any amount required to be paid to Administrative Agent under subsection (a), (b) or (c) of this Section 9.3, each Lender severally agrees to pay to Administrative Agent such Lender’s Pro Rata Share of such unpaid amount; provided that the unreimbursed expense or indemnified payment, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent in its capacity as such.

### To the extent permitted by Applicable Law, Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated therein, the Loan, **[any Letter of Credit]** or the use of proceeds thereof; provided that nothing in this clause (e) shall relieve Borrower of any obligation it may have to indemnify any Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

### All amounts due under this Section 9.3 shall be payable promptly after written demand therefor.

## **Successors and Assigns**.

### The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

### Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement; provided that any such assignment shall be subject to the following conditions:

#### Minimum Amounts.

##### in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitment and the portion of the Loan at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

##### in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes the portion of the Loan outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the portion of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Administrative Agent or, if “Trade Date” is specified in the Assignment and Acceptance, as of the Trade Date) shall not be less than **[$10,000,000]**, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

#### Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement and the other Loan Documents with respect to the portion of the Loan assigned.

#### Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 9.4 and, in addition:

##### the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Defaulthas occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of such Lender or an Approved Fund of such Lender; and

##### the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless such assignment is to a Lender, an Affiliate of such Lender or an Approved Fund of such Lender.

#### Assignment and Acceptance. The parties to each assignment shall deliver to Administrative Agent (A) a duly executed Assignment and Acceptance, (B) a processing and recordation fee of $3,500, (C) an Administrative Questionnaire unless the assignee is already a Lender and (D) the documents required under Section 2.11(g).

#### No Assignment to certain Persons. No such assignment shall be made to (A) Borrower or any of Borrower’s Affiliates or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

#### No Assignment to Natural Persons. No such assignment shall be made to a natural person.

#### Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable *pro rata* share of the Loan previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of the Loan. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to subsection (c) of this Section 9.4, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent applicable, the other Loan Documents, and to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement and the other Loan Documents (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.9, 2.11 and 9.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender’s having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section. If the consent of Borrower to an assignment is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified above), Borrower shall be deemed to have given its consent unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after notice thereof has actually been delivered by the assigning Lender (through Administrative Agent) to Borrower.

### Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices in Atlanta, Georgia or Charlotte, North Carolina a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the portion of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). Information contained in the Register with respect to any Lender shall be available for inspection by such Lender at any reasonable time and from time to time upon reasonable prior notice; information contained in the Register shall also be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice. In establishing and maintaining the Register, Administrative Agent shall serve as Borrower’s agent solely for tax purposes and solely with respect to the actions described in this Section, and Borrower hereby agrees that, to the extent Truist Bank serves in such capacity, Truist Bank and its officers, directors, employees, agents, sub-agents and affiliates shall constitute “Indemnitees”.

### Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a natural person, Borrower or any of Borrower’s Affiliates) (each, a “**Participant**”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the portion of the Loan owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, Administrative Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the following to the extent affecting such Participant: (i) increase the Commitment of such Lender; (ii) reduce the principal amount of such Lender’s portion of the Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder; (iii) postpone the date fixed for any payment of any principal of, or interest on, the Loan or any fees hereunder or reduce the amount of, waive or excuse any such payment; (iv) change Section 2.10(b) or (c) in a manner that would alter the *pro rata* sharing of payments required thereby; (v) change any of the provisions of Section 9.2(b) or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder; (vi) release any Guarantor or limit the liability of any Guarantor under the Guaranty, or (vii) release any material portion of the Collateral securing the Obligations or agree to subordinate any Lien in such Collateral to any other creditor of Borrower. Subject to subsection (e) of this Section 9.4, Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.9 and 2.11 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 9.4; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 9.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.10 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register in the United States on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loan or other obligations under the Loan Documents (the “**Participant Register**”). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. Borrower and Administrative Agent shall have inspection rights to such Participant Register (upon reasonable prior notice to the applicable Lender) solely for purposes of demonstrating that such portion of the Loan or other obligations under the Loan Documents are in “registered form” for purposes of the Code. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

### A Participant shall not be entitled to receive any greater payment under Sections 2.9 and 2.11 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower’s prior written consent. A Participant shall not be entitled to the benefits of Section 2.11unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.11(e) and (f) as though it were a Lender.

### Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

### Borrower agrees, upon the request of Administrative Agent, to use commercially reasonable efforts to assist Administrative Agent in connection with the syndication of the Loan. Such assistance shall include using commercially reasonable efforts to (i) facilitate direct contact between senior management, advisors and Affiliates of Borrower and the proposed assignees and/or participants, (ii) provide such updated financial and other information with respect to Borrower and Guarantor as Administrative Agent may reasonably request in connection with such syndication, (iii) attend one or more meetings with prospective assignees and/or participants, (iv) provide such other general assistance as reasonably requested by Administrative Agent in connection with the syndication and marketing of the Loan. Borrower agrees to use commercially reasonable efforts to cause its senior management, advisors and Affiliates to cooperate as aforesaid and as shall be reasonably requested by Administrative Agent.

## **Governing Law; Jurisdiction; Consent to Service of Process**.

### This Agreement and the other Loan Documents 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 or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof**) of the State of [Georgia] [Florida] [Maryland] [North Carolina] [South Carolina] [Tennessee] [Virginia] [New York] [District of Columbia]**.

### Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusivejurisdiction[[26]](#footnote-27) of the United States District Court **[for the Northern District of Georgia] [for the [Western] District of North Carolina, [Mecklenburg County] Division][[27]](#footnote-28)[what is appropriate for Florida, Maryland, 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]**[**both the [Mecklenburg County] Superior Court and 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, Borough of Manhattan]**, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereby or thereby, 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 [Mecklenburg County] Superior Court or the North Carolina Business Court][such [Tennessee][Florida][Maryland][South Carolina][District of Columbia][Virginia][New York]** **state court]** or, to the extent permitted by Applicable Law, such appellate court. **[Borrower hereby acknowledges and agrees that it shall timely file, or not object to, contest or oppose (whether by filing of a response or otherwise), as applicable, 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 Applicable Law. Nothing in this Agreement or any other Loan Document shall affect any right that Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against Borrower or its properties in the courts of any jurisdiction.

### 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.

### Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement or in any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

## **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 ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (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 AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

## **Right of Setoff**

. In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, each Lender shall have the right, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by Applicable Law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of Borrower at any time held or other obligations at any time owing by such Lender to or for the credit or the account of Borrower against any and all Obligations held by such Lender, irrespective of whether such Lender shall have made demand hereunder and although such Obligations may be unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify Administrative Agent and Borrower after any such set-off and any application made by such Lender, as the case may be; provided that the failure to give such notice shall not affect the validity of such set-off and application. Each Lender agrees to apply all amounts collected from any such set-off to the Obligations before applying such amounts to any other indebtedness or other obligations owed by Borrower to such Lender.

## **Counterparts; Integration; Electronic Signature**

. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile transmission or by electronic mail in pdf format), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Fee Letter, the other Loan Documents, and any separate letter agreement(s) relating to any fees payable to Administrative Agent and its Affiliates constitute the entire agreement among the parties hereto and thereto regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters. Delivery of an executed counterpart to this Agreement or any other Loan Document by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the words “execution”, “executed”, “signed”, “signature” and words of similar import contain in, or related to this Agreement or any other Loan Document and the transactions contemplated hereby and thereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent, and as provided for, in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided, that notwithstanding anything to the contrary contained herein, Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by Administrative Agent pursuant to procedures approved by it.

## **Survival**

. All covenants, agreements, representations and warranties made by Borrower herein and in the certificates, reports, notices and other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of the Loan, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on the Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid **[or any Letter of Credit is outstanding]**. The provisions of Sections 2.9, 2.11, 9.3 and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loan, the termination of this Agreement or any provision hereof.

## **Severability**

. Any provision of this Agreement or any other Loan Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## **Confidentiality**

. Each of Administrative Agent and the Lenders agrees to take normal and reasonable precautions to maintain the confidentiality of any information relating to Borrower or its business, to the extent designated in writing as confidential and provided to it by Borrower, other than any such information that is available to Administrative Agent or any Lender on a non-confidential basis prior to disclosure by Borrower, except that such information may be disclosed (i) to any Related Party of Administrative Agent or any such Lender including, without limitation, accountants, legal counsel and other advisors, (ii) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (iii) to the extent requested by any regulatory agency or authority purporting to have jurisdiction over it (including any self-regulatory authority such as the National Association of Insurance Commissioners), (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section, or which becomes available to Administrative Agent, any Lender or any Related Party of any of the foregoing on a non-confidential basis from a source other than Borrower, (v) in connection with the exercise of any remedy hereunder or under any other Loan Documents or any suit, action or proceeding relating to this Agreement or any other Loan Documents or the enforcement of rights hereunder or thereunder, (vi) subject to execution by such Person of an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, or (B) any actual or prospective party (or its Related Parties) to any swap or derivative or other transaction under which payments are to be made by reference to Borrower and its obligations, this Agreement or payments hereunder, (vii) to any rating agency, (viii) to the CUSIP Service Bureau or any similar organization, or (ix) with the consent of Borrower. Any Person required to maintain the confidentiality of any information as provided for in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord its own confidential information.

## **Use of Name and Information**

**.** Borrower agrees that Administrative Agent shall be permitted to use information related to the Loan, including the syndication and arrangement thereof, in connection with marketing, press releases or other transactional announcements or updates provided to investor or trade publications, including, but not limited to, the placement of “tombstone” advertisements in publications of its choice at its own expense. In addition, Administrative Agent and the Lenders may provide information about this Agreement to market data collectors and similar service providers to the lending industry.

## **Interest Rate Limitation**

. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to the Loan, together with all fees, charges and other amounts which may be treated as interest on the Loan under Applicable Law (collectively, the “**Loan Charges**”), shall exceed the maximum lawful rate of interest (the “**Maximum Rate**”) which may be contracted for, charged, taken, received or reserved by a Lender holding a portion of the Loan in accordance with Applicable Law, the rate of interest payable in respect of the Loan hereunder, together with all Loan Charges payable in respect thereof, shall be limited to the Maximum Rate.

## **Waiver of Effect of Corporate Seal**

**.** Borrower represents and warrants that it is not required to affix its corporate seal to this Agreement or any other Loan Document pursuant to any requirement of Applicable Law or regulation, agrees that this Agreement is delivered by Borrower under seal and waives any shortening of the statute of limitations that may result from not affixing the corporate seal to this Agreement or such other Loan Documents.

## **Patriot Act**

**.** Administrative Agent and each Lender hereby notifies the Loan Parties that (a) pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Patri ot Act**”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Loan Party in accordance with the Patriot Act and (b) pursuant to the Beneficial Ownership Regulation, it is required to obtain a Beneficial Ownership Certificate. Each Loan Party shall provide to the extent commercially reasonable, such information and take such other actions as are reasonably requested by Administrative Agent or any Lender in order to assist Administrative Agent and each Lender in maintaining compliance with the Patriot Act and the Beneficial Ownership Regulation.

