**Daily Simple SOFR Language**

**[CRE]**

**[includes provisions applicable to the CRE Permanent Loan Program]**

**TERM LOAN AGREEMENT**

dated as of [to be supplied]

among

**[NAME OF BORROWER]**

as Borrower

and

**TRUIST BANK**

as Lender

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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 Note]

**TERM LOAN AGREEMENT**

**TERM LOAN AGREEMENT** (this “**Agreement**”)is made and entered into as of [**date**], by and between [**name of Borrower**], a [**state of organization**] (the “**Borrower**”), and **TRUIST BANK**, a North Carolina banking corporation (the “**Lender**”).

**W I T N E S S E T H:**

**WHEREAS,** Borrower has requested that Lender make a term loan in a principal amount equal to $\_\_\_\_\_\_\_\_\_\_\_\_\_ to Borrower (the “**Loan**”).

**WHEREAS**, subject to the terms and conditions of this Agreement, Lender is willing to make the Loan to Borrower.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, Borrower and Lender 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.]**

“**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.

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

[**“Applicable Margin”shall mean \_\_\_% per annum.**]**[[1]](#footnote-2)**

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

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

“**Assignment of Contracts**” shall mean the Assignment of Contracts, Plans and Permits executed by Borrower in favor of Lender, 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 Lender, 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.

“**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, in each case, as of such date.

“**Bank Product Obligations**” shall mean, collectively, all obligations and other liabilities of Borrower to Lender or any Affiliate of Lender in respect of any of the following services provided to Borrower by Lender or any Affiliate of Lender: (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 Lender 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 (Daily Simple 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).**[[2]](#footnote-3)** Lender’s prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to customers. Lender may make commercial loans or other loans at rates of interest at, above or below Lender’s prime lending rate. Each change in the Lender’s prime lending rate or the Federal Funds Rate, as applicable, shall be effective from and including the effective date of such change.][[3]](#footnote-4)

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

“**Benchmark Replacement**” shall mean with respect to any Benchmark Transition Event, the sum of: (i) the alternate benchmark rate that has been selected by Lender 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 credit facilities and (ii) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such 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 for any applicable Available Tenor, 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 Lender 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 credit facilities.

“**Benchmark Replacement Conforming Changes**” shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the addition of a concept of “interest period”, the definition of “U.S. Government Securities Business Day,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of Section 2.13 and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Benchmark Replacement Date**” shall mean 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 no longer 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, (A) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (B) 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 no longer, or as of a specified future date will no longer 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 Transition Start Date**” shall mean, in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“**Benchmark Unavailability Period**” shall mean, the period (if any) (a) beginning at the time that a Benchmark Replacement Date[ pursuant to clauses (a) or (b) of that definition][[4]](#footnote-5) 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 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.

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

“**Business Day**” shall mean [**(i)**] any day other than a Saturday, Sunday or other day on which commercial banks in Charlotte, North Carolina are authorized or required by Applicable Law to close [**and (ii) if such day relates to a determination with respect to a SOFR Loan or any other calculation or determination involving Daily Simple SOFR, the term “Business Day” means any such day that is also a U.S. Government Securities Business Day**].  ***[ omit part (ii) for Fixed Rate loan]***

“**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) 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 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, Lender 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 Lender (or by Lender’s holding company, if applicable), or by 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 \_\_\_\_\_\_\_ (\_\_\_\_%)**[[5]](#footnote-6)** 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.

“**Closing Date**” shall mean the date on which the conditions precedent set forth in Section 3.1 and Section 3.2 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 Lender 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 Lender.

**[“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) among Borrower, Lender and Truist Bank, in its capacity as depository bank, relating to the Collections Account as set forth in Section 5.18(a).]**

“**Commitment**” shall mean the obligation of Lender to make the Loan on the Closing Date.

“**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.

**[“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 A.]**

“**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 (a “**SOFR Rate Day**”), a rate per annum equal to the greater of (a) SOFR for the day (such day “**SOFR Determination Date**”[[6]](#footnote-7)) that is [**two][five**][[7]](#footnote-8) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website, and (b) the Floor. If by 5:00 pm (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Date, the SOFR in respect of such SOFR Determination Date has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then the SOFR for such SOFR Determination Date will be the SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to Borrower.

[**“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 Lender, (ii) [\_\_\_\_\_\_\_ percent (\_\_\_\_\_%)], or (iii)][[8]](#footnote-9) 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.

“**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.

**[“Environmental Assessment” shall mean a written report (including all drafts thereof) of an environmental assessment of the Property of such scope as may be requested by Lender, including the taking of soil borings and air and groundwater samples and other above- and below-ground testing, by an engineering firm acceptable to Lender and made in accordance with Lender’s established guidelines.]**

“**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 Lender, 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.

**[“Environmental Remediation Funds” shall mean all funds from time to time on deposit in the Environmental Remediation Reserve Account.]**

**[“Environmental Remediation Reserve Account” shall mean an account into which the deposit required pursuant to Section 5.22 is to be made.]**

**[“Environmental Remediation Work” shall have the meaning set forth in Section 5.22(a).]**

**[“Equity Maintenance Requirement” shall mean the requirement that Borrower maintain a minimum capital contribution invested in the Project of at least \_\_\_\_\_\_\_\_\_\_\_\_\_(which amount is equal to 15% of the Property’s appraised, “as completed” value, as determined by Lender)[[9]](#footnote-10), 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.]**[[10]](#footnote-11)

“**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.

“**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 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 Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed as a result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (b) any U.S. federal withholding Taxes imposed under FATCA.

**[“Exit Fee” shall mean a fee in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]**

“**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 Lender from three Federal funds brokers of recognized standing selected by Lender. For purposes of this Agreement the Federal Funds Rate shall not be less than zero percent (0%).

“**Federal Reserve Bank of New York’s Website**” shall mean the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

**[“Fixed Rate” shall mean \_\_\_\_\_\_ percent (\_\_\_%) per annum.]**

“**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%**].[[11]](#footnote-12)

**[“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][[12]](#footnote-13) that Borrower must give written notice to Lender within ten (10) days after the occurrence of an event which it believes to constitute an event of Force Majeure.]**

“**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.

“**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 Lender, 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.

“**Immaterial Condemnation**” shall have the meaning set forth in Exhibit 5.5.

“**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 Advance” shall have the meaning set forth in Section 2.1(a).**]

**“Insurance Premiums”** shall mean those premiums due in connection with any insurance policies required to be maintained by Borrower pursuant to any Loan Document.

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

“**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.

**[“Leasing Commissions” shall mean leasing commissions and similar obligations incurred by Borrower in connection with the leasing of the Property.]**

**[“Leasing Costs” shall mean tenant improvement allowances, tenant relocation costs, turnkey work, demolition, landlord work, space planning and all hard and soft costs associated with preparing the applicable space for tenant occupancy which are not costs of Tenant Improvements or Leasing Commissions.]**

“**Lender**” shall have the meaning assigned to such term in the opening paragraph of this Agreement.

“**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 first Recital 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 Note, the Security Instrument, the Guaranty, the Environmental Indemnification Agreement, the Assignment of Leases and Rents, the Assignment of Contracts, the Subordination of Management Agreement, any Collateral Assignment of Hedge, **[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 Parties**” shall mean Borrower and the Guarantor.

**[“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 Lender under any of the Loan Documents.

“**Maturity Date**” shall mean the earlier of (i) [**date to be supplied**] 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.

**[“Net Operating Income” shall mean for any period the annualized lease income from fully executed Approved Leases with Tenants in place and paying rent, *less* a vacancy factor that is the greater of the imputed vacancy from those Leases or *[XX%]*, and other ordinary operating revenues, *less* the most recent trailing twelve (12) months expenses for the Property (excluding interest expense, depreciation and amortization) with adjustments for fully stabilized expenses (if any), a management fee equal to 3% of gross revenues from the Property and *[$0.xx]* per square foot in replacement reserves. Lease income shall be adjusted as follows: (a) increased by rental revenue from fully executed Leases for Tenants which will take occupancy within six (6) months of the Closing Date; and (b) decreased by rental revenue from (i) Tenants in monetary default of their Leases, (ii) Tenants in bankruptcy that have not ratified their Leases, (iii) Tenants which have given notice to vacate at their Lease expiration or have not given notice to exercise the renewal of their Lease by the Lease notice date, *[and]* (iv) Tenants with Lease expiration within six (6) months of the Closing Date without evidence of likely renewal as determined by Lender*[ and (v) Tenants with free rent which exceeds one month per Lease year which are in their free rent period].* *[Commercial definition]***

***OR***

**“Net Operating Income” shall mean for any period the annualized lease income from fully executed Approved Leases with Tenants in place and paying rent (based on the most recent \_\_\_\_months), *less* a vacancy factor that is the greater of the imputed vacancy from those Leases or *[XX%]*; *less* the most recent trailing twelve (12) months expenses for the Property (excluding interest expense, depreciation, and amortization) with adjustments for fully stabilized expenses (if any), a management fee equal to 3% of gross revenues from the Property and *[$0.xx]* per square foot in replacement reserves. *[Multifamily definition]*]**

**[“Net Worth” shall mean, at any time, (i) the fair market value of the total assets of a Person (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) determined in accordance with GAAP, minus (ii) the total liabilities of such Person (including, without limitation, such Person’s contingent liabilities that have accrued under GAAP, accrued and deferred income taxes, and any reserves against assets) determined in accordance with GAAP; provided, however, in no event shall Net Worth be calculated to include the value of the Property.]**

“**Note**” shall mean the promissory note or promissory notes made by Borrower in favor of Lender in 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 Lender.

“**Obligations**” shall mean (a) all amounts owing by Borrower to 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 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[[13]](#footnote-14) to Truist Bank or any Affiliate of Truist Bank, 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(a).

“**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.

“**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 Lender located at 303 Peachtree Street N.E., Atlanta, Georgia 30308, or such other location as to which Lender shall have given written notice to Borrower.

“**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 Exhibit 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 Lender has approved or may approve in writing in Lender’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 Owner” shall mean a transferee of the Property in connection with an assumption of the Loan pursuant to Section 7.11 (Loan Assumption), which transferee has been approved by Lender in its sole discretion.[[14]](#footnote-15) The following criteria are a non-exhaustive list of the factors that Lender will expect to be satisfied in determining whether or not to approve a proposed transferee:**

**Permitted Owner shall be a Person (or, with respect to items (i) and (ii) below, an Affiliate of such Person which is not less than 51% owned and Controlled by such Person):**

1. **which has a Net Worth of at least $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Unencumbered Liquid Assets of not less than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[and Annual Net Cash Flow of not less than $\_\_\_\_\_\_\_\_] [*or* which has total assets (in name or under management) at least equal to $\_\_\_\_\_\_\_\_\_\_\_\_ (exclusive of its interests in and any liabilities relating to the collateral securing the Loan)];**
2. **is experienced in the ownership, management and leasing of properties similar to the Property;**
3. **which, along with its constituent entities, is not, and has not been, subject to a bankruptcy or other insolvency action or a material governmental or regulatory investigation which resolved in a final, non-appealable conviction for criminal activity involving moral turpitude or a civil proceeding in which such entity has been found liable in a final non-appealable judgment to have attempted to hinder, delay or defraud creditors, in each case for the past seven (7) years;**
4. **which satisfies Lender’s internal requirements related to “know-your-customer” rules, anti-money laundering policies and procedures and other similar client identification policies and procedures (in each case, as consistently applied by Lender) and related laws, rules and regulations (including without limitation, the Patriot Act and rules and regulations of OFAC) and has provided to Lender all material documentation and other information required by regulatory authorities under, such laws, rule and regulations;**
5. **which, along with its constituent entities, has never threatened litigation against Lender or been an adverse party to Lender in any litigation;**
6. **which, as a result of the proposed assumption, would not violate Lender’s individual or related borrower limits as established by Lender from time to time in its reasonable discretion.]**

“**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 been remade) the representations and warranties set forth in Section 4.18 and Section 4.19 hereof. Borrower shall give Lender written notice of any Permitted Transfer promptly following the occurrence thereof and shall, upon Lender’s written request, furnish to Lender such reasonably available information as Lender may request in order for Lender to conduct due diligence, satisfactory to Lender, 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 Lender to execute and deliver to Lender 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 Lender one or more opinions of counsel in form reasonably satisfactory to Lender (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, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.

