**Note to Drafter: this Agreement is to be used with respect to the Collections Account (where property rents, etc. are to be deposited) in connection with CRE loans that have a Cash Management feature (i.e., a non-default trigger upon which property cash flow is swept to a lender-controlled deposit account, with funds to be disbursed by lender pursuant to an established waterfall). We are very limited in changes we are able to make to this Agreement due to operational limitations; thus, please consult with Truist internal legal (Jessica Standera, at** **jessica.standera@suntrust.com****) prior to agreeing to any substantive changes to this form.**

**THIS FORM IS NOT TO BE USED IN ANY ARRANGEMENT WHERE TRUIST IS NOT THE LENDER/SECURED PARTY.**

|  |  |
| --- | --- |
|  | **Deposit Account Control Agreement****(CRE Cash Management)** |

|  |  |
| --- | --- |
| **TO** | **TRUIST BANK [as Administrative Agent for the Lenders (as hereinafter defined)]** |
|  |  |

To Whom It May Concern: This will confirm unto **Truist Bank [as Administrative Agent for the Lenders]** (in such capacity, the “**Secured Party**”) that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Borrower**”), **TRUIST BANK,** in its capacity as depository bank (“**Truist**”), and Secured Party have agreed as follows with respect to the accounts identified on Exhibit A attached hereto (the “**Accounts**”):

**1. Acknowledgment of Security Interest.** Borrower and Truist acknowledge and confirm that although the Accounts shall remain in the name of Borrower, all funds now or at any time hereafter deposited to the Accounts and all of Borrower’s rights regarding such Accounts constitute part of the collateral in which Borrower has granted a security interest to Secured Party. If the Borrower maintains one or more lockboxes with Truist, as identified on (the “**Lockboxes**”), the Lockbox Collateral (as defined on ) shall also constitute part of the collateral in which Borrower has granted a security interest to Secured Party, and all funds and other items coming into such Lockboxes shall be deposited into one of the Accounts. Borrower agrees that it will not, without the written consent of Secured Party, revise any instructions then in effect related to the processing of the Lockbox Collateral or otherwise attempt to change or redirect the items deposited in the Lockboxes to any account other than one of the Accounts. This Deposit Account Control Agreement (this “**Agreement**”) constitutes a separate agreement with respect to each of the Accounts and is intended by Borrower and Secured Party to evidence Secured Party’s control over the Accounts and shall serve as instructions for the disposition of the funds in the Accounts without the further consent of Borrower.

 **2. Required Actions.** From and after the effective date of this Agreement, Truist, Borrower and Secured Party agree that:

 **A.** Truist will not honor drafts, demands, withdrawal requests or remittance instructions by Borrower related to the Accounts, except as follows: Until Truist has received a Notice of Cash Sweep Period (as defined below) indicating that a Cash Sweep Period (as defined below) has commenced, Truist will, in accordance with its standard policies and procedures then in effect, remit on a daily basis all collected and available funds on deposit in the Accounts directly to Borrower by electronic transfer of immediately available funds in accordance with the following wire transfer instructions or any subsequent wire transfer instructions of Borrower, or in accordance with such other means of transfer as may be mutually agreed upon in writing by Borrower and Truist. Borrower agrees to execute any treasury management agreement necessary to effect a transfer other than a wire transfer, each in form and substance satisfactory to Truist; provided however that Borrower’s failure to execute any requested agreements at such future date shall not impair Borrower’s rights to obtain the funds from the Accounts as provided for in this Section 2(A). Notwithstanding the foregoing, Truist shall not be obligated to comply with any written instructions of Borrower (a) to transfer less than all the funds in the Accounts or (b) to send funds to more than one recipient.

 **Borrower Wire Transfer Instructions:**

|  |  |
| --- | --- |
| Account Number **[Note to preparer: enter information for Borrower’s Operating Account here; if account is held at Truist [preferred], Bank Address, ABA Number and Reference Number may be left blank]** | Account Name |
|  |  |
| Bank Name | Bank Address |
|  |  |
| ABA Number | Reference Number |
|  |  |

 **B.** Upon Truist’s receipt of a Notice of Cash Sweep Period, and at all times during a Cash Sweep Period, Truist will hold solely for the account of Secured Party all funds which may be on deposit in the Accounts and Secured Party shall have the right, without further notice to or consent from Borrower, to direct Truist as to the disposition of all amounts deposited in the Accounts from time to time, and Truist agrees to comply with such directions, subject to Truist’s standard policies and procedures then in effect. For purposes of this Agreement, a “**Cash Sweep Period**” is any period during which either: (i) a Cash Flow Sweep Event has occurred and is continuing, or (ii) an Event of Default has occurred, pursuant to the provisions of (and as both terms are defined in) that certain **[Construction][Term]** Loan Agreement dated **[as of even date herewith]**, **[by and among Borrower, Secured Party, as Administrative Agent, and certain “Lenders” from time to time party thereto (collectively, the “Lenders”)][by and between Borrower and Secured Party]** (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”).