## **No Advisory or Fiduciary Responsibility**

. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Borrower and each other Loan Party acknowledges and agrees and acknowledges its Affiliates’ understanding that (i) (A) the services regarding this Agreement provided by Administrative Agent and/or the Lenders are arm’s-length commercial transactions between Borrower, each other Loan Party and their respective Affiliates, on the one hand, and Administrative Agent and the Lenders, on the other hand, (B) each of Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (C) Borrower and each other Loan Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of Administrative Agent and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, any other Loan Party or any of their respective Affiliates, or any other Person, and (B) neither Administrative Agent nor any Lender has any obligation to Borrower, any other Loan Party or any of their Affiliates with respect to the transaction contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) Administrative Agent, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower, the other Loan Parties and their respective Affiliates, and each of Administrative Agent and the Lenders has no obligation to disclose any of such interests to Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by Applicable Law, each of Borrower and the other Loan Parties hereby waives and releases any claims that it may have against Administrative Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

## **Time is of the Essence**

**.** Time is of the essence of each and every provision of this Agreement.

## **Third Parties; Benefit**

**.** All conditions to the obligation of Administrative Agent and the Lenders to make advances hereunder are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders and their assigns and no other persons shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Administrative Agent and the Lenders will refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances, be deemed to be the beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Administrative Agent at any time in the sole and absolute exercise of its discretion. The terms and provisions of this Agreement are for the benefit of the parties hereto and, except as herein specifically provided, no other person shall have any right or cause of action on account thereof.

## **Signs; Publicity**

**.** At Administrative Agent’s request, but at the expense of Borrower, Borrower shall place a sign at a location on the Property satisfactory to Administrative Agent, which sign shall recite, among other things, that the Lenders are financing the development of the Land and the construction of the Improvements. Borrower expressly authorizes Administrative Agent to prepare and to furnish to the news media for publication from time to time news releases with respect to the Property, specifically to include but not limited to, releases detailing Administrative Agent and the Lenders’ involvement with the financing of the Property.

## **Acknowledgement and Consent to Bail-In of Affected Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

1. the application of any Write-Down and Conversion Powers by an applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
2. the effects of any Bail-in Action on any such liability, including, if applicable:

#### a reduction in full or in part or cancellation of any such liability;

#### a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

#### the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any applicable Resolution Authority.

##

## **[Judgment by Confession**

**. Borrower hereby duly constitutes and appoints \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as the true and lawful attorney-in-fact for it in its name, place and stead, and upon the occurrence of an Event of Default, to confess judgment against it in the Circuit Court of , Virginia, upon this Agreement and all amounts owed hereunder, hereby ratifying and confirming the acts of said attorney-in-fact as if done by itself, expressly waiving benefit of any homestead or other exemption laws. Administrative Agent shall have the right to substitute another attorney-in-fact for any of the aforementioned persons without notice to Borrower. [for Virginia loans only; also add to Notes]**

**[Section 9.21. Judgment by Confession. The provisions of this paragraph shall not apply to a loan for agricultural purposes. Borrower authorizes any attorney-at-law designated by Administrative Agent to confess judgment against Borrower in any court of record or, in the alternative, authorizes Administrative Agent to instruct the clerk of any court of record to confess judgment against Borrower, at any time after the Loan becomes due (whether upon acceleration or otherwise) for the unpaid balance of the Loan plus interest, together with court costs and attorneys’ fees equal to 15% of the unpaid balance of the Loan, and without stay of execution. [for Maryland loans only; also add to Notes]**

## **[Intercreditor Agreement**

**. Administrative Agent, in its capacity as administrative agent for the Lenders, and [Mezzanine Lender] are or will be parties to the [Intercreditor Agreement] memorializing their relative rights and obligations with respect to the Loan, the [Mezzanine Loan], Borrower, [Mezzanine Borrower] and the Property. Borrower acknowledges and agrees that (i) such Intercreditor Agreement is intended solely for the benefit of Administrative Agent, Lenders and Mezzanine Lender, and (ii) Borrower and Mezzanine Borrower are not intended third-party beneficiaries of any of the provisions therein and shall not be entitled to rely on the provisions contained therein. Administrative Agent and Mezzanine Lender shall have no obligation to disclose to Borrower the contents of the Intercreditor Agreement. Borrower’s obligations hereunder are independent of such Intercreditor Agreement and remain unmodified by the terms and provisions thereof.]**

## **Certain ERISA Matters**.

### Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that at least one of the following is and will be true:

#### such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loan**[, the Letters of Credit]** or the Commitments,

#### the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loan, **[the Letters of Credit,]** the Commitments and this Agreement,

#### (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loan, **[the Letters of Credit,]** the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loan, **[the Letters of Credit,]** the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loan, **[the Letters of Credit,]** the Commitments and this Agreement, or

#### such other representation, warranty and covenant as may be agreed in writing between Administrative Agent, in its sole discretion, and such Lender.

### In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that:

#### none of Administrative Agent, Arranger, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

#### the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loan, **[the Letters of Credit,]** the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

#### the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loan, **[the Letters of Credit,]** the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

#### the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loan, **[the Letters of Credit,]** the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loan, **[the Letters of Credit,]** the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

#### no fee or other compensation is being paid directly to Administrative Agent, Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loan, **[the Letters of Credit,]** the Commitments or this Agreement.

### Administrative Agent and Arranger hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loan, **[the Letters of Credit,]** the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loan**[, the Letters of Credit]** or the Commitments for an amount less than the amount being paid for an interest in the Loan**[, the Letters of Credit]** or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker’s acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## **[Partial Release. Administrative Agent shall release the lien and security interest granted to or held by Administrative Agent for the benefit of the Secured Parties upon [*describe release parcel*], upon the express condition that each and all of the following conditions precedent shall have been fulfilled or complied with to the satisfaction of Administrative Agent (a “Partial Release”):**

### **a written request for the Partial Release is provided to Administrative Agent by the date that is at least thirty (30) days in advance of the desired date upon which Borrower wishes to effect the Partial Release, together with such information regarding the requested Partial Release as Administrative Agent may reasonably request in connection therewith;**

### **no Default or Event of Default shall have occurred and be continuing;**

### **[*add deal-specific conditions, including any required principal paydown, condition for easement agreements if needed, etc.*];**

### ***Include if a principal paydown is required in connection with the partial release*: If a Lender-Related Hedge Provider has provided a Hedging Transaction to Borrower in connection with the Loan, Borrower shall: (i) terminate the notional amount of the Hedging Transaction in the amount of the principal prepayment required by clause \_\_\_\_\_, and (ii) pay any costs associated with such notional reduction or termination to the Lender-Related Hedge Provider;**

### **Borrower pays to Administrative Agent all reasonable, out-of-pocket costs and expenses of Administrative Agent, including the reasonable fees, charges and disbursements of counsel for Administrative Agent, in connection with the review, approval and consummation of the Partial Release and preparation of any amendments, modifications or waivers of the Loan Documents in connection therewith (whether or not the transactions contemplated in this Section shall be consummated);**

### **Borrower shall execute and deliver such agreements and instruments in favor of, and provide such further assurances to, Administrative Agent, in order to maintain, in Administrative Agent’s reasonable discretion, the first priority lien and security interest of Administrative Agent in the remainder of the Property, including without limitation, reasonable survey updates and title updates and endorsements, if requested by Administrative Agent, in its reasonable discretion, in connection with the consummation of the Partial Release.**

### **Upon satisfaction of the above conditions, Administrative Agent shall provide Borrower any documents reasonably necessary to effect the release of the applicable portion of the Property from the Liens of the Security Instrument and other applicable Loan Documents (except for provisions or agreements that expressly survive such release, including but not limited to indemnities with respect to environmental matters and the Environmental Indemnification Agreement). ]**

# THE ADMINISTRATIVE AGENT

## **Appointment of Administrative Agent**

**.**

### Each Lender irrevocably appoints Truist Bank as Administrative Agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent under this Agreement and the other Loan Documents, together with all such actions and powers that are reasonably incidental thereto. Administrative Agent may perform any of its duties hereunder or under the other Loan Documents by or through any one or more sub-agents or attorneys-in-fact appointed by Administrative Agent. Administrative Agent and any such sub-agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub-agent, attorney-in-fact or Related Party and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

### It is understood and agreed that the use of the term “agent” herein or in any other Loan Document (or any similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.

### The provisions of this Article X are solely for the benefit of Administrative Agent, **[Issuing Bank]** and the Lenders, and neither Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions.

## **Nature of Duties of Administrative Agent**

**.** Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, (a) Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Loan Documents that Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.2), provided that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and (c) except as expressly set forth in the Loan Documents, Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by Administrative Agent or any of its Affiliates in any capacity. Administrative Agent shall not be liable for any action taken or not taken by it, its sub-agents or its attorneys-in-fact with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.2) or in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents or attorneys-in-fact except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents. Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof (which notice shall include an express reference to such event being a “Default” or “Event of Default” hereunder) is given to Administrative Agent by Borrower or any Lender, and Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms and conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to Administrative Agent. Administrative Agent may consult with legal counsel (including counsel for Borrower) concerning all matters pertaining to such duties.

## **Lack of Reliance on Administrative Agent**

. Each of the Lenders acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the Lenders also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, continue to make its own decisions in taking or not taking any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder.

## **Certain Rights of Administrative Agent**

. If Administrative Agent shall request instructions from the Required Lenders with respect to any action or actions (including the failure to act) in connection with this Agreement, Administrative Agent shall be entitled to refrain from such act or taking such act unless and until it shall have received instructions from such Lenders, and Administrative Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders where required by the terms of this Agreement.

## **Reliance by Administrative Agent**

. Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper Person. Administrative Agent may also rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person and shall not incur any liability for relying thereon. Administrative Agent may consult with legal counsel (including counsel for Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of such counsel, accountants or experts.

## **Administrative Agent in its Individual Capacity**

. The bank serving as Administrative Agent shall have the same rights and powers under this Agreement and any other Loan Document in its capacity as a Lender as any other Lender and may exercise or refrain from exercising the same as though it were not Administrative Agent; and the terms “Lenders”, “Required Lenders”, or any similar terms shall, unless the context clearly otherwise indicates, include Administrative Agent in its individual capacity. The bank acting as Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with Borrower or any Affiliate of Borrower as if it were not Administrative Agent hereunder.

## **Successor Administrative Agent**.

### Administrative Agent may resign at any time by giving notice thereof to the Lenders and Borrower.[[28]](#footnote-29) Upon any such resignation, the Required Lenders[[29]](#footnote-30) shall have the right to appoint a successor Administrative Agent, subject to approval by Borrower provided that no Default or Event of Default shall exist at such time. If no successor Administrative Agent shall have been so appointed, and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States or any state thereof or a bank which maintains an office in the United States.

### Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. If, within forty-five (45) days after written notice is given of the retiring Administrative Agent’s resignation under this Section, no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 45th day (i) the retiring Administrative Agent’s resignation shall become effective, (ii) the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents and (iii) the Required Lenders shall thereafter perform all duties of the retiring Administrative Agent under the Loan Documents until such time as the Required Lenders appoint a successor Administrative Agent as provided above. After any retiring Administrative Agent’s resignation hereunder, the provisions of this Article shall continue in effect for the benefit of such retiring Administrative Agent and its representatives and agents in respect of any actions taken or not taken by any of them while it was serving as Administrative Agent.