**[“Prepayment Lockout Period” shall mean the period from the Closing Date through \_\_\_\_\_\_\_\_\_\_.]**

**[*One-Way Yield Maintenance Provision*] [“Prepayment Premium” shall mean an amount equal to the greater of (i) 1.0% of the amount of the Loan being prepaid, and (ii) the present value as of the Prepayment Calculation Date of a series of monthly payments, over the remaining term of the Loan through the Payment Date that is ninety (90) days prior to the Maturity Date, each equal to the amount of interest which would be due on the portion of the Loan being prepaid assuming a per annum interest rate equal to the excess of the Applicable Interest Rate over the Reinvestment Yield, and discounted at the Reinvestment Yield. As used herein, “Reinvestment Yield” means the yield calculated at the ICE Benchmark Administration (“IBA”) rate for fixed-rate payers in U.S. Dollar interest rate swaps, for a term corresponding to the term of the Note, interpolated to the nearest month, if necessary, that was in effect the week ending prior to the Prepayment Calculation Date. In the event the IBA no longer releases rates for fixed-rate payers in U.S. Dollar interest rate swaps, Lender may substitute the IBA index for rates for fixed-rate payers in U.S. Dollar interest rate swaps with another similar index as determined by Lender to determine the Reinvestment Yield. The “Prepayment Calculation Date” shall mean, as applicable, the date on which (i) Lender applies any prepayment to the reduction of the outstanding principal amount of the Note, (ii) Lender accelerates the Loan, in the case of a prepayment resulting from acceleration, or (iii) Lender applies funds held under any Reserve Account, in the case of a prepayment resulting from such an application (other than in connection with acceleration of the Loan).]**

*OR*

**[*Make-Whole Premium Provision*] [“Prepayment Premium” shall mean an amount equal the greater of (i) 1.0% of the amount of the Loan being prepaid, and (ii) the present value, as of the Prepayment Calculation Date, of the difference between, (y) the amount that would have been realized by Lender on the prepaid amount for the remaining term of the Loan at the ICE Benchmark Administration (“IBA”) rate for fixed-rate payers in U.S. Dollar interest rate swaps for a term corresponding to the term of the Note, interpolated to the nearest month, if necessary, that was in effect three (3) Business Days prior to the origination date of the Note, and (z) the amount that would have been realized by Lender by reinvesting such prepaid funds for the remaining term of the Loan at the IBA rate for fixed-rate payers in U.S. Dollar interest rate swaps, interpolated to the nearest month, that was in effect three (3) Business Days prior to the Prepayment Calculation Date, both discounted at the same interest rate utilized in determining the applicable amount in (z). In the event the IBA no longer releases rates for fixed-rate payers in U.S. Dollar interest rate swaps, Lender may substitute the IBA index for rates for fixed-rate payers in U.S. Dollar interest rate swaps with another similar index as determined by Lender. The “Prepayment Calculation Date” shall mean, as applicable, the date on which (i) Lender applies any prepayment to the reduction of the outstanding principal amount of the Note, (ii) Lender accelerates the Loan, in the case of a prepayment resulting from acceleration, or (iii) Lender applies funds held under any Reserve Account, in the case of a prepayment resulting from such an application (other than in connection with acceleration of the Loan). In no event shall the Prepayment Premium be less than zero.]**

*OR*

**[*Fixed Penalty Provision*] [“Prepayment Premium” shall mean [for any prepayment occurring during the {*insert applicable tiers of Loan period, i.e., prior to the fifth anniversary of the Closing Date; after the fifth anniversary of the Closing Date and prior to the seventh anniversary of the Closing Date*}] [insert fixed penalty amount] of the outstanding balance of the Loan being prepaid calculated as of the Prepayment Calculation Date. The “Prepayment Calculation Date” shall mean, as applicable, the date on which (i) Lender applies any prepayment to the reduction of the outstanding principal amount of the Note, (ii) Lender accelerates the Loan, in the case of a prepayment resulting from acceleration, or (iii) Lender applies funds held under any Reserve Account, in the case of a prepayment resulting from such an application (other than in connection with acceleration of the Loan).]**

“**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.

“**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 Condition Report**” shall mean that certain \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

“**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 Lender’s prior written approval.

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

“**Real Property Taxes**” shall mean taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including all taxes assessed against the Property or any part thereof.

“**Reference Time**” with respect to any setting of the then-current Benchmark shall mean (a) if such Benchmark is Daily Simple SOFR, then [**\_\_\_\_**][[15]](#footnote-16) U.S. Government Securities Business Days prior to (i) if the date of such setting is a U.S. Government Securities Business Day, such date or (ii) if the date of such setting is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such date and (b) if such Benchmark is not Daily Simple SOFR, then the time determined by Lender in accordance with the Benchmark Replacement Conforming Changes.

“**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, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

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

“**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.

**[“Replacement Environmental Indemnification Agreement” shall mean an environmental indemnification agreement executed by a Replacement Guarantor and the new Borrower in substantially the same form as was delivered to Lender by Guarantor and Borrower in connection with the closing of the Loan.]**

**[“Replacement Guarantor” shall mean one or more Persons approved in writing by Lender, such approval to be granted or withheld in the sole discretion of Lender.]**

**[“Replacement Guaranty” shall mean a guaranty agreement executed by a Replacement Guarantor in substantially the same form as was delivered to Lender by Guarantor in connection with the closing of the Loan.]**

**[“Required Capital Improvements” shall have the meaning set forth in Section 5.19.]**

**[“Required Capital Improvements Reserve Account” shall mean an account into which the deposits required pursuant to Section 5.19 are to be made.]**

**[“Required Capital Improvements Reserve Funds” shall mean all funds from time to time on deposit in the Capital Improvements Reserve Account.]**

**[“Required Capital Improvements Reserve Monthly Deposit” shall have the meaning set forth in Section 5.19.]**

“**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 Lender; and, with respect to financial covenants only, the chief financial officer or the treasurer of Borrower.

**[“Required Repair Reserve Account” shall mean an account into which the deposit required pursuant to Section 5.20 is to be made.]**

**[“Required Repair Reserve Funds” shall mean all funds from time to time on deposit in the Required Repair Reserve Account.]**

**[“Required Repairs” shall have the meaning set forth in Section 5.20(a).]**

“**Reserve Accounts**” shall mean, collectively, the **[Required Repair Reserve Account, the Required Capital Improvements Reserve Account, the TI & Leasing Commissions Reserve Account, the Environmental Remediation Reserve Account, and the Tax and Insurance Reserve Account and [include any other reserve accounts]]**.

**[“Reserve Funds” shall mean, collectively, [Required Repair Reserve Funds, Required Capital Improvement Reserve Funds, TI & Leasing Commissions Reserve Funds, Environmental Remediation Funds, Tax and Insurance Reserve Funds and [include any other reserves]].[[16]](#footnote-17)**

“**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.

“**Security Instrument**” shall mean that certain \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated of even date herewith, executed by Borrower in favor of Lender, covering and creating a first-priority Lien on the Property, as the same may be modified, amended, amended and restated or supplemented from time to time.

“**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 Administrator’s Website**” shall mean the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

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

“**SOFR Loan**” shall mean a Loan (or portion thereof) that bears interest at a rate based on Daily Simple SOFR.

“**SOFR Rate Day**” has the meaning specified in the definition of “Daily Simple SOFR”.

“**SOFR Unavailability Period**” means, the period (if any) (a) beginning at the time that either (i) the SOFR Administrator permanently or indefinitely has ceased to provide SOFR or (ii) the SOFR Administrator has announced that SOFR is no longer representative and (b) ending at the time that either (i) the SOFR Administrator has resumed providing SOFR or (ii) the SOFR Administrator has announced that SOFR is representative, as applicable.

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

“**Subordination of Management Agreement**” shall mean that certain Assignment and Subordination of Management Agreement, dated as of the Closing Date and executed by Borrower, Property Manager and Lender, 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.

**[“Tax and Insurance Reserve Account” shall mean an account into which the deposits required pursuant to Section 5.23(a) are to be made.]**

**[“Tax and Insurance Reserve Funds” shall mean all funds from time to time on deposit in the Tax and Insurance Reserve Account.]**

“**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.

**[“Tenant Improvements” shall mean the construction and related work to be undertaken by Borrower pursuant to any Lease as tenant improvements.]**

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

**[“TI & Leasing Commissions Reserve Account” shall mean an account into which the deposits required pursuant to Section 5.21 of this Agreement are to be made.]**

**[“TI & Leasing Commissions Reserve Funds” shall mean all funds from time to time on deposit in the TI & Leasing Commissions Reserve Account.]**

**[“TI & Leasing Commissions Reserve Monthly Deposit” shall have the meaning set forth in Section 5.21(b).]**

**[“TI, Leasing & CapEx Holdback” shall have the meaning set forth in Section 2.1(d).][[17]](#footnote-18)**

“**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 Lender in its sole discretion, covering the fee estate in the Property, with such reinsurance and endorsements as Lender may require, containing no exceptions to title (printed or otherwise) which are unacceptable to Lender, 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.

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

“**U.S. Government Securities Business Day**” shall mean any day except for (i) a Saturday, (ii) a Sunday or (iii) 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.

**[“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:**

**(a) 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;**

**(b) United States Treasury or other governmental agency obligations which constitute full faith and credit of the United States of America;**

**(c) Publicly traded securities; and**

**(d) 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.]**

## 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 Lender 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 Lender notifies Borrower that Lender wishes 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 Lender.

## 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 phrase “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 Lender’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.

## Rates.

Lender 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, the Benchmark, any component definition thereof or rates referenced 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 Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. Lender and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to Borrower. Lender may select information sources or services in its reasonable discretion to ascertain the Base Rate or the Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower 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.

### **[The initial advance of the proceeds of the Loan on the Closing Date shall not exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Initial Advance”).]** Subject to the terms and conditions set forth herein, Lender agrees to make the [**Initial Advance/Loan**] to Borrower on the Closing Date; provided that, if for any reason the full amount of the [**Initial Advance/Loan**] is not fully drawn on the Closing Date, the undrawn portion thereof shall automatically be cancelled. The Loan shall bear interest at the rate provided in Section 2.4. The execution and delivery of this Agreement by Borrower and the satisfaction of all conditions precedent pursuant to Section 3.1 shall be deemed to constitute Borrower’s request to borrow the [**Initial Advance/Loan**] on the Closing Date. Borrower shall receive only one borrowing hereunder in respect of the [**Initial Advance/Loan**] and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed**[/, and the Commitments with respect to the TI, Leasing & CapEx Holdback [*describe additional holdbacks or reserves, as applicable*] shall terminate upon the** **full** **funding of the TI, Leasing & CapEx Holdback [*describe additional holdbacks or reserves, as applicable*]**.

### Lender shall maintain in accordance with its usual practice appropriate records evidencing the Indebtedness of Borrower to Lender resulting from the advance of the Loan by Lender, including the amounts of principal and interest payable thereon and paid to Lender from time to time under this Agreement. 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 Lender 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) in accordance with the terms of this Agreement.

### Borrower’s obligation to pay the principal of, and interest on, the Loan shall be evidenced by the Note. Lender has no intention of making advances under the Loan in excess of the aggregate face amount of the Note. Borrower acknowledges and agrees, however, that, if, for any reason, the outstanding principal balance of the Loan outstanding from time to time exceeds the face amount of the Note, 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.

### [**Upon Borrower’s written request to Lender using the form of draw request attached hereto as Exhibit 2.1(d), and subject to the other terms and conditions with respect to the TI, Leasing & CapEx Holdback set forth in this section, Lender shall advance a portion of Loan proceeds in an aggregate amount not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “TI, Leasing & CapEx Holdback”) within ten (10) Business Days after Borrower’s request. The amount of the TI, Leasing & CapEx Holdback to be disbursed hereunder shall be the lesser of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or the amount requested by Borrower. The TI, Leasing & CapEx Holdback funds shall only be available during the first two (2) years of the initial term of the Loan, and shall be capped at $\_\_\_\_\_ per rentable square foot of the Property for tenant improvements and at \_\_\_\_\_\_\_\_\_ percent (\_\_\_%) for leasing commissions, unless otherwise approved in writing by Lender. On a one-time basis, Borrower may draw from the TI, Leasing & CapEx Holdback up to $\_\_\_\_\_\_\_\_ for tenant improvements without a corresponding executed Approved Lease. Borrower shall use the proceeds of the TI, Leasing & CapEx Holdback to pay or to reimburse Borrower for the documented costs and expenses (including, but not limited to, expenses for Tenant Improvements, leasing commissions, tenant allowances, capital expenditures and other leasing costs and other costs associated with retaining Tenants at the Property) approved in writing by Lender. The following shall be conditions precedent to the funding the TI, Leasing & CapEx Holdback: (i) no Default or Event of Default shall have occurred and be continuing on the date of Borrower’s written request for funding of the TI, Leasing & CapEx Holdback; (ii) Borrower shall provide Lender with reasonable documentation of the costs and expenses for which the TI, Leasing & CapEx Holdback is to be used; (iii) [intentionally omitted]; (iv) Borrower shall have provided to Lender such other reports, data, lien waivers, information and certificates as Lender may reasonably request with respect to Borrower and the Property; and (v) on the date of the advance of the TI, Leasing & CapEx Holdback, the representations and warranties made in this Agreement and in the other Loan Documents shall be true and correct in all material respects with the same effect as if made on such date, subject to any applicable changes in such representations and warranties resulting from changes in factual matters which do not constitute a material Default or an Event of Default, and changes disclosed by Borrower in writing to Lender, including, without limitation, in the financial and other reports and information delivered to Lender pursuant to Section 6.1 of this Agreement. Borrower shall be entitled to an advance from the TI, Leasing & CapEx Holdback only in an amount provided by this Section 2.1, but not less than $10,000.00 per advance (other than the final advance). Advances shall not be made more frequently than once each calendar month, and Lender may, at its discretion, disburse such advances directly to the recipient of any costs and expenses approved hereunder.**]**[[18]](#footnote-19)**

## Repayment of Loan

. Borrower unconditionally promises to pay to Lender the principal amount of the Loan in equal installments payable on the dates set forth below:

Installment Date Principal Amount

provided that, to the extent not previously paid, the aggregate unpaid principal balance of the Loan shall be due and payable on the Maturity Date.