 **C.** Once Truist receives written instructions from Secured Party that a Cash Sweep Period has commenced and that Borrower is no longer entitled to direct the disposition of funds from the Accounts (the “**Notice of Cash Sweep Period**”), Truist will, in accordance with its standard policies and procedures then in effect, remit the collected and available funds on deposit in the Accounts in such amounts and at such times as may be directed by Secured Party in accordance with any wire transfer instructions or any other means of transfer as may be mutually agreed upon by Secured Party and Truist, including but not limited to internal transfers between the Accounts and any other deposit account maintained in the name of Borrower at Truist. The parties hereto acknowledge and agree that any Notice of Cash Sweep Period will be in effect until such time as Secured Party provides written notice to Truist, in accordance with the provisions of this Agreement, that the Cash Sweep Period has been terminated.

 **D.** Except for the amounts described in this Section 2(D) and the security interest Truist has in items credited to the Accounts solely as a “collecting bank” under Article 4 of the Uniform Commercial Code, Truist subordinates any security interest, lien or right of recoupment or set-off that it may have against the Accounts during the term of this Agreement to Secured Party’s security interest. Truist will not exercise any right of set-off against checks or other amounts deposited in or credited to the Accounts, except for (i) Truist’s standard fees and charges for operating and maintaining the Accounts, including fees for returned items and fees for services provided pursuant to the Deposit-Related Agreements (as such term is defined in Section 10 below); (ii) amounts previously credited to the Accounts, including the face amount of a check, wire transfer of funds, ACH entry, merchant card transaction, or other item, which is deposited in or credited to the Account, whether before or after the date of this Agreement, and which is returned unpaid, is subject to a merchant card chargeback, an adjustment entry under applicable clearing house rules, or is otherwise determined by Truist to be uncollectible, whether for insufficient funds or for any other reason, and without regard to the timeliness of the return, chargeback, adjustment, or notice of non-payment; (iii) adjustments or corrections for posting or encoding errors; and (iv) Truist’s standard fees and charges resulting from performance of this Agreement, including, without limitation, wire transfer fees. If the balance of collected funds in the Accounts is insufficient for such purposes or if Truist makes a good faith determination that it is prohibited from exercising its right of set-off by any applicable order, judgment, decree or injunction, or any applicable law, Borrower will be liable to Truist for such insufficiency and agrees to reimburse Truist upon written demand. If a Cash Sweep Period is in effect and Borrower fails to reimburse Truist within five (5) Business Days of written demand, or if a Cash Sweep Period is in effect and Truist is otherwise prohibited from demanding such amounts from Borrower due to the commencement of any bankruptcy proceeding or the provisions of any judicial or regulatory order or process, Secured Party agrees to reimburse Truist for such insufficiency within ten (10) Business Days of written demand; provided, however, that the liability of Secured Party shall not exceed the aggregate amount of funds transferred out of the Accounts at the direction of Secured Party pursuant to a Notice of Cash Sweep Period or any subsequent instructions hereunder, and Truist must request such reimbursement either prior to termination of this Agreement or within ninety (90) days thereafter. For purposes of this Agreement, a “Business Day” is any day other than Saturday, Sunday, or any other day on which Truist is authorized or required by law to be closed.

 **E.** Truist will follow its usual procedures in the event any Account or any check, draft or other order for payment of money should be or become the subject of any writ, levy, order or other similar judicial or regulatory order or process, including but not limited to the commencement of a case pursuant to Title 11, United States Code, filed by or against Borrower, or the commencement of any similar case under then applicable federal or state law providing for the relief of debtors or the protection of creditors by or against Borrower. Notwithstanding any other provision of this Agreement, Truist may act as it deems necessary in its sole discretion to comply with all applicable provisions of any statute, writ, levy, order, or process, and neither Borrower nor Secured Party shall assert any claim against Truist for so doing.