## **Withholding Tax**

**.** To the extent required by any Applicable Law, Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any authority of the United States or any other jurisdiction asserts a claim that Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify Administrative Agent (to the extent that Administrative Agent has not already been reimbursed by Borrower and without limiting the obligation of Borrower to do so) fully for all amounts paid, directly or indirectly, by Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

## **Administrative Agent May File Proofs of Claim**.

### In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of the Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

#### to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Administrative Agent and its agents and counsel and all other amounts due the Lenders and Administrative Agent under Section 9.3) allowed in such judicial proceeding; and

#### to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

### Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, if Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Section 9.3.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

## **Authorization to Execute Other Loan Documents**

. Each Lender hereby authorizes Administrative Agent to execute on behalf of all Lenders all Loan Documents other than this Agreement.

## **Collateral**

. The Lenders irrevocably authorize Administrative Agent, at its option and in its discretion, to release any Lien on any property granted to or held by Administrative Agent under any Loan Document upon the payment in full of all Obligations (other than contingent indemnification obligations), or if approved, authorized or ratified in writing in accordance with Section 9.2. Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent’s authority to release its interest in particular types or items of property. In each case as specified in this Section, Administrative Agent is authorized, at Borrower’s expense, to execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the Liens granted under the applicable Loan Documents, in accordance with the terms of the Loan Documents and this Section.

## **[Documentation Agent; Syndication Agent**

**. Each Lender hereby designates [\_\_\_\_\_] as Documentation Agent and agrees that the Documentation Agent shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party. Each Lender hereby designates [\_\_\_\_\_] as Syndication Agent and agrees that the Syndication Agent shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party.]**

## **Right to Realize on the Property**

. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Loan Documents, it being understood and agreed that all powers, rights and remedies hereunder and under the Loan Documents may be exercised solely by Administrative Agent, and (ii) in the event of a foreclosure by Administrative Agent on any of the Property, Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Property at any such sale or other disposition and Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Property sold at any such sale or other disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by Administrative Agent at such sale or other disposition.

## **Post-Foreclosure**

**.** Title to all or any portion of the Collateral acquired by Administrative Agent as a result of a foreclosure or the acceptance of a deed or assignment in lieu of foreclosure, or retained in satisfaction of all or any part of the Obligations, will be held by, at Administrative Agent’s discretion, Administrative Agent or a limited liability company or other legal entity owned by Lenders pro rata in proportion to their respective Commitments (the “**Post-Foreclosure Entity**”). Administrative Agent, as the managing member, partner or owner of the Post-Foreclosure Entity, will prepare a recommended course of action for such Collateral (a “**Post-Foreclosure Plan**”), which will be subject to the approval of the Required Lenders. In accordance with the approved Post-Foreclosure Plan, Administrative Agent will manage, operate, repair, administer, complete, construct, restore or otherwise deal with the Collateral acquired, and will administer all transactions relating thereto, including employing a management agent, leasing agent and other agents, contractors and employees, including agents for the sale of such Collateral, and the collecting of rents and other sums from such Collateral and paying the expenses of such Collateral pursuant to the annual budgets and business plan set forth in the approved Post-Foreclosure Plan; provided, however, that Administrative Agent, in its sole discretion, is authorized, in lieu of the procedure set forth in the annual budgets and business plan, to fund itself any additional expenses for reason of a bona fide emergency affecting the Collateral or for payment of taxes or insurance premiums (collectively, “Emergency Fundings”). Except for Emergency Fundings, actions taken by Administrative Agent with respect to the Collateral, which are not specifically provided for in the approved Post-Foreclosure Plan or reasonably incidental thereto, will require the written consent of the Required Lenders by way of supplement to such Post-Foreclosure Plan. Upon demand therefor from time to time, each Lender will contribute its Pro Rata Share of all Emergency Fundings and all reasonable costs and expenses incurred by Administrative Agent pursuant to the approved Post-Foreclosure Plan or reasonably incidental thereto, in connection with the construction, operation, management, maintenance, development, leasing and sale of such Collateral. Administrative Agent will render or cause to be rendered to each Lender, from time to time, an income and expense statement for such Collateral, and each Lender will promptly contribute its Pro Rata Share of any operating loss for such Collateral, and such other expenses and operating reserves as Administrative Agent deems reasonably necessary in accordance with the Post-Foreclosure Plan. The Lenders acknowledge and agree that if title to any Collateral is obtained by the Post-Foreclosure Entity, such Collateral will not be held as a permanent investment but will be liquidated and the proceeds of such liquidation will be distributed in accordance with this Agreement as soon as practicable. Administrative Agent will undertake to sell such Collateral, subject to the terms of the Post-Foreclosure Plan and upon such terms and conditions as the Required Lenders reasonably determine to be most advantageous to the Lenders. The Lenders agree not to unreasonably withhold or delay their approval of a Post-Foreclosure Plan or any third party offer to purchase all or a portion of the Collateral. Any offer to purchase the Collateral at a gross purchase price of 95% of the fair market value of the Collateral as set forth in a current Appraisal shall be deemed to be a reasonable offer. Administrative Agent and all Lenders hereby expressly waive and relinquish any right of partition with respect to any Collateral so acquired.

## **Approvals**

. All communications from Administrative Agent to the Lenders requesting the Lenders’ determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by a description of the matter or time as to which such determination, approval, consent or disapproval is requested, or shall advise each Lender where such matter or item may be inspected, or shall otherwise describe the matter or issue to be resolved, (iii) shall include, if reasonably requested by a Lender and to the extent not previously provided to such Lender, written materials and a summary of all oral information provided to Administrative Agent by the Loan Parties in respect to the matter or issue to be resolved, and (iv) shall include Administrative Agent’s recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within ten (10) Business Days after receipt of the request from Administrative Agent (the “**Lender Reply Period**”). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of the Required Lenders or all the Lenders, Administrative Agent shall submit its recommendation or determination for approval of or consent to such recommendation or determination to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination of the Required Lenders (and each nonresponding Lender shall be deemed to have concurred with such recommended course of action) or all the Lenders, as the case may be.

## **Request for Agent Action**

. Administrative Agent and the Lenders acknowledge that in the ordinary course of business of Borrower, (a) Borrower may enter into Leases covering the Collateral that may require the execution of a subordination, attornment and non-disturbance agreement in favor of the Tenant thereunder, (b) the Collateral may be subject to a condemnation or other taking, (c) Borrower may desire to enter into easements or other agreements affecting the Collateral, record a subdivision plat, dedicate roads or utilities, or take other actions or enter into other agreements in the ordinary course of business which similarly require the consent, approval or agreement of Administrative Agent. In connection with the foregoing, the Lenders hereby expressly authorize Administrative Agent to (w) execute and deliver to Borrower subordination, attornment and non-disturbance agreements with any Tenant under a Lease upon such terms as Administrative Agent in its good faith judgment determines are appropriate (Administrative Agent in the exercise of its good faith judgment may agree to allow some or all of the casualty, condemnation, restoration or other provisions of the applicable Lease to control over the applicable provisions of the Loan Documents), (x) execute releases of liens of Collateral as permitted in this Agreement or in connection with any condemnation or other taking, (y) execute consents or subordinations in form and substance satisfactory to Administrative Agent in connection with any easements, agreements, plats, dedications or similar matters affecting the Collateral, or (z) execute consents, approvals, or other agreements in form and substance satisfactory to Administrative Agent in connection with such other actions or agreements as may be necessary in the ordinary course of Borrower’s business.

##  **Secured Hedging Obligations**. No Lender-Related Hedge Provider that obtains the benefits of Section 8.3, the Security Instrument or any Collateral by virtue of the provisions hereof or of any other Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision herein to the contrary, Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Hedging Obligations unless Administrative Agent has received written notice of such Hedging Obligations, together with such supporting documentation as Administrative Agent may request, from the applicable Lender-Related Hedge Provider.

## **Erroneous Payments**.

1. Each Lender hereby agrees that (i) if Administrative Agent notifies such Lender that Administrative Agent has determined in its sole discretion that any funds received by such Lender from Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender or Issuing Bank (whether or not known to such Lender or Issuing Bank) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “**Erroneous** **Payment**”) and demands the return of such Erroneous Payment (or a portion thereof),[[30]](#footnote-31) such Lender shall promptly, but in no event later than one Business Day thereafter, return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. A notice of Administrative Agent to any Lender under this clause (a) shall be conclusive, absent manifest error.
2. Without limiting immediately preceding clause (a), each Lender hereby further agrees that if it receives an Erroneous Payment from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by Administrative Agent (or any of its Affiliates) with respect to such Erroneous Payment (an “**Erroneous** **Payment Notice**”), (y) that was not preceded or accompanied by an Erroneous Payment Notice, or (z) that such Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case, an error has been made (and that it is deemed to have knowledge of such error at the time of receipt of such Erroneous Payment) with respect to such Erroneous Payment, and to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.  Each Lender and each Issuing Bank agrees that, in each such case, it shall promptly (and, in all events, within one Business Day of its knowledge (or deemed knowledge) of such error) notify Administrative Agent of such occurrence and, upon demand from Administrative Agent, it shall promptly, but in all events no later than one Business Day thereafter, return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.
3. Borrower [and each other Loan Party][[31]](#footnote-32) hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason, Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by Borrower [or any other Loan Party].
4. Each party’s obligations under this Section 10.18 shall survive the resignation or replacement of Administrative Agent, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

*(remainder of page left intentionally blank)*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**[NAME OF BORROWER]**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

[SEAL]

**TRUIST BANK**

as Administrative Agent and as a Lender

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

**[Add additional separate signature pages for each additional Lender]**

**[NAME OF BANK]**

as a Lender

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

**SCHEDULE I**

**Schedule of Lenders**

|  |  |  |
| --- | --- | --- |
| **Lender** | **Commitment Amount** | **Pro Rata Share** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**EXHIBIT A**FORM OF ASSIGNMENT AND ACCEPTANCE

ASSIGNMENT AND ACCEPTANCE

This Assignment and Acceptance (this “**Assignment**”) is dated as of the Effective Date set forth below and is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Assignor**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Construction Loan Agreement identified below (the “**Loan Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including,without limitation **[letters of credit and]** guarantees), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or in any way based on or related to any of the foregoing, including, but not limited to contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity, related to the rights and obligations sold and assigned pursuant to Subsection (i) above (the rights and obligations sold and assigned pursuant to Subsections (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Assignee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[, an Affiliate/Approved Fund of \_\_\_\_\_\_\_\_\_\_\_\_\_]**

3. Borrower(s):

4. Administrative Agent: Truist Bank, as the administrative agent under the Loan Agreement

5. Loan Agreement: The Construction Loan Agreement, dated as of \_\_\_\_\_\_\_\_, 20\_\_ among \_\_\_\_\_\_\_\_, the Lenders parties thereto, and Truist Bank as Administrative Agent

6. Assigned Interest:

|  |  |  |
| --- | --- | --- |
| AggregateAmount ofCommitment/Loansfor all Lenders | Amount ofCommitment/LoansAssigned | PercentageAssigned ofCommitment/Loans |
|  |  |  |
| $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_% |

Effective Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ **[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR:

By:

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ASSIGNEE:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Consented to and]** Accepted:

Truist Bank, as Administrative Agent

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Consented to:]**

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

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***ANNEX 1 TO ASSIGNMENT AND ACCEPTANCE***

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ACCEPTANCE

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby, and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, or any collateral thereunder, (iii) the financial condition of Borrower, any of its Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement and the other Loan Documents, (ii) it meets all the requirements to be an assignee under the Loan Agreement (subject to receipt of such consents as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement and the other Loan Documents as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant thereto, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision independently and without reliance on Administrative Agent or any other Lender to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, and (vi) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

1.3 Assignee’s Address for Notices, etc. Attached hereto as Schedule 1 is all contact information, address, account and other administrative information relating to the Assignee.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to or on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by Administrative Agent for periods prior to the Effective Date or with respect to the making of this Assignment directly between themselves.

3. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by facsimile shall be effective as delivery of a manually executed counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the Law of the state of \_\_\_\_\_\_**[conform to Loan Agreement]**.

***SCHEDULE 1 TO ASSIGNMENT AND ACCEPTANCE***

ADMINISTRATIVE DETAILS

***(Assignee to list names of credit contacts, addresses, phone and facsimile numbers, electronic mail addresses and account and payment information)***

(a) Lending Office:

Assignee name:

Address:

Attention:

Telephone: ( )

Facsimile: ( )

Electronic Mail:

(b) Domestic Lending Office:

Assignee name:

Address:

Attention:

Telephone: ( )

Facsimile: ( )

Electronic Mail:

(c) Notice Address:

Assignee name:

Address:

Attention:

Telephone: ( )

Facsimile: ( )

Electronic Mail:

(d) Payment Instructions:

Account No.
Attention:
Reference:

**EXHIBIT B**

BUDGET

**EXHIBIT C**

FORM OF DRAW REQUEST

BORROWER’S CERTIFICATE AND REQUEST FOR ADVANCE

BORROWER: DRAW REQUEST NUMBER:

PROJECT DESCRIPTION: TRUIST BANK LOAN #:

Borrower hereby certifies and represents to Administrative Agent as follows (unless otherwise defined herein, all terms herein have the meanings assigned in the Construction Loan Agreement by and between Borrower and Truist Bank as Administrative Agent, dated \_\_\_ \_\_\_, 20\_\_\_):

1. As of the date hereof, no Event of Default under the above Construction Loan Agreement has occurred and is continuing, and no event known to Borrower has occurred which, upon the service of notice and/or lapse of time, would constitute an Event of Default thereunder.

2. Except for Permitted Encumbrances, no adverse change has occurred as to the title to the real estate securing the subject loan, except as previously acknowledged and approved by Administrative Agent, and all payable real estate taxes and insurance premiums have been paid in full, except those being contested in accordance with the Construction Loan Agreement

3. The progress of construction of the project is such that it can be completed on or before the completion date specified in the Construction Loan Agreement. All required Equity Deposits have been made. The work and materials for which funds are herein requested are actually in place or are stored as permitted by the Construction Loan Agreement.

4. Except for matters being contested as permitted by the Construction Loan Agreement, all bills for labor, material, services and supplies which could constitute or give rise to a mechanics lien if unpaid, have been paid, or will be paid out of the funds requested in the current application, and no security interest has been given in connection with any materials, appliances, machinery, fixtures or furnishings installed in the project.

5. All representations and warranties of Borrower in the Construction Loan Agreement are true and correct in all material respects (unless such representations and warranties are qualified by materiality or a Material Adverse Effect, in which case such representations and warranties are true and correct in all respects).

Borrower hereby authorizes and requests Administrative Agent to make a $ disbursement of the subject loan proceeds as follows, all in accordance with the procedures provided in the Construction Loan Agreement:

Deposit to Truist Bank DDA number in the name of .

Further, Borrower hereby authorizes and requests Administrative Agent to pay:
\_\_\_\_\_\_\_\_ loan interest \_\_\_\_\_\_\_\_ inspection fees (check as appropriate) as follows:

\_\_\_ Draft the above-indicated Truist Bank account after proceeds from this draw request have been deposited; or

\_\_\_ Checks are enclosed to pay the above checked fee(s) (checks are to be held until the proceeds from the draw request have been deposited to the above account); or

\_\_\_ Pay Administrative Agent directly for the above checked items from funds requested in the draw and deposit the remainder of the funds into the directed DDA.

**[NAME OF BORROWER]**

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

**EXHIBIT D**

FORM OF NOTE

*Note to drafter: for use if applicable; modify as appropriate for deal specifics*

**EXHIBIT E**

[FORM OF]

BORROWER COMPLIANCE CERTIFICATE

[*Date*]

Truist Bank

*RM address*\_\_\_\_

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

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

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

1. mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_

 For the *[Quarterly/Yearly]* Period Ending: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ladies and Gentlemen:

Reference is hereby made to the *[Construction][Term]* Loan Agreement dated as of \_\_\_\_\_\_\_\_ (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among \_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), each lender from time to time party thereto and Truist Bank, as administrative agent (“**Administrative Agent**”), *[and the Guaranty Agreement dated as of \_\_\_\_\_\_ (as amended, restated, supplemented or otherwise modified from time to time, the “****Guaranty****”)*] by \_\_\_\_\_\_\_\_\_\_\_ for the benefit of Administrative Agent and the Lenders. Capitalized terms used herein without definition shall have the meanings set forth in the Loan Agreement.

 The undersigned hereby certifies as of the date hereof that he/she is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate (this “**Certificate**”) to Administrative Agent and the Lenders on the behalf of Borrower, and that:

* 1. Borrower has delivered the financial information required by Section 6.1 of the Loan Agreement for the fiscal [quarter/year] of Borrower ended as of the above date. Such financial information is true and correct in all material respects and fairly presents the financial condition and results of operations of Borrower (in accordance with GAAP) as at such date and for such period.
	2. The calculations set forth in Annex 1 are computations of the [(i) *Debt Yield and (ii) Debt Service Coverage Ratio* for purposes of Section \_\_\_\_\_\_\_ of the Loan Agreement] [*Debt Yield/ Debt Service Coverage Ratio* for purposes of Section \_\_\_ of the Rider attached to the Guaranty and incorporated therein by reference] and are true and accurate in all respects on and as of the date of this Certificate.
	3. *include if applicable:* Based upon a review of the activities of Borrower and the calculations attached hereto during the period covered thereby, as of the date hereof, there [exists][does not exist] a Cash Flow Sweep Event pursuant to the terms of the Loan Agreement.

*[Note to drafter: include provision for affirmative notice from Borrower of any other deal-specific non-default financial test triggers that may have been tripped, if any.]*

* 1. Based upon a review of the activities of Borrower and the calculations attached hereto during the period covered thereby, as of the date hereof, there exists [no Default or Event of Default.][a Default or Event of Default as specified below]:

and Borrower [has taken][proposes to take] the following actions with respect thereto:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .]

* 1. Further based upon a review of the activities of Borrower and other pertinent information, [there currently exists no matter described in Section 5.1 (Notices of Material Events) of the Loan Agreement][Borrower hereby provides notice to Administrative Agent and the Lenders of the following events, as required pursuant to Section 5.1 of the Loan Agreement]:

*[if applicable, describe matter(s) disclosed; otherwise, state N/A]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, as Borrower

By:

By:

Name:

Title: [SEAL]

**ANNEX 1**

**Calculations of Financial Covenant(s)**

[Attached]

*Note to drafter: for use if applicable; modify as appropriate for deal specifics*

[FORM OF]

GUARANTOR COMPLIANCE CERTIFICATE

[*Date*]

Truist Bank

*RM address*\_\_\_\_

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

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

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

1. mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_

 For the *[Quarterly/Yearly]* Period Ending: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ladies and Gentlemen:

Reference is hereby made to the *[Construction][Term]* Loan Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_ (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_, each lender from time to time party thereto and Truist Bank, as administrative agent (“**Administrative Agent**”), and the Guaranty Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_ (as amended, restated, supplemented or otherwise modified from time to time, the “**Guaranty**”) by \_\_\_\_\_\_\_\_\_ (“**Guarantor**”) for the benefit of Administrative Agent and the Lenders. Capitalized terms used herein without definition shall have the meanings set forth in the Guaranty.

The undersigned hereby certifies as of the date hereof that he/she is the [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Guarantor] [Guarantor], and that, as such, he/she is authorized to execute and deliver this Compliance Certificate (this “**Certificate**”) to Administrative Agent and the Lenders on the behalf of the Guarantor, and that:

* 1. Guarantorhas delivered the evidence of such Guarantor’s financial status required by Section [6.1] of the Loan Agreement and Section [5] of the Guaranty Agreement for the fiscal [quarter/year] of the Guarantor ended as of the above date. Such financial information is true and correct in all material respects and fairly presents the financial condition and results of operations of the Guarantor (in accordance with GAAP) as at such date and for such period.
	2. For purposes of Section \_\_\_\_\_\_\_ of the Loan Agreement and Section \_\_\_of the Guaranty, the calculations set forth in Annex 1 are computations of the (i) Unencumbered Liquid Assets of Guarantor and its Consolidated Subsidiaries and (ii) Contingent Liabilities Coverage Ratio, *deal specific - conform to deal* each calculated from the Financial Statements attached hereto in accordance with the terms of the Loan Agreement and the Guaranty, and each calculation is true and accurate in all respects on and as of the date of this Certificate.
	3. Based upon a review of the activities of Guarantor and the Financial Statements attached hereto during the period covered thereby, as of the date hereof, there exists [no Default or Event of Default as a result of a failure to comply with Section \_\_\_ of the Guaranty.][a Default or Event of Default as a result of a failure to comply with Section \_\_\_ of the Guaranty, as more specifically specified below:

and Guarantor [has taken][proposes to take] the following actions with respect thereto:

 .]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, as Guarantor

By: Name:

Title:

**ANNEX 1**

**Calculations of Financial Covenant**

[Attached]

**EXHIBIT 2.11A**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Construction Loan Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among [ ], each lender from time to time party thereto and Truist Bank, as administrative agent (“**Administrative Agent**”).

Pursuant to the provisions of Section 2.11 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and Beneficial Owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

|  |
| --- |
| [NAME OF LENDER] |
| By:  |
|  | Name:  |
|  | Title:  |

Date: \_\_\_\_\_\_\_\_ \_\_, 20[   ]

**EXHIBIT 2.11B**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Construction Loan Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among [ ], each lender from time to time party thereto and Truist Bank, as administrative agent (“**Administrative Agent**”).

Pursuant to the provisions of Section 2.11 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and Beneficial Owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code].