## [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 Lender 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. Such amount shall be due and payable on the date designated in such notice, together with [the Exit Fee due pursuant to Section 2.5(b) and] 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 (if any), Borrower shall also pay all amounts required pursuant to Section 2.13. 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 Lender 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 Lender 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 (if any) in which such prepayment occurs, notwithstanding that such 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.**]

*OR*

**[Section 2.3. Prepayments. Except as permitted in Sections 2.3(a), 2.3(b), and 2.3(c), hereof, the outstanding Amount of the Loan may not be prepaid in whole or in part prior to the Maturity Date.**

**(a) Voluntary Prepayments. Borrower shall not have the right to prepay, in whole or in part, the amount of the Loan due hereunder prior to the Maturity Date (other than with respect to mandatory prepayments hereunder); provided, however, Borrower shall be entitled to make a prepayment of all of the amount of the Loan on any Payment Date occurring after the Prepayment Lockout Period, upon satisfaction of the following conditions:**

**(i) No Event of Default shall have occurred and be continuing under any of the Loan Documents;**

**(ii) Borrower shall provide prior irrevocable written notice (the “Prepayment Notice”) to Lender specifying the proposed date on which the prepayment is to be made, which date must be on a Payment Date and shall be no earlier than thirty (30) days after the date of such Prepayment Notice and no later than sixty (60) days after the date of such Prepayment Notice (the date of such prepayment pursuant to this Section 2.3(a) and Section 2.3(b) below being the “Prepayment Date”);**

**(iii) Borrower has paid to Lender a Prepayment Premium; and**

**(iv) Borrower shall comply with the provisions set forth in Section 2.3(d) hereof.**

**(b) Mandatory Prepayments.**

**(i) On the earlier of (x) the date Lender elects to require prepayment of all or a portion of the Loan in accordance with Exhibit 5.5, Section 2 or Section 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 Lender 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; and**

**(ii) Borrower shall comply with the provisions set forth in Section 2.3(d) and Section 2.3(e) hereof (provided, however, that the Prepayment Premium and Liquidated Damages Amount shall not apply to prepayments made with respect to the receipt of any insurance proceeds or condemnation awards).**

**(c) Open Prepayment Period. Commencing on the Payment Date which is ninety (90) days prior to the Maturity Date, upon giving Lender at least fifteen (15) (but not more than thirty (30)) days prior to written notice, Borrower may voluntarily prepay (without a Prepayment Premium) the Loan in whole (but not in part) on a Payment Date. Lender shall accept a prepayment pursuant to this Section 2.3(c) on a day other than a Payment Date provided that, in addition to payment of the full outstanding principal balance of the Loan, Borrower pays to Lender a sum equal to the amount of interest which would have accrued on the Loan if such prepayment occurred on the next Payment Date (following the day that the prepayment was made).**

**(d) Payments in Connection with a Prepayment*.***

**(i) On the date on which a prepayment, voluntary or involuntary, is made under this Agreement, which date must be a Payment Date, Borrower shall pay to Lender all unpaid interest on the amount of the Loan prepaid, such unpaid interest calculated through the end of the interest period (if any) in which such prepayment occurs. 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 (if any)in which such prepayment occurs, notwithstanding that such interest period (if any) 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. Notwithstanding anything to the contrary contained in this Section 2.3, Lender shall accept a prepayment on a day other than a Payment Date provided that, in addition to all other payments required under this Section 2.3, Borrower pays to Lender a sum equal to the amount of interest which would have accrued under the Note on the amount of such prepayment if such prepayment had occurred on the next Payment Date (following the day that the prepayment was made).**

**(ii) On the Prepayment Date, Borrower shall pay to Lender all other sums (not including scheduled interest payments) then due and payable under the Note, the Loan Agreement, the Security Instrument, and the other Loan Documents; and**

**(iii) Borrower shall pay all costs and expenses of Lender incurred in connection with the prepayment (including without limitation, any costs and expenses associated with a release of the Lien of the related Security Instrument as well as reasonable attorneys’ fees and expenses).**

**(e) LIQUIDATED DAMAGES AMOUNT. IF FOLLOWING THE ACCELERATION OF THE NOTE BY LENDER AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT, ALL OR ANY PART OF THE LOAN IS REPAID DURING THE PREPAYMENT LOCKOUT PERIOD FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, AS A RESULT OF AN ACCELERATED MATURITY DATE, THEN BORROWER SHALL PAY TO LENDER, AS LIQUIDATED DAMAGES FOR SUCH DEFAULT AND NOT AS A PENALTY, AND IN ADDITION TO ANY AND ALL OTHER SUMS AND FEES PAYABLE UNDER THIS PROMISSORY NOTE AND THE OTHER LOAN DOCUMENTS, AN AMOUNT EQUAL TO THE GREATER OF (I) 5% OF THE PRINCIPAL AMOUNT BEING PREPAID, AND (II) THE PRESENT VALUE AS OF THE PREPAYMENT CALCULATION DATE OF A SERIES OF MONTHLY PAYMENTS OVER THE REMAINING TERM OF THE LOAN THROUGH THE PAYMENT DATE THAT IS NINETY (90) DAYS PRIOR TO THE MATURITY DATE, EACH EQUAL TO THE AMOUNT OF INTEREST WHICH WOULD BE DUE ON THE AMOUNT BEING PREPAID ASSUMING A PER ANNUM INTEREST RATE EQUAL TO THE EXCESS OF THE INTEREST RATE OVER THE REINVESTMENT YIELD, AND DISCOUNTED AT THE REINVESTMENT YIELD (THE “LIQUIDATED DAMAGES AMOUNT”). NOTWITHSTANDING THE FOREGOING, THE LIQUIDATED DAMAGES AMOUNT SHALL NOT BE APPLIED TOWARD ANY PREPAYMENTS OF ANY INSURANCE PROCEEDS OR CONDEMNATION AWARDS.**

**(f) In the event that any partial prepayment of principal occurs before the Maturity Date, the Payment Dates shall remain the same. None of the amounts prepaid pursuant to this Section 2.3 may be reborrowed hereunder.]**

## Interest on Loan.

### Subject to Section 2.7 and Section 2.8 below, Borrower shall pay interest on the Loan: at a rate per annum equal to Daily Simple 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 Lender, 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 Lender within ten (10) days of the date such payment is due (inclusive of the date when due), Borrower shall pay to Lender 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 Lender and (ii) the date that Borrower makes the late payment.

### Interest on the principal amount of the Loan shall accrue from and including the Closing Date to but excluding the date of any repayment thereof. Interest shall be payable in arrears on the **[first][last]** day of each calendar month(each a “**Payment Date**”), commencing on \_\_\_\_\_\_\_\_\_\_\_, and on the Maturity Date; provided that (1) if any such date would be a day other than a Business Day, such date shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such date shall be the next preceding Business Day and (2) notwithstanding the foregoing, if the Maturity Date is not a Business Day, such date shall be the next preceding Business Day. All Default Interest shall be payable on demand.

### Lender shall determine the interest rate applicable to the Loan hereunder and shall promptly notify Borrower 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

. **[(a)]** Borrower shall pay to Lender for its own account fees in the amounts and at the times previously agreed upon in writing by Lender and Borrower.

**[(b) Except as provided in this Section 2.5(b), in connection with any voluntary, involuntary or mandatory payment or prepayment of all or any part of the principal of the Loan (including, without limitation, payment in full on the Maturity Date), Borrower shall pay to Lender the Exit Fee at the time of such payment or prepayment.  Notwithstanding the foregoing, no Exit Fee shall be due and payable (i) upon Lender’s application of the proceeds of a casualty or condemnation to the unpaid principal balance of the Loan as permitted pursuant to the terms of the Loan Documents, or (ii) with respect to any payment or prepayment made in connection with a refinance loan provided by or arranged through Lender or any of its Affiliates.[[19]](#footnote-20) Borrower acknowledges and agrees that neither Lender nor any of its Affiliates have guaranteed, represented or warranted that they will provide any such refinance loan *[or Agency Loans]*].]**

## Computation of Interest and Fees

. All computations of 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 fees are payable (to the extent computed on the basis of days elapsed). All interest hereunder on the Loan or any portion thereof shall be computed on a daily basis based upon the outstanding principal amount of the Loan (or applicable portion) as of the applicable date of determination. The applicable Base Rate, Daily Simple SOFR or any fees shall be determined by the Lender, and such determination shall be conclusive absent manifest error. Each determination by Lender 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 Lender determines (which determination shall be conclusive and binding absent manifest error) that “Daily Simple SOFR” cannot be determined pursuant to the definition thereof, Lender will promptly so notify Borrower. Upon notice thereof by Lender to Borrower, any obligation of the Lender 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 Lender 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, the Borrower shall also pay any additional amounts required pursuant to Section 2.13.

### Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, Lender and Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.7(b) will occur prior to the applicable Benchmark Transition Start Date.

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

### Lender will promptly notify Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Lender will promptly notify Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to subsection (e) below. Any determination, decision or election that may be made by Lender 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.

### 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 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 Lender 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 or will be no longer representative, then Lender may modify any definition of “interest period” (if such definition exists herein, 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 or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Lender may modify the definition of “interest period” (if such definition exists herein, or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

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

## Illegality

**.** If Lender determines that any Change in Law shall make in unlawful or impossible for the Lender to make, maintain or fund the Loan or any portion thereof whose interest is determined by reference to Daily Simple SOFR or SOFR, the Lender shall promptly give notice thereof to the Borrower, whereupon until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of Lender to fund or maintain the Loan based on Daily Simple SOFR or SOFR shall be suspended, and the Loan (or any portion thereof) shall be made as, or converted to, a Loan bearing interest at the Base Rate plus the Applicable Margin immediately if Lender shall determine that it may not lawfully continue to maintain the Loan at the SOFR-based rate applicable to such date.

## 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, Lender; or

#### on Lender any other condition affecting this Agreement or the Loan;

and the result of the foregoing is to increase the cost to Lender of making, converting into, continuing or maintaining the Loan or to reduce the amount received or receivable by Lender hereunder (whether of principal, interest or any other amount), then Borrower shall promptly pay, upon written notice from and demand by Lender, within five Business Days after the date of such notice and demand, additional amount or amounts sufficient to compensate Lender for such additional costs incurred or reduction suffered.[[20]](#footnote-21)

### If Lender 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 Lender’s capital (or on the capital of Lender’s parent corporation) as a consequence of its obligations hereunder to a level below that which Lender or Lender’s parent corporation could have achieved but for such Change in Law (taking into consideration Lender’s policies or the policies of Lender’s parent corporation with respect to capital adequacy) **[by an amount deemed by Lender to be material,][[21]](#footnote-22)** then, from time to time, within five (5) Business Days after receipt by Borrower of written demand by Lender, Borrower shall pay to Lender such additional amounts as will compensate Lender or Lender’s parent corporation for any such reduction suffered.

### A certificate of Lender setting forth the amount or amounts necessary to compensate Lender or its parent corporation, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to Borrower and shall be conclusive, absent manifest error. Borrower shall pay Lender such amount or amounts within 10 days after receipt thereof.

### Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender’s right to demand such compensation; **[provided, that Borrower shall not be required to compensate Lender under this Section for any increased costs or reductions incurred more than six (6) months prior to the date that Lender notifies Borrower of such increased costs or reductions and of 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.][[22]](#footnote-23)**

## Payments Generally.

Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable under Sections 2.9, 2.11 or 2.13, 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 Lender, 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 Lender at its Payment Office. 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.

## Taxes.

### 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 requires the deduction or withholding of any Tax from any such payment by a Loan Party, then the Loan Party 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) Lender 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 Lender timely reimburse it for the payment of, any Other Taxes.

### Indemnification by Borrower. Borrower shall indemnify Lender, 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) payable or paid by Lender or required to be withheld or deducted from a payment to Lender 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 Lender shall be conclusive absent manifest error.

### 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 Lender 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 Lender.

### Survival. Each party’s obligations under this Section 2.11 shall survive the termination of the Commitment 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 Lender, 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 Truist Bank or an Affiliate of Truist Bank provides a Hedging Transaction to Borrower, (i) the incremental exposure to Truist Bank or such Affiliate 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 Truist Bank, 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 Truist Bank has received appropriate documentation from Borrower regarding whether Borrower is qualified to enter into a swap under Applicable Law.[[23]](#footnote-24)

## [Funding Indemnity

**.** In the event of (a)  the payment of any principal of any SOFR Loan other than on the Payment Date therefor (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the Interest Payment Date therefor (including as a result of an Event of Default), or (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate 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. A certificate of Lender setting forth any amount or amounts that 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.][[24]](#footnote-25)

# CONDITIONS PRECEDENT TO LOAN

## Conditions To Effectiveness

. The obligation of Lender to make the Loan shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.2):

### Lender shall have received payment of all fees, expenses and other amounts due and payable on or prior to the Closing Date, including, without limitation, reimbursement or payment of all out-of-pocket expenses of Lender (including reasonable fees, charges and disbursements of counsel to Lender) required to be reimbursed or paid by Borrower hereunder, under any other Loan Document, and under any other agreement with Lender.