 **F.** Truist hereby agrees and confirms to Secured Party that (i) Truist is an organization engaged in the business of banking and maintains each of the Accounts as a demand deposit account in the ordinary course of its business, (ii) Truist has not entered into any currently effective deposit account control agreement with any third party under which Truist may be obliged to comply with instructions regarding the Accounts originated by such third party, (iii) Truist will not enter into a deposit account control agreement with respect to the Accounts for the benefit of any person other than Secured Party during the term of this Agreement; and (iv) the records of Truist with respect to the Accounts shall recognize and reflect the security interest in favor of Secured Party.

 **G.** Truist will provide to Secured Party a copy of each periodic account statement relating to the Accounts ordinarily furnished by Truist to Borrower, and Borrower hereby authorizes Truist, at Borrower’s expense, to provide such statements. Truist’s liability for failing to provide an account statement will not exceed Truist’s cost of providing the statement.

 **3. Notices.** Any direction or notice to Truist given or delivered hereunder shall be in writing, signed by the party giving such direction or notice, and shall only be deemed to have been validly given or delivered upon receipt by Truist. Truist shall be entitled to rely upon any notice or other writing Truist believes in good faith to be made by Secured Party without further investigation. All notices hereunder shall be delivered to the addresses listed below the signature line for each party to this Agreement or to such other address specified by any party in a written notice to the other parties hereto and shall be given by certified mail, return receipt requested, by overnight delivery service, by facsimile or by “PDF” electronic transmission. If any notice is given by “PDF” electronic transmission, confirmation of receipt must be made by return transmission of a “read-receipt” notification or other affirmative electronic transmission from the receiving party; and if any notice is given by facsimile, a copy of such notice must also be delivered by one of the other enumerated methods. Further, for purposes hereof, a Notice of Cash Sweep Period and a notice that a Cash Sweep Period has been terminated shall be effective no later than the opening of business on the second (2nd) Business Day next succeeding the Business Day on which such notice is actually received by each of the “Contacts” of Truist set forth below its signature line; provided, however, that if any such notice is so received after 10:00 a.m., Charlotte, North Carolina time, on any Business Day, such notice will become effective no later than the opening of business on the third (3rd)Business Day next succeeding the Business Day on which such receipt occurs.

 **4. Waiver; Indemnity.** Borrower and Secured Party specifically waive all claims of any nature against Truist relating to losses or damages of any nature whatsoever arising from or connected to or allegedly arising from or connected to any action or failure to act by Truist in connection with this Agreement, except to the extent directly caused by Truist’s gross negligence or willful misconduct as determined in a court of competent jurisdiction in a final non-appealable order. Truist shall not be liable for, and Borrower agrees to defend, indemnify and hold Truist harmless from and against, any and all liabilities, losses, damages, costs or expenses (including, without limitation, court costs, reasonable and documented attorneys’ fees and other litigation expenses) which Truist may incur in connection with or pursuant to this Agreement, except to the extent directly caused by Truist’s gross negligence or willful misconduct as determined in a court of competent jurisdiction in a final non-appealable order. Secured Party agrees to defend, indemnify and hold Truist harmless from and against any and all liabilities, losses, damages, costs or expenses (including, without limitation, reasonable and documented attorneys’ fees, court costs, and other litigation expenses) to the extent incurred by Truist acting pursuant to a Notice of Cash Sweep Period or any subsequent instructions of Secured Party in connection with or pursuant to this Agreement, including a notice that a Cash Sweep Period has been terminated, except to the extent directly caused by Truist’s gross negligence or willful misconduct as determined in a court of competent jurisdiction in a final non-appealable order. In no event shall Truist be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Truist’s reasonable control or for indirect, special, punitive or consequential damages or for lost profits. Furthermore, notwithstanding anything in this Agreement to the contrary, (i) Truist shall have no fiduciary duties under this Agreement or any transaction or service contemplated by the provisions hereof to any party; (ii) Truist shall have no liability as a result of acting on any written notice, request, or withdrawal, payment, transfer, or other instruction (including but not limited to electronically confirmed facsimiles) that Truist in good faith believes to be furnished by Secured Party in accordance with the terms hereof, in which case the parties agree that Truist has no duty to make any further inquiry whatsoever; and (iii) Truist shall not be responsible for the validity, priority or enforceability of Secured Party’s security interest in the Accounts, nor shall Truist be responsible for enforcement of any agreement between Borrower and Secured Party.