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

|  |
| --- |
| [NAME OF PARTICIPANT] |
| By:  |
|  | Name:  |
|  | Title:  |

Date: \_\_\_\_\_\_\_\_ \_\_, 20[ ]

**EXHIBIT 2.11C**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Construction Loan Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among [ ], each lender from time to time party thereto and Truist Bank, as administrative agent (“**Administrative Agent**”).

Pursuant to the provisions of Section 2.11 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole Beneficial Owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

|  |
| --- |
| [NAME OF PARTICIPANT] |
| By:  |
|  | Name:  |
|  | Title:  |

Date: \_\_\_\_\_\_\_\_ \_\_, 20[ ]

**EXHIBIT 2.11D**

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Construction Loan Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among [ ], each lender from time to time party thereto and Truist Bank, as administrative agent (“**Administrative Agent**”).

Pursuant to the provisions of Section 2.11 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole Beneficial Owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Loan Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

|  |
| --- |
| [NAME OF LENDER] |
| By:  |
|  | Name:  |
|  | Title:  |

Date: \_\_\_\_\_\_\_\_ \_\_, 20[ ]

**EXHIBIT 3.1**

**[Notes to preparer: (i) one certificate per structure should be provided, and (ii)**

**conform certificate to loan agreement and transaction requirements]**

**Certificate of Flood Insurance Compliance**

Truist Bank, as Administrative Agent

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

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

**Re: $\_\_\_\_\_\_\_ loan (“Loan”) evidenced by [Construction][Term] Loan Agreement dated as of \_\_\_\_\_\_\_\_ (as amended, modified, supplemented, restated, or renewed, from time to time, the “Agreement”), by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_ of the state of \_\_\_\_\_\_\_\_\_ (the “Borrower”), the several banks and other financial institutions and lenders from time to time party thereto (the “Lenders”) and TRUIST BANK, a North Carolina banking corporation, in its capacity as administrative agent for the Lenders (the “Administrative Agent”)**

**Reference is made to the Agreement and the other documents evidencing and securing the Loan (“Loan Documents”). Capitalized terms used in this certificate (including schedules and other attachments hereto, this “Certificate”) without definition have the meanings specified in the Loan Documents.**

**Pursuant to applicable provisions of the Agreement, the undersigned, being an authorized representative of Borrower authorized and empowered to issue this Certificate for and on behalf of Borrower hereby certifies to the Lenders as follows as of the date hereof:**

1. Review of Flood Insurance Terms and Conditions. The undersigned has reviewed the terms of the Agreement, including, but not limited to, the representations and warranties of Borrower and Guarantor(s) set forth in the Agreement [*add if applicable: and the Guaranty*] and the covenants of Borrower set forth in the Agreement, regarding flood insurance for real and personal property (“**Flood Insurance Terms and Conditions**”), and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of Borrower and Guarantor(s) through the reporting periods.

2. Compliance with Terms of Agreement. Each of Borrower *[and each Guarantor]* is in compliance with all of the Flood Insurance Terms and Conditions.

3. Certifications regarding Personal Property. The real property pledged as collateral for the Loan (“**Real Property**”) is legally described in the Loan Documents. The undersigned certifies as follows with respect to the personal property pledged as collateral for the Loan (as described in the Loan Documents), including without limitation all personal property, collateral and contents securing the Loan within the meaning of 12 CFR 208.25 (c) (collectively “**Personal Property**”) [mark appropriate statement and attach backup materials]:

(i)*\_\_\_\_* Borrower does not own any Personal Property in connection with the Loan and the Real Property [acceptable to mark if there is none, or if any present is owned by third parties or leased by Borrower]

(ii) \_\_\_\_ The aggregate value of Personal Property that Borrower currently owns, or will in the succeeding twelve (12) months from the date hereof own, in connection with the Loan and the Real Property, is equal to or more than $500,000.00 with respect to each building located on the Real Property, andBorrower maintains flood insurance on the Personal Property in connection with the Loan and the Real Property in an amount not less than $500,000.00 per building, as evidenced by the attached information on insurance.

(iii) *\_\_\_\_* The aggregate value of Personal Property that Borrower currently owns, or will in the succeeding twelve (12) months from the date hereof own, in connection with the Loan and the Real Property *[with respect to the \_\_\_\_\_ building – Note: specify designated building if more than one building is located on the Real Property]*, is $ \_\_\_\_\_\_\_\_ *[insert actual value amount]*, and Borrower maintains flood insurance on said Personal Property, as evidenced by the attached information on values and insurance, in a per building amount that is not less than the lowest of:

(i) $500,000.00;

(ii) An amount that, when combined with the amount of flood insurance Borrower maintains on the Real Property, is equal to the outstanding principal balance of the Loan; or

(iii) The full insurable value of the Personal Property

*[Note to drafter: mark the following option only if credit is requiring coverage that exceeds the flood insurance regulatory minimum specified in the third option above]*

(iv) *\_\_\_\_* The aggregate value of Personal Property that Borrower currently owns, or will in the succeeding twelve (12) months from the date hereof own, in connection with the Loan and the Real Property *[with respect to the \_\_\_\_\_ building – Note: specify designated building if more than one building is located on the Real Property]*,is $ \_\_\_\_\_\_\_\_\_\_\_ *[insert actual value amount]*, and Borrower maintains flood insurance on said Personal Property, as evidenced by the attached information on values and insurance, in a per building amount that is equal to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. *[insert amount that exceeds $500,000.00]*

4. Schedules and Exhibits. Any schedules and exhibits attached hereto are incorporated herein by this reference.

**Borrower covenants and agrees promptly to notify Administrative Agent and to deliver to Administrative Agent a replacement certificate if any of the information in any certification marked in Section 3 changes such that the certification becomes untrue.**

IN WITNESS WHEREOF, this Certificate is executed by the undersigned this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_.

Date:

[insert signature blocks]

[attach applicable schedules and exhibits]

**EXHIBIT 5.5**

INSURANCE REQUIREMENTS; CASUALTY AND CONDEMNATION

**1. Insurance.** Borrower shall maintain insurance as follows:

* + 1. *Required Coverages*.

#### Comprehensive “special causes of loss” or “all risk” property insurance (or its equivalent) covering the Property, including improvements and personal property, against losses caused by but not limited to fire, flood, windstorm (including named windstorm if located in the state of Florida or any Tier One designated county), hail, explosion, collapse, earthquake (if in a high risk seismic area as determined by Lender), sinkhole (if located in the state of Florida), malicious mischief, vandalism, sprinkler leakage, terrorism and such other insurable hazards as, under good insurance practices, from time to time, are insured against for other real properties similar to the Property in nature, use, location, height and type of construction *[if property is a* ***Hotel****, add:* and those that are required pursuant to the terms of the Franchise Agreement*]*. Such insurance policy shall:

(1) Insure the Property, including improvements and personal property, in an amount equal to not less than one hundred percent (100%) of the “Insurable Value” which for purposes of this Agreement shall mean, the full Replacement Cost (including FF&E and TI costs) without deduction for depreciation but excluding the cost of the land, excavation, grading, site work, underground utilities, footings, foundations and some indirect/soft costs such as taxes, financing costs, owner’s overhead and profit (but including direct costs of rebuild such as engineering / design fee, permits, contractor overhead and profit, etc.). *[If the property is in a high risk seismic area, as determined by Lender, the amount of insurance required for earthquake coverage may be less than the full “Insurable Value”. The minimum amount required for earthquake coverage may be based on the reported PML values for SEL contained in a Seismic Risk Assessment report acceptable to lender.]*

*[If property is an “existing” property in a high risk seismic area add;* Provided however, the minimum amount of insurance required for earthquake coverage may not be less than $\_\_\_\_\_\_\_\_\_\_\_\_.]

*[If property is a “to be built” property in a high risk seismic area add;* Provided however, the minimum amount of insurance required for earthquake coverage during construction may not be less than $\_\_\_\_\_\_\_\_\_\_\_\_ [and if required] and $\_\_\_\_\_\_\_\_\_\_\_ after construction is complete.]

(2) Be written on a replacement cost basis and contain either an agreed amount endorsement with respect to the Property (including improvements and personal property) or a waiver of all co-insurance provisions;

(3) Contain “Ordinance or Law Coverage” including loss to the undamaged portion of the building, the expense of demolition (including the demolition of undamaged portions of the Property) and increased cost of construction due to the enforcement of Applicable Laws regulating reconstruction at the time of rebuilding following a loss;

(4) With the exception of flood, earthquake, and named windstorm as defined below, provide for a deductible not greater than $\_\_\_\_\_\_\_\_;

*[Note: Deductibles are not to exceed $50,000 for transactions of $2.5 million or less or $100,000 for transactions greater than $2.5 million.]*

(5) If any portion of the Property is currently or at any time in the future located in a “special flood hazard area” designated by the Federal Emergency Management Agency: (a) include flood hazard insurance in an amount equal to (I) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended (“**NFIP**”) and (II) such excess limits as Administrative Agent may require, with a deductible not greater than the maximum amount available from the NFIP; and (b) include flood hazard insurance with respect to all personal property and contents securing the Loan within the meaning of 12 CFR 208.25, to the extent required by the Flood Insurance Laws;

(6) If earthquake coverage is required, provide for an earthquake deductible not greater than 5% of the Insured Value per building;

(7) If named windstorm coverage is required, provide for a named windstorm deductible not greater than 5% of the Insured Value per building.

Note: For earthquake and named storm coverage, if there is a minimum that is in excess of the standard mentioned in (4) above, the amount will need to be approved by credit.

#### Loss of rents insurance or business income insurance, as applicable, on an actual loss sustained basis in an amount not less than the amount of rent receivable or business income (less expenses that do not continue during the period of restoration) earned in a twelve (12) month period and at the discretion of Administrative Agent additionally providing a 365-day extended period of indemnity. Administrative Agent on behalf of the Lenders shall be named as lender loss payee as respects to this coverage.

#### At all times during which structural construction, repairs or alterations are being made with respect to the Property, and only if the aforesaid coverages do not otherwise apply, (1) owner’s contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the below mentioned commercial general liability and excess liability insurance policies; and (2) the insurance provided for in subsection (i) above written in a so-called builder’s risk completed value form (I) on a non-reporting basis; (II) against “special causes of loss” or “all risk” coverage (III) including soft costs; (IV) with an agreed amount endorsement waiving co-insurance provisions; and (V) with permission to occupy the Property.

#### Comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Administrative Agent on terms consistent with the commercial property insurance policy required under subsection (i) above.

#### If perils of terrorism and acts of terrorism or other similar acts or events are hereafter excluded from Borrower’s comprehensive “special causes of loss” or “all risk” property insurance or loss of rents insurance or business income insurance coverage required under subsections (i) and (ii) above, Borrower shall, if the same is available and the cost of which is commercially reasonable, obtain an endorsement to such policy, or a separate policy from an insurance provider which meets the requirements set forth in Section 1(b) below, or is otherwise satisfactory to Administrative Agent, insuring against all such excluded acts or events. The endorsement or policy shall be in amount, form, and substance reasonably satisfactory to Administrative Agent.