### Lender (or its counsel) shall have received the following, each to be in form and substance satisfactory to Lender:

#### a counterpart of each of the Loan Documents signed by or on behalf of the parties thereto;

#### a certificate of the Secretary or Assistant Secretary of **[Borrower][each Loan Party]**, and the members of Borrower to the extent requested by Lender, attaching and certifying copies of its bylaws, or partnership agreement or limited liability company agreement, and of the resolutions of its boards of directors or other equivalent governing body, or comparable organizational documents and authorizations, authorizing the execution, delivery and performance of the Loan Documents to which it is a party and certifying the name, title and true signature of each officer of **[Borrower][such Loan Party]** executing the Loan Documents to which it is a party;

#### certified copies of the articles or certificate of incorporation, certificate of organization or limited partnership, or other registered organizational documents of **[Borrower][each Loan Party]**, **and the members of Borrower to the extent requested by Lender**, together with certificates of good standing or existence, as may be available from the Secretary of State of the jurisdiction of organization of **[Borrower][such Loan Party]** **or the applicable member of Borrower** and each other jurisdiction where such **party** is required to be qualified to do business as a foreign corporation;

#### a favorable written opinion of counsel to the **[Borrower ][Loan Parties]**, addressed to Lender, and covering such matters relating to the **[Borrower][Loan Parties]**, the Loan Documents and the transactions contemplated therein as Lender shall reasonably request;

#### a certificate, dated the Closing Date and signed by a Responsible Officer, certifying that after giving effect to the funding of the Loan, (x) no Default or Event of Default exists, (y) all representations and warranties of Borrower set forth in the Loan Documents are true and correct and (z) since the date of the financial statements of Borrower described in Section 4.4, there shall have been no change which has had or could reasonably be expected to have a Material Adverse Effect;

#### a duly executed funds disbursement agreement;

#### the Title Insurance Policy;

#### current “as-built” survey of the Property, dated or updated to a date not earlier than thirty (30) days prior to the Closing Date, certified to Lender and the title insurer, prepared by a surveyor licensed in the State of [\_\_\_\_\_\_] acceptable to Lender and the issuer of the mortgagee title insurance policy, and conforming to Lender’s current standard survey requirements;

#### appropriate information on the 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 (x) complies with the most recent ASTM 1527 standard, and (y) is prepared by an environmental consultant acceptable to Lender, and any further environmental assessment, testing, analysis, or reporting deemed necessary or desirable by Lender and showing results satisfactory to Lender. Lender 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;

#### a current engineering report or property condition report with respect to the Property, covering, among other matters, inspection of heating ventilation, air conditioning and any other base building systems, roof and structural details and showing no failure of compliance with building plans and specifications, Applicable Laws (including requirements of the Americans with Disabilities Act, as amended) and fire safety and health standards;

#### an appraisal of the Property performed by an M.A.I. appraiser acceptable to Lender (an “**Appraisal**”) which indicates a minimum leased fee value “as is” of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

#### an update to existing zoning letter or zoning report, dated not more than (30) days prior to the Closing Date, certified to Lender;

#### copies of property and liability insurance policies maintained by Borrower, conforming to the requirements of Exhibit 5.5 hereof and otherwise in form and detail acceptable to Lender, in each case naming Lender as loss payee or additional insured, as the case may be, together with a lender’s loss payable endorsement in form and substance satisfactory to Lender;

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

#### **[a current rent roll of the Property, certified by Borrower, which rent roll shall include the following information: (a) Tenant names; (b) unit/suite numbers; (c) area of each demised premises and total area of the Property (stated in net rentable square feet); (d) rental rate (including escalations) (stated in gross amount and in amount per net rentable square foot per year); (e) Lease term (commencement, expiration and renewal options); (f) real property tax or common area and maintenance expense pass-throughs; (g) cancellation/termination provisions; (h) security deposit; and (i) material operating covenants and co-tenancy clauses. In addition, Borrower shall provide Lender with true and correct copies of all leases of the Property]**[[25]](#footnote-26)**;**

#### copy of the most recent tax bill for the Property;

#### copies of service contracts;

#### **[estoppel certificates and subordination, non-disturbance and attornment agreements from** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**;

#### copies of existing certificates of occupancy for the Property;

#### a copy of the Management Agreement for the Property, certified by Borrower as being true, correct and complete;

#### copies of duly executed payoff letters, in form and substance satisfactory to Lender, executed by any existing lender, together with (i) UCC‑3 or other appropriate termination statements, in form and substance satisfactory to Lender, releasing all liens of any existing lenders upon any of the personal property of Borrower, (ii) cancellations and releases, in form and substance satisfactory to Lender, releasing all liens of any existing lender upon the Property, and (iii) any other releases, terminations or other documents reasonably required by Lender to evidence the payoff of Indebtedness secured by the Property; and

#### at least five (5) days prior to the date of this Agreement, all documentation and other information required by bank regulatory authorities or reasonably requested by 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.

### **[Lender shall have confirmed that the maximum amount of the Loan shall not [(i) result in a ratio of Net Operating Income divided by Debt Service of less than [\_\_\_\_\_\_\_\_\_] or (ii) result in a Debt Yield of less than \_\_\_\_\_\_\_%]. [For purposes of this clause (c) only, “Net Operating Income” will be based on [insert any applicable term sheet adjustments].]**

### **[Lender shall have received reasonably satisfactory evidence of Borrower’s satisfaction of the Equity Maintenance Requirement.]**[[26]](#footnote-27)

## Delivery of Documents

. All of the Loan Documents, certificates, legal opinions and other documents and papers referred to in this Article shall be delivered to Lender and shall be in form and substance satisfactory in all respects to Lender.

# REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to 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 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.[[27]](#footnote-28)

## 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

. Borrower and its ERISA Affiliate(s), if any, are in compliance with the provisions of ERISA with respect to any retirement or other employee benefit plan to which it or an ERISA Affiliate is a party as employer.

## Disclosure

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### To Borrower’s knowledge, no statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed to Lender 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, 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.]**

## Leases

. Borrower represents and warrants to Lender with respect to Leases that: (1) the rent roll delivered to Lender is true, correct and complete, and the Leases are valid and in full force and effect; (2) the Leases (including any and all amendments thereto) are in writing, and there are no oral agreements with respect thereto; (3) the copies of the Leases delivered to Lender are true, correct and complete; (4) neither the landlord nor, to Borrower’s knowledge, any Tenant is in default under any of the Leases; (5) Borrower has no knowledge of any notice of termination or default with respect to any Lease; (6) Borrower has not assigned or pledged any of the Leases, the rents or any interests therein except to Lender; (7) no Tenant or other party has any right or option to purchase all or any portion of the Property; (8) no Tenant has the right to terminate its Lease prior to expiration of the stated term of such Lease; and (9) no Tenant has prepaid more than one (1) month’s rent in advance.

## 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 Lender in connection with the closing of the Loan, the Property complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Property, 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 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 use and occupancy of the Property are available and have sufficient capacity to operate the Property for their intended purposes, including water supply, storm and sanitary sewer facilities, electricity and telephone facilities. 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.

### *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.

# AFFIRMATIVE COVENANTS

Borrower covenants and agrees that so long as any Obligation remains unpaid or outstanding:

## Notices of Material Events

. Borrower will furnish to 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;

### 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.

### Without limitation of the foregoing, Borrower and its ERISA Affiliate(s), if any, shall at all times comply with the provisions of ERISA with respect to any retirement or other employee benefit plan to which it or an ERISA Affiliate is a party as employer, and as soon as possible after Borrower knows, or has reason to know, that any Reportable Event (as defined in ERISA) with respect to any such plan of Borrower or an ERISA Affiliate has occurred, it shall furnish to Lender a written statement setting forth details as to such Reportable Event and the action, if any, which Borrower proposes to take with respect thereto, together with a copy of the notice of such Reportable Event furnished to the Pension Benefit Guaranty Corporation.

## 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 Lender to assist in ensuring that Lender is in compliance with the Flood Insurance Laws applicable to the Collateral, including providing Lender 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 Lender 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 Lender that it intends to contest such claim or demand, (ii) Borrower provides Lender with an indemnity, bond or other security (including any reserve account established by Borrower) reasonably satisfactory to Lender (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 Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on 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 Lender, on demand, all taxes, costs and charges for which 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, Lender 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 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 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. Borrower shall pay Lender’s customary property inspection fee, for one property inspection performed by or for Lender per calendar year.

## 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 Lender 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 Lender 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 Lender 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”). Lender 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 Lender’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 Lender 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 Lender that it intends to contest such Mechanic’s Lien or Stop Notice, (2) Borrower provides Lender 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 Lender, including Lender’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 Lender 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

. Lender 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 Lender 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 Lender the cost of any and all new and updated Appraisals obtained by Lender. Lender 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 Lender 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 Lender reasonably may request. Notwithstanding the foregoing, in no event shall Lender 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 Lender 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 Lender, from time to time upon request, evidence reasonably satisfactory to Lender 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 Lender;

### 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 Lender, (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 Lender, 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.

## Depository Collateral Accounts.

### **Borrower shall be required to maintain all accounts of Borrower associated with the Property with Lender. On or prior to the date hereof, Borrower has opened an operating account with Lender 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, Lender may, at its election, establish a deposit account in the name and tax ID number of Borrower with Lender, into which funds from the Operating Account may be transferred (the “Master Disbursement Sweep Account”); provided that Lender shall have the right to entitle such account with such other designation as Lender may select in its sole discretion. Lender shall have sole control over, and the sole right to withdraw funds from, the Master Disbursement Sweep Account.**

### **Borrower hereby pledges and assigns to Lender, and grants to Lender, 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 Lender (collectively, the “Accounts”) as additional Collateral for the Loan. Borrower will take, or authorizes Lender to take, all actions necessary to maintain in favor of Lender 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 Lender further agree that it is the intent of the parties that this Agreement is an authenticated record evidencing Lender’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, Lender shall have the right to apply funds in the Accounts to one or more of the following items, in Lender’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 Lender. Without limitation of the foregoing, Borrower shall have established and shall maintain (i) its primary operating account for the Property with Lender, designated as account number \_\_\_\_\_\_\_\_\_\_\_\_ (the “Operating Account”), (ii) a restricted depository account with Lender into which Tenants will be directed by Borrower to pay rents by ACH payment or wire transfer, designated as account number \_\_\_\_\_\_\_\_\_\_\_\_ (the “Collections Account”), and (iii) a restricted collateral account with Lender, designated as account number \_\_\_\_\_\_\_\_\_\_\_\_ (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. Borrower shall also have entered into the Collections Account Agreement, and 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 Lender 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, Lender 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 Lender 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 Lender 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 Lender further agree that it is the intent of the parties that this Agreement is an authenticated record evidencing Lender’s “control” of the Accounts (within the meaning of Section 9-104 of the Uniform Commercial Code as in effect in the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]).]**

## Required Capital Improvements

**. Borrower shall complete the capital improvements set forth on Exhibit 5.19 (the “Required Capital Improvements”), in accordance with all Applicable Laws and to the reasonable satisfaction of Lender, on or prior to the date set forth for each Required Capital Improvement on Exhibit 5.19. The failure to complete each Required Capital Improvements by the specified date shall constitute an Event of Default under this Agreement, provided that no Event of Default shall exist if (i) the failure to complete a Required Capital Improvement is due to Force Majeure or (ii) the cost of completing the Required Capital Improvements is less than [$250,000.00] for each Required Capital Improvement and less than [$500,000.00] in the aggregate, and such Required Capital Improvements are completed within [thirty (30)] days of the agreed upon date of completion set forth on Exhibit 5.19]**.

*OR*

**[Section 5.19**. **Required Capital Improvements.**

* + - 1. **Prior to the Closing Date, the Property has been inspected by an engineering consultant acceptable to Lender and for the benefit of Lender. Lender makes no representation or warranty as to the accuracy or completeness of the inspection. Attached hereto as Exhibit 5.19 is a list of items (the “Required Capital Improvements”) identified in the Property Condition Report prepared by the engineering consultant as requiring replacement or improvement as part of an ongoing capital replacement and improvement program. Borrower shall commence all Required Capital Improvements prior to the applicable “Outside Commencement Date” set forth on Exhibit 5.19 attached hereto and, without limiting the obligations of Borrower pursuant to Section 5.10, shall perform the work for the Required Capital Improvements diligently and continuously, and shall complete all Required Capital Improvements in a good and workmanlike manner, in accordance with Applicable Laws and in a manner reasonably acceptable to Lender as soon as commercially reasonable after commencing to make each such Required Capital Improvements.**
      2. **(i) On the Closing Date, Borrower shall deposit into the Required Capital Improvements Reserve Account [\_\_\_\_\_\_\_\_\_] Dollars ($[\_\_\_\_\_\_\_]), to be held for application to pay the cost of the Required Capital Improvements as provided herein (or during the continuance of an Event of Default, as Lender may elect in its sole discretion). So long as no Default or Event of Default shall have occurred and be continuing, Lender shall, to the extent funds deposited pursuant to this Section 5.19(b)(i) are available in the Required Capital Improvements Reserve Account, disburse to Borrower the amount paid or incurred by Borrower in performing the Required Capital Improvements as required in Section 5.19(a) upon satisfaction of the applicable requirements set forth in Section [5.24].**

**(ii) [On or before the last Business Day of each month, Borrower shall deposit in the Required Capital Improvements Reserve Account an amount equal to one-twelfth (1/12) of the product of the square footage of the Property multiplied by $[\_\_\_\_\_\_\_\_\_] Dollars ($[\_\_\_\_\_\_\_]) Dollars (the “Required Capital Improvements Reserve Monthly Deposit”)]. Amounts deposited in the Required Capital Improvements Reserve Account pursuant to this Section 5.19(b) shall hereinafter be referred to as “Required Capital Improvements Reserve Funds.”  So long as no Default or Event of Default shall have occurred and be continuing, Lender shall, to the extent funds deposited pursuant to this Section 5.19(b)(ii) are available in the Required Capital Improvements Reserve Account, disburse to Borrower the amount paid or incurred by Borrower in performing the maintenance as required pursuant to Section 5.10 upon satisfaction of the applicable requirements set forth in Section [\_\_\_\_].]**