 **5. Representations and Warranties.** Secured Party and Borrower each represents and warrants to Truist but with respect to itself only that (i) this Agreement had been duly authorized executed and delivered and constitutes its legal, valid, binding and enforceable obligation except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (ii) the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereunder will not (a) constitute or result in a breach of its certificate or articles of incorporation or organization, by-laws, limited liability company agreement, trust agreement or partnership agreement, as applicable, or the provisions of any material contract to which it is a party or by which it is bound or (b) result in the violation of any law, regulation, judgment, decree or governmental order applicable to it that would materially affect its performance hereunder; and (iii) all approvals and authorizations required to permit the execution, delivery, performance and consummation of this Agreement and the transactions contemplated hereunder have been obtained. The Borrower hereby represents and warrants that each of the Accounts is a “deposit account” as such term is defined under Article 9 of the Uniform Commercial Code.

 **6. Binding Effect; Assignment; Amendment.** This Agreement shall be binding upon and shall inure to the benefit of Truist, Borrower and Secured Party and their respective permitted successors and assigns. Borrower shall not assign or transfer any of its rights and obligations under this Agreement without the prior written consent of Secured Party and Truist. Secured Party may assign and transfer its rights and obligations under this Agreement and agrees to deliver written notice to Truist of such assignment as promptly as practicable but in no event later than thirty (30) days after the effective date of such assignment; provided, however, that any assignment and transfer by Secured Party of its obligations under this Agreement shall not relieve Secured Party of any obligations hereunder incurred prior to the effective date of the assignment and assumption unless such obligations are expressly assumed by Secured Party’s assignee. Truist (a) may assign or transfer its rights and obligations under this Agreement without the consent of Borrower or Secured Party (provided that any such assignment and transfer shall not relieve Truist of any obligations under this Agreement prior to the effective date of the assignment and assumption by Truist’s assignee): (i) to any direct or indirect depositary subsidiary of Truist, or (ii) to a successor depositary institution in the event of a merger or acquisition of Truist, and (b) may delegate certain cash management or similar services related to the Accounts as described in the Deposit-Related Agreements to third-party vendors that have contracted with Truist to provide such services, although any such delegation shall not relieve Truist of any obligations under this Agreement. This Agreement may not be modified without the prior written consent of Truist, Borrower and Secured Party.

 **7. Termination.** This Agreement may be terminated (a) by Secured Party at any time upon written notice to the other parties hereto or (b) by Truist, (i) upon five (5) days’ prior written notice to the other parties hereto if Borrower is in material breach of any of the Deposit-Related Agreements and (ii) otherwise, upon thirty (30) days’ prior written notice to the other parties hereto. Borrower agrees that it shall not close the Accounts or, to the extent applicable, the Lockboxes, or any of them, without prior written consent of the Secured Party. Prior to the implementation of a Notice of Cash Sweep Period, Truist shall have no obligation to notify Secured Party of the closure of any Accounts or any Lockboxes by Borrower and shall have no liability to Secured Party related to such closure or for the remittance of any funds in such Accounts or any Lockbox Collateral, directly to, or on the instructions of, Borrower. If this Agreement is terminated or any of the Accounts or, to the extent applicable, Lockboxes, are closed at any time while a Notice of Cash Sweep Period is in effect, Truist shall remit the proceeds of the Accounts or such Account being closed, as well as any Lockbox Collateral remaining in such Lockboxes on the date of such termination or closure, as directed by Secured Party, all in accordance with Truist’s standard policies and procedures then in effect.

 **8. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement. This Agreement shall be effective upon Truist’s execution of this Agremeent and receipt of duly executed counterparts from each of the parties hereto. Signatures to this Agreement transmitted in a commonly accepted electronic format that reproduces an image of the actual executed signature page shall have the same legal effect, validity, and enforceability as a manually executed counterpart of the document to the extent and as provided for in the Federal Electronic Signatures in Global and National Commerce Act and the applicable state law based on the Uniform Electronic Transactions Act. Further, Borrower agrees to deliver a manually executed counterpart of this Agreement to Truist no later than ten (10) Business Days following the date of this Agreement.

**9. Interpleader.** If at any time Truist, in good faith, is in doubt as to the action it should take under this Agreement, Truist shall have the right to commence an interpleader action utilizing a portion of the funds that are the subject of the interpleader action to cover all expenses related thereto, (including, without limitation, court costs, reasonable attorneys’ fees and other litigation expenses), and otherwise at Borrower’s expense. Truist shall thereafter be relieved of any further liability or obligation under this Agreement except for failure to comply with the order or decision of the applicable court in such interpleader action.