#### Commercial general liability insurance against claims for personal injury, bodily injury (including death) or property damage occurring upon, in or about the Property. Such policy shall be written on an occurrence form with a per occurrence limit of not less than $1,000,000 and a general aggregate limit of not less than $2,000,000. The general aggregate limit shall apply per location if multiple properties are insured under the program and the policy shall not include a deductible greater than $25,000. The policy shall provide coverage for the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; and (4) contractual liability for all oral and written contracts*. [If the Property is a* ***Hotel*** *add the following (as applicable).* (5) damage to property of others and bodily injury; (6) personal and advertising injury; (7) innkeeper’s liability; (8) crime coverage; (9) Liquor Liability and (10) Garage-Keepers Liability*].*

#### Workers’ compensation, subject to the statutory limits of the state, and employer’s liability insurance in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable).

#### Commercial automobile liability insurance against claims for personal injury, bodily injury and property damage with a combined single limit of $1,000,000. Coverage shall apply for owned/leased vehicles (if applicable) and hired and non-owned autos.

#### Umbrella/Excess liability insurance in an amount not less than $\_\_\_\_\_\_\_\_\_\_\_ per occurrence on terms consistent with the commercial general liability and commercial automobile liability insurance required under subsections (vi) and (viii) above.

*[The recommended minimum amount of Umbrella/Excess Liability Insurance required is listed below]*

|  |  |
| --- | --- |
| *Loan Size* | *Umbrella / Excess Amount* |
| *Less than or equal to $5MM* | *N/A* |
| *Greater than $5MM but less than or equal to $25MM* | *$ 5,000,000* |
| *Greater than $25MM but less than or equal to $50MM* | *$10,000,000* |
| *Greater than $50MM* | *$20,000,000* |

[*If the property is a* ***Hotel****, the amount of Liability insurance (GL + Excess or Umbrella) should be increased over the amounts listed above. They should at least be equal to the amounts specified in the Franchise Agreement]*

#### Environmental liability coverage at the discretion of Administrative Agent and in an amount and in form and substance reasonably satisfactory to Administrative Agent.

#### If the loan is a construction loan, Commercial general liability insurance from the General Contractor, against claims for personal injury, bodily injury (including death) or property damage occurring upon, in or about the Property. Such policy shall be written on an occurrence form with a per occurrence limit of not less than $1,000,000 and a general aggregate limit of not less than $2,000,000. This should also include evidence of coverage for Worker’s Compensation Insurance and Automobile Liability Insurance described in (vii) and (viii) above.

#### Upon sixty (60) days’ written notice, such other reasonable insurance and in such reasonable amounts as Administrative Agent may from time to time reasonably request against such other insurable hazards which at the time are commonly insured against by institutional lenders for properties similar to the Property located in or around the same region as the Property if the cost of such coverage is commercially reasonable.

Borrower acknowledges that whether the cost of any insurance coverage requested or required under the foregoing subsections (v) and (xii) is “commercially reasonable” shall be reasonably determined by Administrative Agent from time to time and that such determination shall take into account the cost of such coverage(s) then typically required by institutional mortgage lenders with respect to properties similar to the Property located in the same geographical area as the Property. In no event shall Administrative Agent or any Lender be liable for any loss, damage or injury resulting from the inadequacy or lack of any insurance coverage.

### *Form and Quality*.All insurance required hereunder shall be obtained under valid and enforceable policies (collectively, the “**Policies**” or in the singular, the “**Policy**”), and shall be subject to the approval of Administrative Agent as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state or commonwealth where the Property is located and must have an A.M. Best policy holder rating of “A-” or better (or an equivalent rating approved in writing by Administrative Agent). To the extent such Policies are not available as of the date hereof, Borrower shall deliver to Administrative Agent an Acord 28 (property) and Acord 25 (liability) or similar certificates of insurance evidencing the coverages and amounts required hereunder. Not less than ten (10) days prior to the expiration date of any insurance coverage in place with respect to the Property, Borrower shall deliver to Administrative Agent an Acord 28 (property) and Acord 25 (liability) or similar certificates of insurance, evidencing renewal of coverage as required herein, accompanied by evidence satisfactory to Administrative Agent of payment of the premiums due in connection therewith (the “**Insurance Premiums**”), and, as soon as available thereafter, copies of other evidence of coverage of such Policies requested by Administrative Agent. The certificates of insurance must include all limits, sub-limits and deductibles and must list the Certificate Holder as provided by Administrative Agent. Administrative Agent shall not be deemed by reason of the custody of any insurance policies, certificates or binders or copies thereof to have knowledge of the contents thereof. Administrative Agent reserves the right to request certified copies of the insurance policies required in this Article.

### *Endorsement.* All insurance policies shall be endorsed in form and substance reasonably acceptable to Administrative Agent to name Administrative Agent, on behalf of the Lenders hereunder, and its and their successors and/or assigns, as their interests may appear, as (i) an additional insured on the General Liability policy and (ii) mortgagee and lender loss payee on the Property Insurance policy with loss payable to Administrative Agent on behalf of the Lenders, without contribution, under a standard New York (or local equivalent) mortgagee clause. With respect to all insurance, no Person other than Administrative Agent on behalf of the Lenders shall be named as mortgagee or lender loss payee.

### Other Requirements. All Policies shall contain clauses or endorsements to the effect that:

1. No act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Administrative Agent is concerned;
2. The Policies shall not be canceled by the insurer without at least thirty (30) days’ prior written notice to Administrative Agent, except only ten (10) days’ prior written notice to Administrative Agent for non-payment of premium shall be required;
3. The insurance shall not be invalidated should Borrower/Named Insured waive, in writing, prior to loss, any or all rights of recovery against a party for loss occurring to the Property (waiver of subrogation).

### *Blanket Insurance*. Borrower may effect the insurance coverage herein required under its blanket insurance policies; provided that:

1. Any such policy or policies of blanket insurance either shall specify therein, or Borrower shall furnish Administrative Agent with written statement from the insurer (or from Borrower’s insurance broker) under such policy or policies specifying: (1) the maximum amount of the total insurance afforded by the blanket policy allocated to the Property, (2) any sublimits in such blanket policy or policies applicable to the Property, which amounts shall not be less than the amounts required pursuant to this Exhibit 5.5 and (3) no margin clause applies to the Property;
2. Any policy of blanket insurance hereunder shall comply in all respects with the other provisions of this Exhibit 5.5; and
3. The protection afforded Borrower under any policy of blanket insurance hereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the Property.

### *Adjustments*. Borrower shall give immediate written notice of any loss in respect of the Property to Administrative Agent and to the insurance carrier commensurate with the requirements of the policies so as not to prejudice recovery of any loss. With respect to any loss exceeding $\_\_\_\_\_\_\_\_\_, Borrower hereby irrevocably authorizes and empowers Administrative Agent, as attorney-in-fact for Borrower, coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Administrative Agent’s expenses incurred in the collection of such proceeds. Nothing contained in this Section 1(f) however, shall require Administrative Agent to incur any expense or take any action hereunder. Any proceeds of insurance policies coming into the possession of Administrative Agent shall not be deemed trust funds, and Administrative Agent shall be entitled to apply such proceeds as herein provided.

### *Additional Information***.** Borrower shall supply such information as Administrative Agent deems necessary to determine the adequacy of the insurance procured by Borrower on the Property. This information may include but is not limited to (i) a statement of values including replacement costs and estimated annual rents for all properties insured under the insurance policies, (ii) probable maximum loss (PML) studies, (iii) property condition reports and (iv) catastrophic modeling.

### *Administrative Agent’s Right to Procure Insurance*. Notwithstanding anything to the contrary contained herein, if at any time Administrative Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Administrative Agent shall have the right (but not the obligation), without notice to Borrower, to take such action as Administrative Agent deems necessary to protect its interest in the Property, including, without limitation, obtaining such insurance coverage as Administrative Agent in its sole discretion deems appropriate. All premiums and expenses incurred by Administrative Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Administrative Agent upon demand and, until paid, shall be secured by the Security Instrument and shall accrue Default Interest.

2. **Use and Application of Insurance Proceeds**. Administrative Agent shall apply insurance proceeds to costs of restoring the Property or the Loan as follows:

### if the loss is less than or equal to $\_\_\_\_\_\_\_\_\_\_\_, Administrative Agent shall upon receipt thereof release the insurance proceeds to Borrower for restoration of the Property; *provided*, that: (i) no Event of Default or Default exists; and (ii) Borrower promptly commences and is diligently pursuing restoration of the Property;

### if the loss exceeds $\_\_\_\_\_\_\_\_\_\_\_\_ but is not more than $\_\_\_\_\_\_\_\_\_\_\_, Administrative Agent shall apply the insurance proceeds to restoration; *provided*, that at all times during such restoration: (i) no Event of Default or Default exists; (ii) Administrative Agent reasonably determines that there are sufficient funds available to restore and repair the Property to a condition approved by Administrative Agent; (iii) Administrative Agent reasonably determines that the aggregate of the Net Operating Income of the Property during restoration and the business interruption insurance proceeds to be received during restoration will be sufficient to pay Debt Service; (iv) Administrative Agent reasonably determines (based on Approved Leases which will remain in effect after restoration is complete and the like) that after restoration and the extended period of indemnity during which business interruption insurance proceeds continue to be received, the Debt Yield will be at least equal to \_\_\_\_\_%; (v) Administrative Agent reasonably determines that restoration and repair of the Property to a condition approved reasonably by Administrative Agent will be completed within eighteen (18) months after the date of loss or casualty and in any event one hundred eighty (180) days prior to the Maturity Date; and (vi) Borrower promptly commences and diligently pursues restoration of the Property;

### if the conditions set forth above are not satisfied or if in Administrative Agent’s reasonable discretion the loss exceeds $\_\_\_\_\_\_\_\_\_\_, Administrative Agent may apply any insurance proceeds it may receive to the payment of the Loan or allow all or a portion of such proceeds to be used for the restoration of the Property, in Administrative Agent’s sole discretion;

### with respect to a loss in excess of $\_\_\_\_\_\_\_\_\_\_ for which Administrative Agent is required or elects, as applicable, to make insurance proceeds available to Borrower for restoration, insurance proceeds applied to restoration will be disbursed on receipt of satisfactory plans and specifications, contracts and subcontracts, schedules, budgets, lien waivers and architects’ certificates, and otherwise in accordance with prudent commercial construction lending practices for construction loan advances; and

### the net proceeds of rent loss and/or business interruption insurance shall be paid to Administrative Agent upon the occurrence of an Event of Default; otherwise, to Borrower to be used in accordance with the provisions hereof.