**Borrower hereby grants to Lender an irrevocable power-of-attorney, coupled with an interest, to perform upon the occurrence and during the continuance of an Event of Default any of the Required Capital Improvements or maintenance as required above and to apply the amounts on deposit in the Required Capital Improvements Reserve Account to the costs associated therewith, all as Lender may determine in its sole discretion but without obligation to do so. Upon the completion of the Required Capital Improvements as required above and provided Borrower shall have delivered to Lender reasonable evidence of such completion together with reasonable evidence that all costs thereof have been paid and no Default or Event of Default shall have occurred and be continuing, the balance remaining in the Required Capital Improvements Reserve Account shall [either] be [(i) if no Cash Flow Sweep Event is then in effect,] disbursed to Borrower in accordance with its written instructions delivered to Lender [or (ii) if a Cash Flow Sweep Event is then in effect, deposited into the Master Disbursement Sweep Account.][[28]](#footnote-29)**

**[Section 5.20. Required Repairs.[[29]](#footnote-30)**

* + - 1. **Prior to the Closing Date, the Property has been inspected by an engineering consultant acceptable to Lender and for the benefit of Lender. Lender makes no representation or warranty as to the accuracy or completeness of the inspection. Attached hereto as Exhibit 5.20 is a list of items (the “Required Repairs”) identified in the Property Condition Report prepared by the engineering consultant as requiring repair. Borrower shall perform the work for the Required Repairs diligently and continuously, and shall complete the Required Repairs in a good and workmanlike manner on or before the date that is the applicable “Outside Completion Date” set forth on Exhibit 5.20 attached hereto, in accordance with all Applicable Laws and in a manner reasonably acceptable to Lender.**
      2. **On the Closing Date, Borrower shall deposit into the Required Repair Reserve Account [\_\_\_\_\_\_\_\_\_] Dollars ($[\_\_\_\_\_\_]), to be held for application to the Required Repairs as provided herein (or during the continuance of an Event of Default, as Lender may elect in its sole discretion).** 
         1. **So long as no Default or Event of Default shall have occurred and be continuing, Lender shall, to the extent funds are available for such purpose in the Required Repair Reserve Account, disburse to Borrower the amount paid or incurred by Borrower in performing the Required Repairs as required above upon satisfaction of the applicable requirements set forth in Section [5.24]. Borrower hereby grants to Lender an irrevocable power-of-attorney, coupled with an interest, to perform upon the occurrence and during the continuance of an Event of Default any of the Required Repairs as required above and to apply the amounts on deposit in the Required Repair Reserve Account to the costs associated therewith, all as Lender may determine in its sole discretion but without obligation to do so. Upon the completion of the Required Repairs as required above, and provided Borrower shall have delivered to Lender reasonable evidence of such completion together with reasonable evidence that all costs thereof have been paid and no Default or Event of Default shall have occurred and be continuing, the balance remaining in the Required Repair Reserve Account shall [either] be [(x) if no Cash Flow Sweep Event is then in effect,][[30]](#footnote-31) disbursed to Borrower in accordance with its written instructions delivered to Lender [or (y) if a Cash Flow Sweep Event is then in effect, deposited into the Master Disbursement Sweep Account.][[31]](#footnote-32)**

**[Section 5.21. Tenant Improvements, Leasing Costs and Leasing Commissions.[[32]](#footnote-33)**

* + - 1. **Attached hereto as Exhibit 5.21 is a list of the ongoing and outstanding Tenant Improvements, Leasing Commissions and Leasing Costs due for the Property as of the Closing Date (the “Closing Date Tenant Improvement/Leasing Cost Schedule”). On the Closing Date, Borrower shall deposit into the TI & Leasing Commissions Reserve Account [\_\_\_\_\_\_\_\_\_] Dollars ($[\_\_\_\_\_\_\_]), to be held for application to Tenant Improvements, Leasing Commissions and Leasing Costs as provided herein (or during the continuance of an Event of Default, as Lender may elect in its sole discretion). Borrower shall perform, or cause to be performed, all Tenant Improvements, Leasing Commission and Leasing Costs set forth on the Closing Date Tenant Improvement/Leasing Cost Schedule in accordance with the applicable Leases, brokerage and other agreements and the terms and conditions of Exhibit 5.21 and the other terms and conditions of this Agreement and the other Loan Documents. Without limiting the foregoing, all Tenant Improvements shall be performed and completed in a good and workmanlike manner, in accordance with Applicable Laws and in a manner reasonably acceptable to Lender.**
         1. **So long as no Default or Event of Default shall have occurred and be continuing, Lender shall, to the extent funds are available for such purpose in the TI & Leasing Commissions Reserve Account, disburse to Borrower the amount paid or incurred by Borrower on account of Tenant Improvements, Leasing Commission and Leasing Costs set forth on the Closing Date Tenant Improvement/Leasing Cost Schedule upon satisfaction of the applicable requirements set forth in Section [5.24]. [Upon the completion of and payment for the Tenant Improvements and payment of Leasing Commissions and Leasing Costs as required above, and provided Borrower shall have delivered to Lender reasonable evidence of such completion and payment and no Default or Event of Default shall have occurred and be continuing, the balance remaining in the TI & Leasing Commissions Reserve Account shall [either] be [(i) if no Cash Flow Sweep Event is then in effect,][[33]](#footnote-34) disbursed to Borrower in accordance with its written instructions delivered to Lender [or (ii) if a Case Flow Sweep Event is then in effect, deposited into the Master Disbursement Sweep Account.][[34]](#footnote-35)**
      2. **On or before the last Business Day of each month, Borrower shall deposit into the TI & Leasing Commissions Reserve Account an amount equal to the sum of (i) one-twelfth (1/12) of the product of the square footage of the Property multiplied by $[\_\_\_] (the “TI & Leasing Commissions Reserve Monthly Deposit”) and (ii) any Termination Fee Deposit on the date of Borrower’s receipt thereof.**

**(i)[[35]](#footnote-36) So long as no Default or Event of Default shall have occurred and be continuing, Lender shall, to the extent funds are available in the TI & Leasing Commissions Reserve Account and upon satisfaction of the applicable requirements set forth in Section [5.24], disburse to Borrower the amount actually paid or incurred by Borrower in performing Tenant Improvements or on account of Leasing Commissions and Leasing Costs, in each case which are not included in the Closing Date Tenant Improvement/Leasing Cost Schedule and as the same are incurred pursuant to Leases entered into in accordance with the provisions of Exhibit 5.21 or otherwise approved by Lender.**

* + - 1. **Borrower hereby grants to Lender an irrevocable power-of-attorney, coupled with an interest, to pay and perform upon the occurrence and during the continuance of an Event of Default any of the Tenant Improvements, Leasing Commissions and Leasing Costs as required above and to apply the amounts on deposit in the TI & Leasing Commissions Reserve Account to the costs associated therewith, all as Lender may determine in its sole discretion but without obligation to do so.**

**[Section 5.22. Environmental Remediation.**

* + - 1. **Prior to the Closing Date, the Property has been inspected by an environmental consultant acceptable to Lender and for the benefit of Lender. Lender makes no representation or warranty as to the accuracy or completeness of the inspection. Attached hereto as Exhibit 5.22 is a list of environmental items (the “Environmental Remediation Work”) identified in the environmental report(s) for the Property prepared by the environmental consultant as possibly requiring remediation. Borrower shall, at its sole risk and under its name, cause the Environmental Remediation Work to be completed in accordance with any recommendations set forth in Exhibit 5.22 attached hereto, and in any event, so as to cause the Property to comply in all material respects with all applicable Environmental Laws and to have the full use and benefit of the Property as contemplated by the Loan Documents. Borrower shall cause the Environmental Remediation Work to be completed within the time frame set forth in Exhibit 5.22 attached hereto (or if not set forth therein, Borrower shall perform the Environmental Remediation Work diligently and continuously, and complete same within the time frame required by Applicable Laws), in a good and workmanlike manner, in accordance with all applicable Environmental Laws and in a manner otherwise reasonably satisfactory to Lender.**
      2. **On the Closing Date, Borrower shall deposit into the Environmental Remediation Reserve Account [\_\_\_\_\_\_\_\_\_] Dollars ($[\_\_\_\_\_\_\_]), to be held for application to the Environmental Remediation Work as provided herein (or during the continuance of an Event of Default, as Lender may elect in its sole discretion).**
      3. **So long as no Default or Event of Default shall have occurred and be continuing, Lender shall, to the extent funds are available for such purpose in the Environmental Remediation Reserve Account, disburse to Borrower the amount paid or incurred by Borrower in performing the Environmental Remediation Work as required above upon satisfaction of the applicable requirements set forth in Section [5.24]. Borrower hereby grants to Lender an irrevocable power-of-attorney, coupled with an interest, to perform upon the occurrence and during the continuance of an Event of Default any of the Environmental Remediation Work as required above and to apply the amounts on deposit in the Environmental Remediation Reserve Account to the costs associated therewith, all as Lender may determine in its sole discretion but without obligation to do so. Upon the completion of all Environmental Remediation Work as required above and provided Borrower shall have delivered to Lender reasonable evidence of such completion together with reasonable evidence that all costs thereof have been paid and “no-further action” letters or other written confirmations from the applicable Governmental Authorities confirming that no further remediation or other action is required on account of the environmental items with respect to which the Environmental Remediation Work was required and no Default or Event of Default shall have occurred and be continuing, the balance remaining in the Environmental Remediation Reserve Account shall [either] be [(i) if no Cash Flow Sweep Event is then in effect, disbursed to Borrower in accordance with its written instructions delivered to Lender or (ii) if a Cash Flow Sweep Event is then in effect, deposited into the Master Disbursement Sweep Account.[[36]](#footnote-37)**
      4. **Within fifteen (15) days after completion of each item of Environmental Remediation Work, Borrower shall, at its expense, obtain and deliver to Lender an Environmental Assessment of the Property made after such completion and confirming to Lender’s satisfaction that such item has been successfully completed in accordance with this Agreement.]**

**[Section 5.23. Tax and Insurance Reserve Funds.**

* + - 1. **On the Closing Date, Borrower shall deposit into the Tax and Insurance Reserve Account [\_\_\_\_\_\_\_\_\_] Dollars ($[\_\_\_\_\_\_\_]), which amount, when added to the required monthly deposits set forth in Section 5.23(b), is intended to be sufficient to make all payments in accordance with this Agreement of Real Property Taxes that Lender estimates will be payable during the next ensuing twelve (12) months[[37]](#footnote-38) and Insurance Premiums (except to the extent the insurance required hereunder is maintained under a blanket insurance policy reasonably acceptable to Lender) that Lender estimates will be payable during the next ensuing twelve (12) months for the renewal of the coverage afforded by the insurance policies upon the expiration thereof.**
      2. **On the last Business Day of each month commencing with the last Business Day of [\_\_\_\_\_\_\_\_\_], Borrower shall deposit into the Tax and Insurance Reserve Account (i) one-twelfth (1/12) of the amount necessary (taking into account amounts on deposit in the Tax and Insurance Reserve Account) to pay the Real Property Taxes that Lender estimates will be payable during the next ensuing twelve (12) months or such higher amount necessary to accumulate with Lender sufficient funds to pay all such Real Property Taxes prior to the earlier of (A) the date that the same will become delinquent and (B) the date that additional charges or interest will accrue due to the non‑payment thereof, and (ii) except to the extent the insurance required hereunder is maintained under a blanket insurance policy reasonably acceptable to Lender, one twelfth (1/12) of the Insurance Premiums that Lender estimates will be payable during the next ensuing twelve (12) months for the renewal of the coverage afforded by the insurance policies upon the expiration thereof or such higher amount necessary to accumulate with Lender sufficient funds to pay all such Insurance Premiums prior to the due date for such payments (said amounts in clauses (i) and (ii) above hereinafter called the “Tax and Insurance Reserve Funds”). In making any disbursement from the Tax and Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office or tax lien service (with respect to Real Property Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. So long as no Default or Event of Default shall have occurred and be continuing, and provided that Borrower shall have timely provided Lender with a written request and the other items required to be delivered pursuant to Section [5.24], Lender shall disburse funds for the payment of such Real Property Taxes or Insurance Premiums to either, at Lender’s option, (y) Borrower, which funds Borrower shall only use for the purpose of making such payments, or (z) the applicable payee. While any Default or Event of Default is continuing, Lender may, but shall have no obligation to, make disbursements of Tax and Insurance Reserve Funds. If at any time Lender reasonably determines that the Tax and Insurance Reserve Funds are not or will not be sufficient to pay such Real Property Taxes and Insurance Premiums by the dates set forth in clauses (i) and (ii) above, Lender shall notify Borrower of such determination and Borrower shall pay to Lender any amount necessary to make up the deficiency within ten (10) Business Days after receipt of written notice from Lender to Borrower requesting payment thereof.]**