 **10. Miscellaneous.** This Agreement embodies the entire understanding and agreement by and among Truist, Borrower and Secured Party with respect to the subject matter hereof and supersedes all prior agreements, understandings and inducements among the parties, whether express or implied, or oral or written, including but not limited to any deposit account control agreement. If this Agreement conflicts with any deposit account agreement or other agreement between Truist and Borrower related to the Accounts, or conflicts with any cash management, treasury management, or similar service provided by Truist in connection with the Accounts (the “**Deposit-Related Agreements**”), this Agreement shall control; provided, however, that this Agreement will not derogate from any claim or defense that Truist may have against Borrower under any of the Deposit-Related Agreements or create any third-party beneficiary rights under any of the Deposit-Related Agreements in favor of Secured Party. The fees and charges associated with the maintenance and administration of the Accounts will be deducted from the Accounts or any other account designated by the Borrower on the Business Day such fees and charges are due pursuant to the Deposit-Related Agreements; all fees and charges are subject to change from time to time at Truist’s discretion and otherwise in accordance with the provisions in the Deposit-Related Agreements. This Agreement shall be governed in all respects by and construed in accordance with the applicable federal laws and the internal laws of the state of Georgia, which state shall also be the “jurisdiction” of Truist within the meaning of Article 9 of the Uniform Commercial Code. In addition, unless otherwise specifically stated herein, the Accounts and Truist’s policies and procedures with respect thereto, are subject to state banking laws, the Uniform Commercial Code, applicable Federal laws and regulations, Federal Reserve and clearing house rules and procedures, and other applicable laws in effect from time to time. As a condition to the service provided by Truist hereunder and upon reasonable notice, Borrower hereby agrees to provide current financial statements to Truist to the extent such financial statements are not publicly available or are otherwise provided to Truist in its capacity as a lender to Borrower; any financial statements provided shall be subject to Truist’s privacy policy. The obligations of Borrower and Secured Party under Section 2(D) hereof and the terms of Sections 4, 9 and 11 hereof shall survive the termination of this Agreement.

 **11. JURY TRIAL WAIVER**. **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 ACTION, SUIT, PROCEEDING OR COUNTERCLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| This Agreement shall be deemed effective as of |  | , |  | or, if later, the date on which the final |
| party to this Agreement executes the Agreement in the appropriate space below and delivers its signature to Truist. |

[**signatures appear on following page**]

|  |  |
| --- | --- |
| **Borrower Name:** |  |
| Acknowledged and Agreed to as of this |  | day of |  | , |  | . |

|  |
| --- |
|  |
| Signature |
|  |
|  |
| Print Name |
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|  |
| Title |
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**Contact:**

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| Attention |
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| City, State, ZIP Code |
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| Phone Number |
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| **Secured Party Name:** | **Truist Bank [as Administrative Agent for the Lenders]** |
| Acknowledged and Agreed to as of this |  | day of |  | , |  | . |

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| Signature |
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| Print Name |
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| Title |
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**Contact:**

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| Attention |
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| City, State, ZIP Code |
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| --- |
| **Truist Bank** |
| Acknowledged and Agreed to as of this |  | day of |  | , |  | . |

|  |
| --- |
|  |
| Relationship Manager Signature |
|  |
|  |
| Print Name and Title |

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| --- |
| **Contacts:**Truist Bank – Commercial Real Estate Support TeamAttention: Susan HastingsMail Code FL-ORL-1053200 S. Orange Ave., 5th FloorOrlando, FL 32801**With a copy to:**Truist Bank Legal Department – Commercial Real Estate303 Peachtree Street NE, Suite 3600 Mail Code GA-Atl-0643 Atlanta, Georgia 30308 |

**Exhibit A**

**To Deposit Account Control Agreement (CRE Cash Management)**

**Accounts and Lockboxes**

“Accounts”, as used in the attached **Deposit Account Control Agreement**, means the accounts listed below.

|  |  |
| --- | --- |
| **Account Name** | **Account Number** |
|  |  |
|  |  |
|  |  |
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(If Lockbox Collateral will be included in this **Deposit Account Control Agreement**, the lockbox number(s) must be inserted in the table below.)

“Lockbox Collateral” means that certain lockbox number(s) (listed below) operated by Truist for the benefit of Borrower (the “Lockbox” or “Lockboxes”), along with all checks, drafts, collection remittances, money orders, instruments, cash and other items at any time received in any such Lockbox for deposit in any Account (subject to specific lockbox instructions in effect for processing items received in any such Lockbox), and all wire transfers of funds, automated clearing house (“ACH”) entries, credits from a merchant card transaction and other electronic funds transfers or other funds deposited in, credited to, or held for deposit in or credit to, any Account through lockbox processing, and all proceeds of any of the foregoing.

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| **Lockbox Numbers** |
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