3. **Condemnation Awards**. Borrower shall immediately notify Administrative Agent of the institution of any proceeding for the condemnation or other taking of the Property or any portion thereof. Administrative Agent may participate in any such proceeding and Borrower will deliver to Administrative Agent all instruments necessary or required by Administrative Agent to permit such participation. Without Administrative Agent’s prior consent, not to be unreasonably withheld with respect to an Immaterial Condemnation (as defined below), Borrower (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Property or any part thereof are hereby assigned to and shall be paid to Administrative Agent. Borrower authorizes Administrative Agent to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and in Administrative Agent’s sole discretion, to apply the same toward the payment of the Loan, notwithstanding that the Loan may not then be due and payable, or to the restoration of the Property; provided, however, that if (A) the award is less than or equal to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Borrower requests that such proceeds be used for non-structural site improvements (such as landscape, driveway, walkway and parking area repairs) required to be made as a result of such condemnation or (B) such condemnation does not adversely affect the Property or access thereto, as reasonably determined by Administrative Agent (the foregoing set forth in clauses (A) and (B), an “**Immaterial Condemnation**”), Administrative Agent will apply the award to such restoration in accordance with the disbursement procedures applicable to insurance proceeds as set forth therein, provided, that there exists no Default or Event of Default.

Borrower, upon request by Administrative Agent, shall execute all instruments requested to confirm the assignment of the awards and compensation to Administrative Agent, free and clear of all liens, charges or encumbrances. It is expressly understood and agreed that any proceeds received by Administrative Agent pursuant to this Section 3 shall in no way be construed as being held in trust for the benefit of Borrower.

**EXHIBIT 5.11**LEASING AND TENANT MATTERS**[[32]](#footnote-33)**

Borrower and Lenders agree as follows:

**1. Standard Lease Form; Security Deposits**. All Leases entered into after the date hereof (other than renewals of existing Tenants) shall be initially delivered to prospective Tenants on a standard written lease form approved by Administrative Agent. Such lease form and each new sublease at the Property shall provide that the Tenant shall attorn to Administrative Agent for the benefit of itself and the Lenders. No Lease or Lease guaranty may contain any option or right of first refusal to purchase all or any portion of the Property or any present or future interest therein. Borrower shall hold, in trust, all Tenant security deposits in a segregated account, and, to the extent required by Applicable Law, shall not commingle any such funds with any other funds of Borrower. Within ten (10) Business Days after Administrative Agent’s request, Borrower shall furnish to Administrative Agent a statement of all Tenant security deposits, and copies of all Leases not previously delivered to Administrative Agent, certified by Borrower as being true, correct and complete. Further, after the occurrence of an Event of Default, within ten (10) Business Days after Administrative Agent’s demand therefor, Borrower will deliver all security deposits to or as directed by Administrative Agent, which security deposits will be held by Administrative Agent or its designee in accordance with the terms of the respective Leases to which such security depositsapply**.**

**2. Covenants of Borrower Regarding Leases and Rents.** Borrower covenants that Borrower (a) will observe and perform all of the obligations imposed upon the landlord in the Leases and will not do or permit to be done anything to impair the security thereof; (b) will use its best efforts to enforce or secure, or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective Tenants under the Leases, except for obligations or undertaking waived in the ordinary course of Borrower’s business, and will appear in and defend, at Borrower’s sole cost and expense, any action or proceeding arising under, or in any manner connected with, the Leases; (c) will not collect any of the rents under the Leases more than thirty (30) days in advance of the time when the same become due under the terms of the Leases; (d) will not discount any future accruing rents other than in the ordinary course of business; (e) without the prior written consent of Administrative Agent, will not execute any assignment of the Leases or the rents thereunder; and (f) will execute and deliver, at the request of Administrative Agent, all such assignments of the Leases and rents thereunder in favor of Administrative Agent for the benefit of itself and the Lenders as Administrative Agent may from time to time reasonably require.

**3.** **Leasing Guidelines.**

(a) Borrower shall not enter into any Lease without the prior consent of Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, such consent shall not be required in the case of any Lease which satisfies all of the following conditions:

(i) such Lease is in writing and in a form approved by Administrative Agent other than for completion of relevant information such as Tenant name and demised area and such revisions that, taking into consideration the then-current market conditions, do not have a material adverse effect on the value of the Property;

(ii) such Lease provides for a term of not less than [\_\_\_\_\_] years and, exclusive of any extension options, not greater than [\_\_\_\_\_\_] years;

(iii) such Lease encompasses a demised area, individually and in aggregate for each Tenant and its Affiliates, of not less than [\_\_\_\_\_\_] net rentable square feet and not greater than [\_\_\_\_\_\_] net rentable square feet;

(iv) such Lease requires a capital expenditure on Borrower’s behalf including, but not limited to, Tenant improvements and leasing commissions, of not greater than \_\_\_\_\_ dollars ($\_\_.00) per net rentable square foot;

(v) such Lease provides for abated or free rent not greater than \_\_\_\_\_ months for each year in the initial term of such Lease; and

(vi) such Lease provides for a minimum average gross rent over the Lease term (inclusive of early termination rights and exclusive of any extension rights) of \_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_)a per net rentable square foot for full service with base year expense stop.

(b) Borrower shall not, without the prior consent of Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed, modify, amend, extend, waive or grant consents or approvals under any Lease or any guaranty thereof, unless (i) the foregoing is done at a time that no Event of Default shall have occurred and be continuing, (ii) the foregoing is done in the ordinary course of business of Borrower, (iii) after giving effect to the foregoing, such Lease would not have required the consent of Administrative Agent pursuant to Section 3(a) hereof when entered into, (iv) the Tenant under such Lease shall not be an Affiliate of Borrower and (v) there shall be no modification or waiver of any of the subordination, attornment or lender protection provisions of such Lease. Borrower shall not, without the prior consent of Administrative Agent, terminate, accept a surrender of or shorten the term of any Lease or any guaranty thereof unless it (i) is done at a time that no Event of Default shall have occurred and be continuing, (ii) is done in the ordinary course of business of Borrower and (iii) is done on account of a default by the Tenant under such Lease.

[**(c) If Borrower is required to obtain Administrative Agent’s consent under this Section 3, Borrower shall submit to Administrative Agent a written request for approval of such Lease, or such renewal, modification or extension, which written request shall include: (i) the following in the reference line of the request in all capital, bolded, block letters: “LEASE APPROVAL; THE FOLLOWING REQUEST REQUIRES A RESPONSE WITHIN TEN (10) BUSINESS DAYS OF RECEIPT.”; (ii) a summary of the economic terms of the proposed Lease, renewal, modification or extension (as applicable), any non-economic terms that may materially vary from the form lease approved by Administrative Agent or the existing Lease (as applicable), (iii) Borrower’s calculation of the Net Effective Base Rent under the proposed Lease, or the modified, renewed or extended Lease, as applicable, and (iv) financial information on the proposed Tenant as Administrative Agent may reasonably require (to the extent reasonably available to Borrower). Administrative Agent shall provide written notice of its approval or disapproval of such request, which notice of disapproval shall include a reason for such disapproval, within ten (10) Business Days of receipt of such request and required information. In the event Administrative Agent fails to respond in writing to such request within such ten (10) Business Day time period, then Borrower may send to Administrative Agent a second (2nd) notice requesting consent, which notice shall include the following in the reference line of the request in all capital, bolded, block letters: “LEASE APPROVAL; THE FOLLOWING REQUEST REQUIRES A RESPONSE WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT. FAILURE TO DO SO WILL BE DEEMED AN APPROVAL OF THE REQUEST.” Administrative Agent’s failure to respond to such second request within five (5) Business Days of receipt of the request shall constitute a deemed approval of such request on the terms submitted to Administrative Agent for approval. For purposes of this provision**, **“Net Effective Base Rent” shall mean, with respect to any Lease, (1) the sum of (a) the total of all base rent to be paid by a Tenant under its Lease during the initial lease term (including all early termination rights and excluding any extension options), plus (b) any termination payments and required unreimbursed tenant improvement and leasing commission payments and relocation costs to be paid by such Tenant, minus (c) the total of all costs to be incurred by Borrower to secure such Lease, including** **but not limited to, tenant improvements****,** **leasing commissions,** **free rent and relocation costs, divided by (2) the number of years in the initial lease term (including all early termination rights and excluding any extension options), divided by (3) the** **net rentable square** **footage of the Lease****.]**[[33]](#footnote-34)

**[for multifamily projects, substitute the below for Section 3 above:**

**3. Leasing Guidelines. Borrower shall not enter into any Lease of space in the Improvements unless approved or deemed approved by Administrative Agent prior to execution, such approval not to be unreasonably withheld, conditioned or delayed. Borrower’s standard form of tenant lease, and any revisions thereto, must have the prior written approval of Administrative Agent. Administrative Agent shall be “deemed” to have approved any Lease that: (a) is on the standard form lease approved by Administrative Agent with no material deviations except as approved by Administrative Agent, such approval not to be unreasonably withheld, conditioned or delayed; (b) is entered into in the ordinary course of business with a bona fide unrelated third party Tenant, and Borrower, acting in good faith and exercising due diligence, has determined that the Tenant is financially capable of performing its obligations under the Lease; (c) reflects an arm’s length transaction; and (d) contains no right or option to purchase the Property or any present or future interest therein. Other than in the ordinary course of business, Borrower shall not alter, modify or change the terms of the Leases, or surrender, cancel or terminate the same without the prior written consent of Administrative Agent. If requested by Administrative Agent, Borrower shall provide to Administrative Agent a correct and complete copy of each existing Lease, including any exhibits, and any guaranty(ies) thereof, within seven (7) days after Administrative Agent’s request.]**

**4. Tenant Estoppels.** At Administrative Agent’s request, but not more often than once in any one (1) year period, Borrower shall request and use commercially reasonable efforts to obtain and furnish to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by Tenants under the Leases in the Property and confirming the term, rent and other provisions and matters reasonably requested by Administrative Agent from time to time relating to the Leases, including, without limitation, such estoppels as may be required by Administrative Agent as a condition precedent to its making the Loan. **[delete for multifamily]**

**5.** **Subordination, Non-Disturbance and Attornment Agreements.** If requested by Borrower, Administrative Agent, on behalf of the Lenders, may, at Administrative Agent’s election and Borrower’s expense, enter into a Subordination, Non-Disturbance and Attornment Agreement on Administrative Agent’s then standard form with prospective new Tenants leasing at least \_\_\_\_\_ percent (\_\_\_%) of the square feet of space in the Property for a base term of at least \_\_\_\_\_\_ (\_\_\_) years (excluding any options to renew). **[delete for multifamily]**

**6.** **Delivery of Leasing Information and Documents.** From time to time upon Administrative Agent’s request, Borrower shall promptly deliver to Administrative Agent (a) a complete rent roll of the Property in such detail as Administrative Agent may require, together with such operating statements and leasing schedules and reports as Lender may require, and (b) such other leasing information as Administrative Agent may request.