**[Section 5.24. Disbursement of Reserve Funds.**

* + - 1. **Borrower shall deliver to Lender a written request for each requested disbursement from the Reserve Accounts in accordance with this Section 5.24. Borrower shall deliver all requests for all disbursements from the Reserve Accounts concurrently and not more than once per month. Each such request shall (i) specify the [Required Repairs, the Replacements, the Tenant Improvements, the Leasing Commissions, the Leasing Costs, the Environmental Remediation Work or Real Property Taxes and Insurance Premiums][specify applicable Reserves] for which such disbursement is requested, and (ii) be accompanied by a certification and draw request in the form attached hereto as Exhibit 5.24, or as Lender shall otherwise specify. Borrower shall promptly deliver to Lender copies of paid invoices (or unpaid invoices to which the requested disbursement relates and is to be applied), lien waivers (with respect to any matter the non-payment of which could give rise to a lien against the Collateral and that costs more than [$50,000]), Real Property Tax or Insurance Premium bills, statements or estimates, contractor invoices, tenant certifications (if applicable) and any licenses, permits and certifications and filings required by Law, in each case as Lender may reasonably require. Provided that the foregoing conditions are satisfied, and all other conditions applicable to the requested disbursement set forth in [specify Reserve sections], as applicable, are satisfied, Lender shall disburse sums from the applicable Reserve Account to Borrower in accordance with its written instructions delivered to Lender. Notwithstanding the preceding sentence, in no event shall Lender be required to disburse funds from any of the Reserve Accounts if a Default or Event of Default then exists and is continuing. The amount of each such disbursement shall not be less than $10,000.00 per advance (other than the final disbursement). Such disbursements shall not be made more frequently than once each calendar month, and may, at Lender’s discretion, be disbursed directly to the recipient of any costs and expenses approved hereunder with respect to such disbursement.**
      2. **Lender’s disbursement of any Reserve Funds or other acknowledgment of completion of any work in a manner reasonably satisfactory to Lender shall not be deemed a certification or warranty by Lender to any Person that any work or other matter that is the subject of the disbursement has been completed in accordance with Applicable Laws or any agreement to which Borrower is a party or the Property is bound.**
      3. **The insufficiency of any balance in any of the Reserve Accounts shall not relieve Borrower from its obligation to perform fully all covenants contained in each of the Loan Documents.**

**[Section 5.25. Reserve Funds Generally.**

* + - 1. **Subject to Section 5.25(a)(ii), any interest and other income on any Reserve Funds shall be credited to and accrue to the benefit of Borrower, shall be added to and become a part of the Reserve Account for such Reserve Funds and shall be disbursed in the same manner as other monies deposited in such Reserve Account. Lender shall maintain such Reserve Accounts or any funds deposited therein in interest-bearing accounts to the extent available; provided, however, that upon the occurrence and during the continuance of any Event of Default, Lender may elect not to hold any or all of the Reserve Accounts in interest-bearing accounts.**
         1. **In no event shall Lender be required to select any particular account or credit funds therein at the highest business savings or comparable rate of interest, or use any account deposits in which would be insured by the Federal Depositary Insurance Corporation or other Governmental Authority. Lender may, at its election, retain any such interest and other income for its own account upon the occurrence and during the continuance of a Default. Borrower agrees that it shall include all interest and other income to which it is entitled under the terms hereof on Reserve Funds as the income of Borrower (and, if Borrower is a partnership or other pass-through entity, the partners, members or beneficiaries of Borrower, as the case may be), and that it shall be the owner of the Reserve Funds for all purposes, including for federal and applicable state and local tax purposes, except to the extent that Lender retains any interest or other income on the Reserve Funds for its own account upon the occurrence and during the continuance of an Event of Default as provided herein.**
      2. **Borrower hereby grants to Lender a first-priority perfected security interest in, and assigns and pledges to Lender, each of the Reserve Accounts and any and all Reserve Funds now or hereafter maintained in the Reserve Accounts and any and all “Investment Property” (as defined in the UCC of each applicable jurisdiction) contained therein as collateral security for payment of the Obligations. The provisions of this Section 5.25 and other provisions of this Agreement and the other Loan Documents are intended to give Lender or any subsequent holder of the Loan “control” of the Reserve Accounts within the meaning of the UCC of each applicable jurisdiction.**
      3. **Borrower authorizes Lender to file any financing statement or statements required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein in connection with the Reserve Funds and the Reserve Accounts. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly and duly execute and deliver all further instruments and documents, and take all further action that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or the priority thereof, to obtain or preserve the full benefits of this Agreement and the rights and powers herein granted, or to enable Lender to exercise and enforce its rights and remedies hereunder.**
      4. **The Reserve Accounts and any and all Reserve Funds and other Investment Property now or hereafter maintained in the Reserve Accounts shall be subject to the exclusive dominion and control of Lender, which shall hold the Reserve Accounts and any or all Reserve Funds now or hereafter deposited in the Reserve Accounts subject to the terms and conditions of this Agreement. Neither Borrower, Property Manager or any other Person claiming on behalf of or through Borrower or Property Manager shall have any right of withdrawal from the Reserve Accounts or any other right or power with respect to the Reserve Accounts or any or all of the Reserve Funds and Investment Property now or hereafter deposited or contained in the Reserve Accounts, except as expressly provided in this Agreement.**
      5. **So long as no Default or Event of Default has occurred and is then continuing, subject to the other terms and conditions of this Agreement, Lender shall make disbursements from the Reserve Accounts in accordance with this Agreement, including Section 5.24. All such disbursements shall be deemed to have been expressly pre‑authorized by Borrower, and shall not be deemed to constitute the exercise by Lender of any remedies against the Property unless an Event of Default shall have occurred and be continuing and Lender shall have expressly stated in writing its intent to proceed to exercise its remedies as a secured party, pledgee or lienholder with respect to the Reserve Accounts. Borrower shall use any Reserve Funds released to it solely for the applicable purposes of such Reserve Funds set forth herein.**
      6. **Notwithstanding anything to the contrary set forth herein, Borrower shall have no right to receive disbursements from any Reserve Account upon the occurrence and during the continuance of any Default or Event of Default. Upon the occurrence and during the continuance of any Event of Default, Lender may exercise any or all of its rights and remedies as a secured party, pledgee and lienholder with respect to the Reserve Accounts. Without limitation of the foregoing, upon and during the continuance of any Event of Default, Lender may use, in its sole discretion, and disburse the Reserve Funds (or any portion thereof), including for any of the following purposes: (i) repayment of the Obligations, including principal prepayments and prepayment premiums, if any, applicable to such full or partial prepayment; (ii) reimbursement of Lender for all losses, fees, costs and expenses (including reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default; (iii) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Loan Documents; or (iv) payment of any item required or permitted under this Agreement; provided, however, that any application of funds shall not cure or be deemed to cure any Event of Default. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender’s rights and remedies as a secured party, as applicable, with respect to the Reserve Funds, any Investment Property and the Reserve Accounts and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker’s lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Reserve Funds or any Investment Property to effect a cure of any Event of Default, or to pay the Obligations, or in any specific order of priority. The exercise of any or all of Lender’s rights and remedies under this Agreement or under any of the other Loan Documents shall not in any way prejudice or affect Lender’s right to initiate and complete a foreclosure under the Security Instrument.**
      7. **The Reserve Funds shall not constitute escrow or trust funds and may be commingled with other monies held by Lender. Notwithstanding anything else herein to the contrary, Lender may commingle in one or more accounts any and all funds controlled by Lender, including funds pledged in favor of Lender by other borrowers, whether for the same purposes as the Reserve Accounts or otherwise. In the case of any Reserve Funds which are held in a commingled account, Lender shall maintain records sufficient to enable it to determine at all times which portion of such account is related to the Loan. The Reserve Accounts are solely for the protection of Lender. With respect to the Reserve Accounts, Lender shall have no responsibility beyond the allowance of due credit for the sums actually received by Lender or beyond the reimbursement or payment of the costs and expenses for which such Reserve Accounts were established in accordance with their terms. Upon assignment of the Loan by Lender, any Reserve Funds shall be turned over to the assignee and any responsibility of Lender as assignor shall terminate. The requirements of this Agreement concerning the Reserve Accounts in no way supersede, limit or waive any other rights or obligations of the parties under any of the Loan Documents or under Applicable Law.**
      8. **Borrower shall not further pledge, assign or grant any security interest in the Reserve Accounts or the Reserve Funds deposited therein or any Investment Property or permit any Lien to attach thereto, except for the security interest granted in this Section 5.25, or any levy to be made thereon, or any UCC financing statements, except those naming Lender as the secured party, to be filed with respect thereto.**
      9. **Borrower will maintain the security interest created by this Section 5.25 as a first priority perfected security interest and will defend the right, title and interest of Lender in and to the Reserve Accounts and the Reserve Funds and Investment Property against the claims and demands of all Persons whomsoever.**
      10. **Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by Lender to be genuine, and it may be assumed conclusively that any Person purporting to give any of the foregoing in connection with the Reserve Accounts has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by them hereunder and in good faith in accordance therewith. Lender shall not be liable to Borrower for any act or omission done or omitted to be done by Lender in reliance upon any instruction, direction or certification received by Lender and without gross negligence or willful misconduct.**

**Beyond the exercise of reasonable care in the custody thereof, Lender shall not have any duty as to any Reserve Funds or Investment Property in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any Person or otherwise with respect thereto. In no event shall Lender or any of its Affiliates, agents, employees or bailees, be liable or responsible for any loss or damage to any of the Reserve Funds or Investment Property, or for any diminution in value thereof, by reason of the act or omission of Lender or any such Affiliate, agents, employees or bailees, except to the extent that such loss or damage is determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from such Person’s gross negligence or willful misconduct.]**

# FINANCIAL COVENANTS AND REPORTING

## Financial Statements and Other Information

. Borrower will deliver to Lender:

### as soon as available and in any event within forty-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 Lender,**] 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;

### 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 Lender;

### 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 Lender may reasonably request with respect to Borrower and the Property; and

### information and documentation reasonably requested by 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 Lender in its sole discretion may determine that Lender is 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 Lender’s request from time to time, Borrower shall provide a certification to Lender, in form and substance acceptable to Lender, confirming Borrower’s compliance with the provisions of this Section 6.2, supported by appropriate calculations and documentation.][[38]](#footnote-39)

## Debt Yield

. **Within thirty (30) days after the end of each Fiscal Year, Borrower shall deliver to Lender 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 Lender 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%).][[39]](#footnote-40)**

## [Debt Service Coverage Ratio. Within [thirty (30) days][match time period to financial reporting] after the end of each [quarter/fiscal year], Borrower shall deliver to Lender a Compliance Certificate setting forth the Debt Service Coverage Ratio calculated as of the date of the last day of such [quarter/fiscal year]. In the event the Debt Service Coverage Ratio is less than \_\_\_ to 1.00, as determined by Lender in its sole discretion, Borrower shall be required to prepay the Loan, including the payment of any prepayment fee or premium, with thirty (30) days of notice of the failure to meet the required Debt Service Coverage Ratio in an amount that would result in a Debt Service Coverage Ratio of at least \_\_\_\_ to 1.00.][[40]](#footnote-41)

# NEGATIVE COVENANTS

Borrower covenants and agrees that so long as any Obligation remains unpaid or outstanding:

## Due on Sale and Encumbrance; Transfers of Interests

. Without the prior written consent of Lender, 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 Lender:

### 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 Lender. 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 Lender, 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 Lender (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; (iii) reduce or consent to the reduction of the term of the Property Management Agreement; (iv) increase or consent to the increase of the amount of any charges under, or Borrower’s obligations under, the Property Management Agreement; or (v) 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 Lender) 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 Lender’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 Lender, 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 Lender 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 Lender at any time to enable Lender 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 other extensions of credit hereunder, 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 or other extensions of credit hereunder, whether as underwriter, advisor, investor, or otherwise). No part of the proceeds of the Loan or other extensions of credit hereunder 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 Lender’s request from time to time, Borrower shall provide a certification to Lender, in form and substance acceptable to Lender 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.]**[[41]](#footnote-42)

## 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 Lender.

## [Loan Assumption

## .[[42]](#footnote-43) In connection with any Transfer of the Property to a Permitted Owner, Borrower shall have the right to request Lender’s consent to, and Lender may approve in its sole discretion,[[43]](#footnote-44) a one-time[[44]](#footnote-45) Transfer of the Property and the assumption of the Loan by the purchaser of the Property. Any such assumption of the Loan shall be conditioned upon, among other things, (i) no Event of Default shall have occurred and be continuing, (ii) such purchaser being a Permitted Owner, (iii) the delivery of financial information, including, without limitation, audited financial statements, for such purchaser and the direct and indirect owners of such purchaser, (iv) the Property producing at least a \_\_\_\_\_ Debt Yield and at least a \_\_\_\_\_ Debt Service Coverage Ratio, (v) the delivery of evidence that the purchaser is a single purpose entity as described in Section 5.17 of this Agreement, (vi) the execution and delivery of all documentation reasonably requested by Lender, in form and substance reasonably satisfactory to Lender, including without limitation, (A) a written assumption agreement whereby the proposed transferee assumes all obligations of Borrower under the Loan Documents, and (B) the Replacement Guaranty and the Replacement Environmental Indemnification Agreement; (vii) the delivery of opinions of counsel requested by Lender, including, without limitation, opinions with respect to the valid formation, due authority and good standing of the purchaser, any additional pledgors and the Replacement Guarantor and the enforceability of the Loan Documents, as modified by the loan assumption agreement, and the Replacement Guaranty and the Replacement Environmental Indemnification Agreement, and any other matters requested by Lender, (viii) the delivery of an endorsement to the Title Insurance Policy in form and substance acceptable to Lender, insuring the lien of the Security Instrument, as assumed, subject only to the Permitted Encumbrances, (ix) the proposed transferee shall have delivered certificates of insurance as required under Exhibit 5.5 of this Agreement; (x) Borrower or the proposed transferee shall have delivered such UCC, litigation, tax and bankruptcy searches with respect to the Property, the proposed transferee and Replacement Guarantor as Lender may reasonably require; (xi) the payment of an assumption fee equal to \_\_\_\_\_\_\_\_ percent (\_\_\_% ) of the outstanding amount of the Loan; (xii) the payment to Lender of a processing fee equal to [$15,000.00], (xiii) the delivery of evidence reasonably acceptable to Lender that the Property will be managed by a qualified property manager approved by Lender in its reasonable discretion; (xiv) all third-party out-of-pocket costs and expenses related to any assumption are to be paid by Borrower, and (xv) the payment of all of Lender’s third-party out-of-pocket costs and expenses, including, without limitation, reasonable attorneys’ fees and costs, actually incurred by Lender in connection with such assumption. For avoidance of doubt, any Hedging Transaction entered into with Lender or an Affiliate of Lender as a counterparty shall not be transferable to a Permitted Owner in connection with an assumption of the Loan unless otherwise approved by Lender in its sole discretion.][[45]](#footnote-46)

# 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 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 Lender 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 Lender 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 Lender with security reasonably satisfactory to Lender 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.[[46]](#footnote-47)

### *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*. A Reportable Event (as defined in ERISA) shall have occurred that, in the opinion of Lender, when taken together with other Reportable 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 Lender.

### *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.[[47]](#footnote-48)

### *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 Lender shall have executed a supplemental Guaranty, Environmental Indemnification Agreement and other documentation in form and substance acceptable to Lender.

### *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 Lender, in its sole discretion, shall deem significant.]**

## 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, Lender at its election may (but shall not be obligated to) 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 Lender’s Commitment; (e) in its own name or in the name of Borrower, entering into possession of the Property, leasing and operating the Property, performing all work and constructing 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 Lender to or for the credit or account of Borrower against the Obligations; 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 Lender as Borrower’s attorney-in-fact, which power of attorney is irrevocable and coupled with an interest, with full power of substitution if Lender 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. Lender shall not have any liability to Borrower for the sufficiency or adequacy of any such actions taken by Lender.

# MISCELLANEOUS

## 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 Lender: Truist Bank[[48]](#footnote-49)

[**CRE Loan Admin Vienna Office**

**Attention: Loan Servicing**

**8330 Boone Boulevard, Suite 700**

**Mail Code: CS-ACW-2608**

**Vienna, VA 22182**

***OR***

**CRE Loan Admin Charlotte Office**

**Attention: Loan Servicing**

**4777 Sharon Road, Suite 300**

**Mail Code: NC-Charlotte-0300**

**Charlotte, NC 28210**

***OR***

**CRE Loan Admin Atlanta Office**

**Attention: Loan Servicing**

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

**Mail Code GA-ATL-3707**

**Atlanta, GA 30303]**

and

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

With a copy to (for

information purposes only):

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

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 Lender shall not be effective until actually received by Lender at its address specified in this Section 9.1.

### Any agreement of Lender herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of Borrower. 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 Lender shall not have any liability to Borrower or other Person on account of any action taken or not taken by 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 Lender to receive written confirmation of any telephonic or facsimile notice or the receipt by Lender of a confirmation which is at variance with the terms understood by Lender to be contained in any such telephonic or facsimile notice.

## Waiver; Amendments.

### No failure or delay by Lender in exercising any right or power hereunder or under any other Loan Document, and no course of dealing between Borrower and 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 Lender 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 Lender may have had notice or knowledge of such Default or Event of Default at the time.

### No amendment or waiver of any provision of this Agreement or the other Loan Documents, nor consent to any departure by Borrower therefrom, shall in an event be effective unless the same shall be in writing and signed by Borrower and Lender and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

## Expenses; Indemnification.

### Borrower shall pay (i) all reasonable, out-of-pocket costs and expenses of Lender 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), and (ii) 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 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 Lender and each Related Party of Lender (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 any actual or proposed use of the proceeds therefrom, (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 breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Syndtrak, Intralinks or any other Internet or intranet website, except as a result of such Indemnitee’s gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment.

### Borrower shall pay, and hold Lender 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 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 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 or the use of proceeds thereof.

### 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 Lender (and any other attempted assignment or transfer by Borrower shall be null and void). Lender may at any time, without consent of, or notice to Borrower, pledge or assign to any Person, or grant participations in, all or any portion of its rights under this Agreement and, to the extent of any assignment shall be released from its obligations hereunder. Lender may forward to each purchaser, transferee, assignee or participant all documents and information which Lender now has or may hereafter acquire relating to Borrower, any loan to Borrower, any Guarantor or the Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable.

## 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**[[49]](#footnote-50)**of the United States District Court **[for the Northern District of Georgia] [for the [Western] District of North Carolina, [Mecklenburg County] Division][[50]](#footnote-51)[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 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, 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 Lender to or for the credit or the account of Borrower against any and all Obligations held by Lender, irrespective of whether Lender shall have made demand hereunder and although such Obligations may be unmatured. Lender agrees promptly to notify Borrower after any such set-off and any application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

## 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 other Loan Documents, and any separate letter agreement(s) relating to any fees payable to Lender 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 Lender 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, Lender is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by Lender 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 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. 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

. Lender 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 Lender on a non-confidential basis prior to disclosure by Borrower, except that such information may be disclosed (i) to any Related Party of 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 Lender or any Related Party of Lender 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 Lender 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, Lender 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 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

. 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 “**Patriot 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 Lender 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 Lender in order to assist 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 Lender are arm’s-length commercial transactions between Borrower, each other Loan Party and their respective Affiliates, on the one hand, and Lender, 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) Lender 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) Lender has no 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) Lender and its 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 Lender 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 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 Lender to make advances hereunder are imposed solely and exclusively for the benefit of Lender and its 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 Lender 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 Lender 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.

## 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. Lender 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 Note]**

## 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 Lender to confess judgment against Borrower in any court of record or, in the alternative, authorizes Lender 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 Note]**

## Intercreditor Agreement

**. Lender 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 Lender 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. Lender 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.]**

## [Partial Release. Lender shall release the lien and security interest granted to or held by Lender 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 Lender (a “Partial Release”):

### **a written request for the Partial Release is provided to Lender 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 Lender 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 Truist Bank or an Affiliate of Truist Bank 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 Truist Bank;**

### **Borrower pays to Lender all reasonable, out-of-pocket costs and expenses of Lender, including the reasonable fees, charges and disbursements of counsel for Lender, 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, Lender, in order to maintain, in Lender’s reasonable discretion, the first priority lien and security interest of Lender in the remainder of the Property, including without limitation, reasonable survey updates and title updates and endorsements, if requested by Lender, in its reasonable discretion, in connection with the consummation of the Partial Release.**

### **Upon satisfaction of the above conditions, Lender 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). ]**

*(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

By:

Name:

Title:

**EXHIBIT A**

**FORM OF COMPLIANCE CERTIFICATES**

*Note to drafter: for use if applicable; modify as appropriate for deal specifics*

[FORM OF]

BORROWER COMPLIANCE CERTIFICATE

[*Date*]

Truist Bank

*RM address*\_\_\_\_

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

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

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

E-mail address: [\_\_\_\_\_\_\_\_\_\_\_\_\_](mailto:Rebecca.Cox@SunTrust.com)

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 between \_\_\_\_\_\_\_\_\_\_ (“**Borrower**”) and Truist Bank, as lender (“**Lender**”), *[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 Lender. 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 Lender 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 Lender 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

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: [\_\_\_\_\_\_\_\_\_\_\_\_\_](mailto:Rebecca.Cox@SunTrust.com)

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 between \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Truist Bank (“**Lender**”), 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 Lender. 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 Lender 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 B**

**PERMITTED ENCUMBRANCES**

[Insert]

EXHIBIT **[2.1(d)/5.24]**  
  
**[FORM OF]**

**BORROWER’S CERTIFICATE AND REQUEST FOR ADVANCE**

BORROWER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DRAW REQUEST NUMBER:

PROJECT DESCRIPTION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TRUIST BANK LOAN #:

The undersigned, as duly authorized representative of Borrower, hereby certifies and represents to Truist Bank, as Lender as follows (unless otherwise defined herein, all terms herein have the meanings assigned in the Term Loan Agreement by and between Borrower and Truist Bank, as Lender dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; capitalized terms used but not otherwise defined herein have the meaning given therein).

1. As of the date hereof, no suit or proceeding at law or in equity and no proceeding of any Governmental Authority has been instituted or threatened, which in either case would have a Material Adverse Effect on the financial condition or business operations of Borrower.

2. As of the date hereof, no Default or Event of Default under the above Term Loan Agreement has occurred.

3. No material adverse change has occurred in the financial condition or in the assets and liabilities of Borrower from those set forth in the last financial statements furnished to Truist Bank.

4. No adverse change has occurred as to the title to the real estate securing the Loan, except as previously acknowledged and approved in writing by Lender, and all payable related estate taxes and Insurance Premiums have been paid in full.

5. 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 Property.

6. All representations and warranties of Borrower in the Term Loan Agreement are hereby ratified and confirmed.

Borrower hereby authorizes and requests Lender to make a $ disbursement of the **[reference to applicable holdback or reserve]** as follows, all in accordance with the procedures provided in Section [\_\_\_\_] of the Term Loan Agreement:

Deposit to Truist Bank DDA number in the name of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

Further, Borrower hereby authorizes and requests Truist Bank to pay inspection fees 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 Lender directly for the above checked items from funds requested in the draw and deposit the remainder of the funds into the directed DDA.

**Borrower hereby acknowledges receipt from Lender of the following notice:**

**WARNING!**

**YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO YOU AS THE BORROWER, OR JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME LABOR, SERVICES, OR MATERIALS USED IN MAKING THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN RELEASES FROM EACH LIENOR WHO HAS SENT YOU A NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO YOUR CONTRACTOR.**

Date:

**[NAME OF BORROWER]**

By

Name:

Title:

**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 Lender

**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 between \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_ of the state of \_\_\_\_\_\_\_\_\_ (the “Borrower”) and TRUIST BANK, a North Carolina banking corporation, (the “Lender”)**

**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 Lender 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:

(a) $500,000.00;

(b) 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

(c) 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 Lender and to deliver to Lender 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 Lender 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 Lender additionally providing a 365-day extended period of indemnity. Lender 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 Lender 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 Lender, insuring against all such excluded acts or events. The endorsement or policy shall be in amount, form, and substance reasonably satisfactory to Lender.

#### 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 Lender and in an amount and in form and substance reasonably satisfactory to Lender.

#### 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 Lender 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 Lender 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 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 Lender 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 Lender). To the extent such Policies are not available as of the date hereof, Borrower shall deliver to Lender 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 Lender 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 Lender 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 Lender. The certificates of insurance must include all limits, sub-limits and deductibles and must list the Certificate Holder as provided by Lender. Lender 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. Lender 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 Lender to name Lender and its 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 Lender, without contribution, under a standard New York (or local equivalent) mortgagee clause. With respect to all insurance, no Person other than Lender 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 Lender is concerned;
2. The Policies shall not be canceled by the insurer without at least thirty (30) days’ prior written notice to Lender, except only ten (10) days’ prior written notice to Lender 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 Lender 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 Lender 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 Lender, 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 Lender’s expenses incurred in the collection of such proceeds. Nothing contained in this Section 1(f) however, shall require Lender to incur any expense or take any action hereunder. Any proceeds of insurance policies coming into the possession of Lender shall not be deemed trust funds, and Lender shall be entitled to apply such proceeds as herein provided.

### *Additional Information***.** Borrower shall supply such information as Lender 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.

### *The Lender’s Right to Procure Insurance*. Notwithstanding anything to the contrary contained herein, if at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right (but not the obligation), without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, obtaining such insurance coverage as Lender in its sole discretion deems appropriate. All premiums and expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Security Instrument and shall accrue Default Interest.

2. **Use and Application of Insurance Proceeds**. Lender shall apply insurance proceeds to costs of restoring the Property or the Loan as follows:

### if the loss is less than or equal to $\_\_\_\_\_\_\_\_\_\_\_, Lender 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 $\_\_\_\_\_\_\_\_\_\_\_, Lender shall apply the insurance proceeds to restoration; *provided*, that at all times during such restoration: (i) no Event of Default or Default exists; (ii) Lender reasonably determines that there are sufficient funds available to restore and repair the Property to a condition approved by Lender; (iii) Lender 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) Lender 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) Lender reasonably determines that restoration and repair of the Property to a condition approved reasonably by Lender 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 Lender’s reasonable discretion the loss exceeds $\_\_\_\_\_\_\_\_\_\_, Lender 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 Lender’s sole discretion;

### with respect to a loss in excess of $\_\_\_\_\_\_\_\_\_\_ for which Lender 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 Lender 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 Lender of the institution of any proceeding for the condemnation or other taking of the Property or any portion thereof. Lender may participate in any such proceeding and Borrower will deliver to Lender all instruments necessary or required by Lender to permit such participation. Without Lender’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 Lender. Borrower authorizes Lender to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and in Lender’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 Lender (the foregoing set forth in clauses (A) and (B), an “**Immaterial Condemnation**”), Lender 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 Lender, shall execute all instruments requested to confirm the assignment of the awards and compensation to Lender, free and clear of all liens, charges or encumbrances. It is expressly understood and agreed that any proceeds received by Lender 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**[[51]](#footnote-52)**

Borrower and Lender 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 Lender. Such lease form and each new sublease at the Property shall provide that the Tenant shall attorn to Lender. 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 Lender’s request, Borrower shall furnish to Lender a statement of all Tenant security deposits, and copies of all Leases not previously delivered to Lender, certified by Borrower as being true, correct and complete. Further, after the occurrence of an Event of Default, within ten (10) Business Days after Lender’s demand therefor, Borrower will deliver all security deposits to or as directed by Lender, which security deposits will be held by Lender or its designee in accordance with the terms of the respective Leases to which such security deposits apply.