1. Include as exhibit if one will not be executed at closing. [↑](#footnote-ref-2)
2. **Note to drafter:** Delete letter of credit provisions (which are bolded and bracketed throughout agreement) if deal does not include a letter of credit facility. [↑](#footnote-ref-3)
3. Per the LSTA concept Term SOFR Credit Agreement, the optional “Adjusted Term SOFR” definition allows parties to include a zero or nonzero spread adjustment based on their negotiations as part of the calculation of the benchmark Adjusted Term SOFR, which could allow usage of an Applicable Rate for Term SOFR referenced loans that is the same as for LIBOR referenced loans. When using this option, replace “Term SOFR” with “Adjusted Term SOFR” where indicated in the document. [This may not be necessary if the pricing set forth in the CRE term sheet contemplates a margin over SOFR without the need for this adjustment. Consult with the business team to confirm if an adjustment is necessary for the transaction. If it is not, the definition can be deleted.] [↑](#footnote-ref-4)
4. *Note to drafter:* This number should be a **minimum** of fifty-one percent (51%); any number lower than 51% requires approval of the applicable credit officer. A higher threshold may be appropriate, or required by credit, on a specific deal. [↑](#footnote-ref-5)
5. Note to drafter: Truist deal team will need to provide this number. This number is the minimum equity requirement needed to avoid HVCRE designation. [↑](#footnote-ref-6)
6. Insert other applicable floor set forth in the term sheet if necessary. [↑](#footnote-ref-7)
7. Consider adding the specific exclusion for COVID-19 related Force Majeure if possible. [↑](#footnote-ref-8)
8. Note to drafter: If no additional money would be advanced at closing, use this number to satisfy Truist internal system and reporting requirements. [↑](#footnote-ref-9)
9. *Note to drafter:* Revise if hedge will be entered into by a related party, not the Borrower itself [e.g. “all Hedging Obligations owed by Borrower (or *[name of entity entering into hedge]* on Borrower’s behalf)”]. [↑](#footnote-ref-10)
10. *Note to drafter:* Revise if hedge will be entered into by a related party, not the Borrower itself [e.g. “all Hedging Obligations owed by Borrower (or *[name of entity entering into hedge]* on Borrower’s behalf)”]. [↑](#footnote-ref-11)
11. Include any of the bracketed referenced to “Adjusted” only if the defined term “Adjusted Term SOFR” is used in the document. That term is only used if there is a term SOFR rate that requires adjustment before the Applicable Margin is added. [↑](#footnote-ref-12)
12. Include this proviso only if the definition of “Adjusted Term SOFR” is **not** used. [↑](#footnote-ref-13)
13. This is the adjustment for one-month Term SOFR contained in the LSTA concept document. This CRE form contemplates only one-month Term SOFR and no option to select Base Rate borrowings. If other interest periods or Base Rate borrowers are contemplated, please consult Legal for alternative forms. If the concept of an adjustment is elected not be used by the business team, please consult Legal for alternative form language. [↑](#footnote-ref-14)
14. Use this definition only if the term “Adjusted Term SOFR” is used; otherwise, delete. The adjustment number can be changed based on the terms of the deal and should be selected by the business team. This is the adjustment set forth for 1-month Term SOFR in the LSTA concept credit agreement. [↑](#footnote-ref-15)
15. ***Note to drafter:*** *include bracketed text if the Truist Fee Letter will include an Exit Fee.* [↑](#footnote-ref-16)
16. Bracketed language should not be included in the first draft. May be added in response to borrower’s comments. [↑](#footnote-ref-17)
17. Bracketed language should not be included in the first drafts. May be added in response to borrower’s comments. [↑](#footnote-ref-18)
18. ***Springing Rate Cap Provision, for use if applicable:***

 (a) In the event that at any time Term SOFR shall equal or exceed \_\_\_ percent (\_\_%), within ten (10) days thereafter, Borrower shall enter into a Hedging Transaction in the form of an interest rate cap agreement (“**Rate Cap Agreement**”) at a strike price of Term SOFR plus \_\_\_%, with a maximum “all in” interest rate not to exceed \_\_\_\_%. The Rate Cap Agreement shall have an initial notional amount equal to the then outstanding principal balance of the Loan **[and shall be for a term not less than the remaining term of the Loan][and shall be for a term not less than (i) the remaining term of the Loan (not including any extension option) if entered into prior to the initial Maturity Date and (ii) the remaining term of the applicable extension period if entered into during an extension period]. [In the event Borrower exercises any extension option provided for under Section \_\_\_, if a Rate Cap Agreement is required to be in effect during the corresponding extension period pursuant to this Section \_\_\_, then on the first day of any such extension period, Borrower shall enter in a new or, if applicable, renewal or replacement Rate Cap Agreement for a period of not less than the term of the applicable extension option.]**

 (b) The Rate Cap Agreement shall be in form acceptable to Administrative Agent and shall be with a counterparty acceptable to Administrative Agent. Within ten (10) days of execution of a Rate Cap Agreement, Borrower shall execute and deliver to Administrative Agent, for the benefit of itself and the Lenders, a collateral assignment of interest rate protection agreement executed by Borrower and the counterparty, **[in form and substance satisfactory to Administrative Agent][in form and substance substantially the same as the form attached hereto as Exhibit \_\_].** All amounts paid by the counterparty under the Rate Cap Agreement shall be deposited by counterparty directly into an account designated by Administrative Agent, which account shall also be collaterally assigned to Administrative Agent, for the benefit of itself and the Lenders, and so long as no Event of Default exists, such deposited amounts may thereafter be used by Borrower solely to make payments due under the Loan Documents or to buy a replacement or renewal Rate Cap Agreement.

 (c) In the event that Borrower fails to purchase, deliver and/or maintain the Rate Cap Agreement or any replacement or renewal thereof as required hereby, Administrative Agent may (in addition to exercising any of its other rights and remedies under the Loan Documents) purchase such Rate Cap Agreement or any replacement thereof and the actual out-of-pocket costs incurred by Administrative Agent in purchasing and maintaining the same shall be paid by Borrower with interest thereon at the Default Rate from the date such cost was incurred by Administrative Agent until such cost is paid by Borrower to Administrative Agent. In connection with the Rate Cap Agreement and any replacement thereof required hereby, if the counterparty is not Administrative Agent or an Affiliate of Administrative Agent, Borrower shall use commercially reasonable efforts to obtain and deliver to Administrative Agent within fifteen (15) Business Days after the delivery of the Rate Cap Agreement, a customary opinion of counsel for the counterparty (upon which Administrative Agent and the Lenders, and its and their successors and assigns may rely) in form, scope and substance reasonably acceptable to Administrative Agent. [↑](#footnote-ref-19)
19. Bracketed language should not be included in the first draft. May be added in response to Borrower’s comments. [↑](#footnote-ref-20)
20. Note that if the Budget will not be finalized at closing, the Loan to Project Cost ratio condition will need to be moved to Section 3.3. [↑](#footnote-ref-21)
21. RECAD to advise whether executed subcontracts will be reviewed for the applicable loan. [↑](#footnote-ref-22)
22. Include the required equity investment here or, if applicable, as an initial closing condition in Section 3.2. If the initial advance is more than nominal, 15% cash equity (calculated as a percentage of appraised “as completed” value) must be invested **before** that initial advance in order to avoid HVCRE designation. [↑](#footnote-ref-23)
23. *Alternative Section 4.4 provision for use when Borrower is a newly formed entity:* **Section 4.4. Financial Information**. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Administrative Agent in respect of Borrower, Guarantor and the Property: (i) were true, complete and correct in all material respects when delivered, and remain true and correct in all material respects as of the Closing Date, (ii) accurately represent the financial condition of Guarantor and the Property as of the date of such reports, and (iii) have been prepared in accordance with standard accounting methods acceptable to Administrative Agent in its reasonable discretion, consistently applied. Borrower has no contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower, except as referred to or reflected in said financial statements covering the relevant period. Guarantor has no contingent liabilities, liabilities for taxes or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower or Guarantor, except as referred to or reflected in said financial statements covering the relevant period. [↑](#footnote-ref-24)
24. Acceptable addition in response to Borrower comments: “unless Borrower shall, within thirty (30) days following such damage, loss, theft or destruction, provide evidence satisfactory to Administrative Agent of the commitment of available funds sufficient to provide for the restoration thereof.” [↑](#footnote-ref-25)
25. Acceptable modified provision that may be substituted in response to Borrower comments: “*Validity of Loan Documents*. Any of the Loan Documents ceases to be a legal, valid and binding agreement enforceable against any Loan Party in accordance with the terms of such Loan Document such that Administrative Agent and Lenders shall not have the practical realization of the benefits provided, or purported to be provided, thereby, or is in any way terminated (except in accordance with its terms) or is in any way challenged or contested by a Loan Party, or any Affiliate of a Loan Party, or ceases to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby such that Administrative Agent and Lenders shall not have the practical realization of the benefits provided, or purported to be provided, thereby.” [↑](#footnote-ref-26)
26. If NY law is selected to govern, Borrower must submit to the **exclusive** jurisdiction of NY courts, unless Borrower is principally located in the Truist footprint, in which case non-exclusive jurisdiction is acceptable. If GA law is selected to govern, Borrower must submit to the exclusive jurisdiction of the GA Business Court. If NC law is selected to govern, Borrower must submit to the exclusive jurisdiction of the NC Business Court. [↑](#footnote-ref-27)
27. For the Western District of North Carolina (which includes Charlotte, NC), specify which division of the federal district court is preferred so that more remote divisions (e.g., Ashville, NC) can be avoided. [↑](#footnote-ref-28)
28. *Note to drafter:* If deal is intended to be syndicated but additional Lenders are not likely to join deal until after closing (so that other Lenders may not have the opportunity to review loan documents before they are executed), then discuss with CRE Syndications teammate working on deal whether or not to include the following Agent removal provision in Section 10.7: “In the event of gross negligence or willful misconduct by Administrative Agent (in its capacity as Administrative Agent under the Loan Documents), as determined pursuant to a final, non-appealable judgment of a court of competent jurisdiction, Administrative Agent may be removed as Administrative Agent under the Loan Documents with the consent of all Lenders (other than the Lender then acting as Administrative Agent) and the Borrower (provided, however, no such consent by Borrower shall be required if a Default or Event of Default shall then exist), upon 30-days’ prior written notice to Administrative Agent.” If added, revise remainder of Section 10.7 to include “removal” of Administrative Agent, in addition to resignation, where applicable. [↑](#footnote-ref-29)
29. *Note to drafter:* If the Agent removal language from the immediately preceding footnote is added, then revise the first portion of this sentence to read: “Upon any such resignation or removal, the Required Lenders (which, in the case of the removal of Administrative Agent as provided in the immediately preceding sentence, shall be determined without regard to the Commitment of the Lender then acting as Administrative Agent) ……” [↑](#footnote-ref-30)
30. NTD: If a Lender requests a cutoff, we may insert the LSTA-recommended proviso, but please consult with CRE Legal regarding appropriate time period: [(*provided*, that, without limiting any other rights or remedies (whether at law or in equity), Administrative Agent may not make any such demand under this clause (a)(i) with respect to an Erroneous Payment unless such demand is made within [•] days of the date of receipt of such Erroneous Payment by the applicable Lender.] [↑](#footnote-ref-31)
31. NTD: Insert other Loan Parties if they are signatory to this Agreement. [↑](#footnote-ref-32)
32. Revise this Exhibit as necessary for asset type and approved deal terms (consult RM). [↑](#footnote-ref-33)
33. Do not include in first draft. May be added in response to Borrower comments. [↑](#footnote-ref-34)