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 Lender, will not execute any assignment of the Leases or the rents thereunder; and (f) will execute and deliver, at the request of Lender, all such assignments of the Leases and rents thereunder in favor of Lender as Lender may from time to time reasonably require.

3. **Leasing Guidelines**.

(a) Borrower shall not enter into any Lease without the prior consent of Lender, 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 Lender 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 Lender, 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 Lender 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 Lender, 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 Lender’s consent under this Section 3, Borrower shall submit to Lender 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 Lender 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 Lender may reasonably require (to the extent reasonably available to Borrower). Lender 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 Lender fails to respond in writing to such request within such ten (10) Business Day time period, then Borrower may send to Lender 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.” Lender’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 Lender 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****.****][[52]](#footnote-53)**

**[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 Lender 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 Lender. Lender shall be “deemed” to have approved any Lease that: (a) is on the standard form lease approved by Lender with no material deviations except as approved by Lender, 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 Lender. If requested by Lender, Borrower shall provide to Lender a correct and complete copy of each existing Lease, including any exhibits, and any guaranty(ies) thereof, within seven (7) days after Lender’s request.]**

**4. Tenant Estoppels**. At Lender’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 Lender, written estoppels in form and substance reasonably satisfactory to Lender, executed by Tenants under the Leases in the Property and confirming the term, rent and other provisions and matters reasonably requested by Lender from time to time relating to the Leases, including, without limitation, such estoppels as may be required by Lender as a condition precedent to its making the Loan. **[delete for multifamily]**

**5.** **Subordination, Non-Disturbance and Attornment Agreements**. If requested by Borrower, Lender may, at Lender’s election and Borrower’s expense, enter into a Subordination, Non-Disturbance and Attornment Agreement on Lender’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 Lender’s request, Borrower shall promptly deliver to Lender (a) a complete rent roll of the Property in such detail as Lender may require, together with such operating statements and leasing schedules and reports as Lender may require, and (b) such other leasing information as Lender may request.

[**EXHIBIT 5.19**

**REQUIRED CAPITAL IMPROVEMENTS**]

[Insert]

[**EXHIBIT 5.20**

**REQUIRED REPAIRS**]

[Insert]

[**EXHIBIT 5.21**

**CLOSING DATE TENANT IMPROVEMENT/LEASING COST SCHEDULE**]

[Insert]

[**EXHIBIT 5.22**

**ENVIRONMENTAL REMEDIATION WORK**]

[Insert]

1. Use for variable rate loans. [↑](#footnote-ref-2)
2. Note: If deal terms include an option for Borrower to choose to borrow at Base Rate, include the following third prong to the Base Rate definition: “or (iii) Daily Simple SOFR in effect on such day (taking into account any Daily Simple SOFR floor set forth in the definition of “Daily Simple SOFR”), so long as a daily Daily Simple SOFR rate is offered, ascertainable and not unlawful and subject to Section 2.9”; (with Base Rate to be the highest of the three prongs). If Base Rate is used only as the fallback interest rate if Daily Simple SOFR is not available or is illegal, omit this third prong. [↑](#footnote-ref-3)
3. Omit Base Rate term for Fixed Rate Loans. [↑](#footnote-ref-4)
4. Parties may include if bracketed clause (c) of the “Benchmark Replacement Date” definition is included. [↑](#footnote-ref-5)
5. *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-6)
6. Parties can consider replacing “*i*” with “SOFR Determination Date” in all instances of this definition if preferred. [↑](#footnote-ref-7)
7. Please confirm with the closer on the transaction as to the relevant lookback period for such transaction. [↑](#footnote-ref-8)
8. For Fixed Rate Loans, omit “the greatest of” and subparts (i) and (ii). [↑](#footnote-ref-9)
9. 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-10)
10. *Note to drafter:*  Definition of Equity Maintenance Requirement, Sections 3.1(d), 6.2 and 7.8(b) can be deleted for:  (i) loans originated under the Truist CRE permanent loan program; (ii) loans that finance rehab or renovations/repositioning (value add projects) and bridge loans, **if** the property is already generating cash flow sufficient to meet Truist underwriting criteria for permanent loans (and is expected to continue to do so during renovations or improvements), and (iii) loans that satisfy another exemption from the definition of HVCRE ADC loan pursuant to Section 51 of The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Please confirm with the Truist relationship manager or portfolio manager on any given deal of a type described in clause (ii) that the loan meets Truist underwriting criteria for permanent financings before deleting this provision. [↑](#footnote-ref-11)
11. Insert other applicable floor set forth in the term sheet if necessary. [↑](#footnote-ref-12)
12. Consider adding the specific exclusion for COVID-19 related Force Majeure if possible. [↑](#footnote-ref-13)
13. *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-14)
14. *Note to drafter:* “Sole discretion” standard for approval of a Permitted Owner should not be modified without credit officer approval. [↑](#footnote-ref-15)
15. The number of U.S. Government Securities Business Days here should be one U.S. Government Securities Business Day fewer than the number of U.S. Government Securities Business Days set forth in the lookback in the definition of “Daily Simple SOFR” or “Daily Compounded SOFR”, as applicable, to account for the inherent one U.S. Government Securities Business Day lag built into SOFR. [↑](#footnote-ref-16)
16. Include as applicable. [↑](#footnote-ref-17)
17. Choose alternate provision in Section 2.1(d) and 5.21 as applicable. [↑](#footnote-ref-18)
18. See alternative Reserve provision at Section 5.21. [↑](#footnote-ref-19)
19. ***Note to drafter: add only if included in term sheet:***, or (iii) if, during the term of the Loan, an Affiliate of Borrower and Guarantor closes one or more Loans provided by or arranged through Lender or any of its Affiliates and issued under the Fannie Mae, Federal Home Loan Mortgage Corporation, or U.S. Department of Housing and Urban Development loan programs (“**Agency Loans**”). [↑](#footnote-ref-20)
20. Omit Section 2.9(a) for Fixed Rate Loans. [↑](#footnote-ref-21)
21. Bracketed language should not be included in the first draft. May be added in response to borrower's comments. [↑](#footnote-ref-22)
22. Bracketed language should not be included in the first drafts. May be added in response to borrower's comments. [↑](#footnote-ref-23)
23. ***Springing Rate Cap Provision, for use if applicable:***

    (a) In the event that at any time the Applicable Interest Rate 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 Daily Simple 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 Lender and shall be with a counterparty acceptable to Lender. Within ten (10) days of execution of a Rate Cap Agreement, Borrower shall execute and deliver to Lender a collateral assignment of interest rate protection agreement executed by Borrower and the counterparty, **[in form and substance satisfactory to Lender][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 Lender, which account shall also be collaterally assigned to Lender, 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, Lender 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 Lender 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 Lender until such cost is paid by Borrower to Lender. In connection with the Rate Cap Agreement and any replacement thereof required hereby, if the counterparty is not Lender or an Affiliate of Lender, Borrower shall use commercially reasonable efforts to obtain and deliver to Lender within fifteen (15) Business Days after the delivery of the Rate Cap Agreement, a customary opinion of counsel for the counterparty (upon which Lender and its successors and assigns may rely) in form, scope and substance reasonably acceptable to Lender. [↑](#footnote-ref-24)
24. [Omit Section 2.13 for Fixed Rate Loans]. [↑](#footnote-ref-25)
25. Revise or delete as applicable for collateral type. [↑](#footnote-ref-26)
26. *Note to drafter:*  Definition of Equity Maintenance Requirement, Sections 3.1(d), 6.2 and 7.8(b) can be deleted for:  (i) loans originated under the Truist CRE permanent loan program; (ii) loans that finance rehab or renovations/repositioning (value add projects) and bridge loans, **if** the property is already generating cash flow sufficient to meet Truist underwriting criteria for permanent loans (and is expected to continue to do so during renovations or improvements), and (iii) loans that satisfy another exemption from the definition of HVCRE ADC loan pursuant to Section 51 of The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Please confirm with the Truist relationship manager or portfolio manager on any given deal of a type described in clause (ii) that the loan meets Truist underwriting criteria for permanent financings before deleting this provision. [↑](#footnote-ref-27)
27. ## *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 Lender 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 Lender 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-28)
28. Include in lieu of short form Section 5.19 only if there are Required Replacements but no Additional Replacements; with appropriate adjustments with respect to a cash sweep. [↑](#footnote-ref-29)
29. Include as applicable. [↑](#footnote-ref-30)
30. To include if the transaction includes a cash sweep. [↑](#footnote-ref-31)
31. To include if the transaction includes a cash sweep. [↑](#footnote-ref-32)
32. Use as applicable in lieu of short form Section 2.1(d) (TI & Leasing Commissions). [↑](#footnote-ref-33)
33. Include if the transaction includes a cash sweep. [↑](#footnote-ref-34)
34. Include if no ongoing TI & Leasing Commissions Reserve Account requirement with appropriate adjustments with respect to a cash sweep. [↑](#footnote-ref-35)
35. Include if applicable. [↑](#footnote-ref-36)
36. Include if the transaction includes a cash sweep. [↑](#footnote-ref-37)
37. Confirm tax period. [↑](#footnote-ref-38)
38. *Note to drafter:*  Definition of Equity Maintenance Requirement, Sections 3.1(d), 6.2 and 7.8(b) can be deleted for:  (i) loans originated under the Truist CRE permanent loan program; (ii) loans that finance rehab or renovations/repositioning (value add projects) and bridge loans, **if** the property is already generating cash flow sufficient to meet Truist underwriting criteria for permanent loans (and is expected to continue to do so during renovations or improvements), and (iii) loans that satisfy another exemption from the definition of HVCRE ADC loan pursuant to Section 51 of The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Please confirm with the Truist relationship manager or portfolio manager on any given deal of a type described in clause (ii) that the loan meets Truist underwriting criteria for permanent financings before deleting this provision. [↑](#footnote-ref-39)
39. Do not use Debt Yield covenant in Fixed Rate Loans. [↑](#footnote-ref-40)
40. Do not use DSCR covenant in Fixed Rate Loans. [↑](#footnote-ref-41)
41. *Note to drafter*: Definition of Equity Maintenance Requirement, Sections 3.1(d), 6.2 and 7.8(b) can be deleted for: (i) loans originated under the Truist CRE permanent loan program; (ii) loans that finance rehab or renovations/repositioning (value add projects) and bridge loans, if the property is already generating cash flow sufficient to meet Truist underwriting criteria for permanent loans (and is expected to continue to do so during renovations or improvements), and (iii) loans that satisfy another exemption from the definition of HVCRE ADC loan pursuant to Section 51 of The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Please confirm with the Truist relationship manager or portfolio manager on any given deal of a type described in clause (ii) that the loan meets Truist underwriting criteria for permanent financings before deleting this provision. [↑](#footnote-ref-42)
42. Note to drafter: Do NOT include a loan assumption provision in a deal unless it was included in the term sheet, or you have confirmation that the approving credit officer has subsequently approved the addition of a loan assumption right. This is not a standard feature of all term loan deals. [↑](#footnote-ref-43)
43. *Note to drafter:* “Sole discretion” standard for approval of a Permitted Owner should not be modified without credit officer approval. [↑](#footnote-ref-44)
44. *Note to drafter:*  Loan assumption right should remain a one-time right. [↑](#footnote-ref-45)
45. *Note to drafter:* Transferability of any hedge provided by Truist requires separate approval from Truist credit risk management for our Financial Risk Management (“FRM”) (derivatives) department and additional conditions may be imposed in the ISDA documentation. If Truist will provide a hedge for the deal, please ensure that the deal team communicates to Truist FRM anynegotiated changes to our base form “Permitted Owner” definition and Section 7.11 Loan Assumption provision, as those changes are agreed to, as changes to these provisions may impact ISDA negotiation. [↑](#footnote-ref-46)
46. 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 Lender of the commitment of available funds sufficient to provide for the restoration thereof.” [↑](#footnote-ref-47)
47. 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 Lender 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 Lender shall not have the practical realization of the benefits provided, or purported to be provided, thereby.” [↑](#footnote-ref-48)
48. *Note*: Use CRE Loan Admin Office where the loan will be serviced, as confirmed by the Closing Specialist on a given deal. [↑](#footnote-ref-49)
49. 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-50)
50. 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-51)
51. Revise this Exhibit as necessary for asset type and approved deal terms (consult RM). [↑](#footnote-ref-52)
52. Do not include in first draft. May be added in response to Borrower comments. [↑](#footnote-ref-53)