|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Interest Rate | Principal | Funding Date | Maturity Date | Loan Number |
| 14.0% | $165,000 | 10/11/2024 | 04/10/2025 | B1066 |

**UNLIMITED CONTINUING GUARANTY**

**Date and Parties.** The date of this Unlimited Continuing Guaranty (Guaranty) is October 11, 2024. The parties and their address are:

|  |  |  |  |
| --- | --- | --- | --- |
| **Lender:** | | **Borrower:** | |
|  | Asymmetric Investments LLC  4611 Hard Scrabble Road  Suite 109 #336  Columbia, SC 29229 |  | Upstream Residential LLC  456 High St  Columbia, SC 29209 |
| **Property:** | | **Guarantor:** | |
|  | 123 Main St  Columbia, SC 29229 |  | John Smith  789 Oak St  Columbia, SC 29223 |

1. **CONSIDERATION.** Borrower, **Upstream Residential LLC** ("the Borrower"), has applied for a loan ("the Loan") from Lender in the Principal Amount and terms described above, to be evidenced by a Commercial Promissory Note ("the Note") dated the date hereof and secured by a Mortgage, Assignment of Rents and Leases, Security Agreement, and Fixture Filing ("the Security Instrument") on the Property described above. Lender is not willing to make the Loan, or otherwise extend credit to Borrower, unless the undersigned Guarantor(s) ("the Guarantor"), which is an affiliate of Borrower and will receive direct or indirect benefit from Lender's making of the Loan to Borrower, unconditionally guarantees the payment of all amounts due under the terms of the Note and/or the Loan and performance by Borrower of each and every term, covenant, condition, and agreement contained therein and in the Loan documents or under any and all other agreements executed by the Borrower to or for the benefit of the Lender in connection with the Loan on the part of Borrower to be kept, observed or performed. The Security Instrument, Note, and such other loan documents and agreements are hereinafter collectively referred to as the "Loan Documents." As an inducement to Lender to enter into one or more loans, including the Loan, or other financial accommodations with or on behalf of Borrower, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor, intending to be legally bound hereby, executes this Guaranty and represents, warrants, covenants, and agrees for the benefit of Lender as set forth in in this Guaranty.
2. GUARANTY. Guarantor hereby absolutely and unconditionally guarantees to Lender the prompt and full payment and performance of the Note, and the due and punctual performance and observance by Borrower of any other terms, covenants, and conditions of the Loan Documents on the part of the Borrower to be kept, observed, or performed, whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants, and conditions thereof, now or at any time hereafter made or granted, and promises to pay all present and future, joint and/or several, direct and indirect, absolute and contingent, express and implied, indebtedness, liabilities, obligations, and covenants (cumulatively "indebtedness") to Lender when due (whether upon maturity or by demand, acceleration or otherwise). Guarantor/Borrower's liabilities and obligations under this Guaranty ("Guaranteed Obligations") shall be unlimited and shall include all present and future written agreements between Guarantor/Borrower and Lender (whether executed for the same or different purposes than the foregoing), evidencing the indebtedness, together with all interest and all of Lender's expenses and costs including, but not limited to, reasonable attorney's fees incurred in connection with the indebtedness and including any amendments, extensions, modifications, renewals, replacements, or substitutions thereto including, but not limited to, the Note. The liability of each Guarantor hereunder is joint and several with all other Guarantors, if applicable, and all other {{guarantor}}s, and is independent of and separate from the liability of Borrower, any other {{guarantor}}, person, or entity, and is independent of the availability of any collateral security for and/or under any documents granting Lender security for the Loan.
3. **SECURITY INTEREST.** The Guaranteed Obligations are secured by the collateral described in the Note and/or Security Instrument and/or Loan Documents executed by Borrower/Guarantor in connection with this Guaranty and any collateral described in any other security instrument(s) securing this Guaranty including, but not limited to, a Security Instrument executed by Borrower conveying certain land and premises situate in the State of South Carolina, for the benefit of Lender and referenced hereinabove.
4. ABSOLUTE AND CONTINUING NATURE OF GUARANTY. The Guaranteed Obligations are absolute and continuing and shall not be affected or impaired if Lender repeatedly and unconditionally amends, renews, extends, compromises, exchanges, fails to exercise or perfect rights in, impairs or releases any collateral or any of the indebtedness owed by Guarantor/Borrower or any Co-{{guarantor}}/Co-{{borrower}} or third party (even if such impairs Guarantor/Borrower's rights of subrogation) to Lender. In addition, the Guaranteed Obligations shall not be affected or impaired by the discharge (including, but not limited to, any inability to collect a deficiency judgment against), death, incompetency, termination, dissolution, insolvency, business cessation, or other financial deterioration of Guarantor/Borrower or any Co-{{guarantor}}/Co-{{borrower}} or third party or by any state of facts or the happening from time to time of any event, including without limitation the following: (a) The invalidity, irregularity, illegality, or unenforceability of, or any defect in, the Note, Security Instrument, Loan Documents, or any agreement or any collateral security for the Note or the Guaranteed Obligations (the "Collateral"); (b) Any present or future law or order of any government (de jure or de facto) or of any agency thereof purporting to reduce, amend or otherwise affect the indebtedness of the Guarantor/Borrower or any other obliger or any other terms of payment; (c) The waiver, compromise, settlement, release, or termination of any or all of the obligations, covenants or agreements of the Guarantor/Borrower or any Co-{{guarantor}}/Co-{{borrower}} or third party under the Note, Security Instrument, Loan Documents or any agreement; (d) The failure to give notice to the Guarantor/Borrower of the occurrence of an Event of Default, as defined in the Note, Security Instrument, Loan Documents, or any other agreement; (e) The loss, release, sale, exchange, surrender, or other change in any Collateral; (f) The repeated extension of time for payment of any {{principal}} of or interest on the indebtedness or of the time for performance of any obligations, covenants or agreements under or arising out of the Note, Security Instrument, Loan Documents, or any agreement, or the repeated extension or the renewal of any thereof; (g) The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Note, Security Instrument, Loan Documents, or any agreement; (h) The taking of, or the omission to take, any of the actions referred to in the Note, Security Instrument, Loan Documents, or any agreement; (i) Any failure, omission or delay on the part of the Lender to enforce, assert or exercise any right, power or remedy conferred on the Lender in the Note, Security Instrument, Loan Documents, or any agreement; U) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor/Borrower or any of their assets, or any allegation or contest of the validity of the Note, Security Instrument, Loan Documents, or any agreement; (k) The default or failure of the Guarantor/Borrower to fully perform any of the Guaranteed Obligations set forth in this Guaranty; (I) Any event or action that would, in the absence of this paragraph, result in the release or discharge of the Guarantor/Borrower from the performance or observance of any of the Guaranteed Obligations, covenants, or agreements contained in this Guaranty; and (m) Any other circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or a Co-{{guarantor}}/Co-{{borrower}}.
5. DIRECT AND UNCONDITIONAL NATURE OF GUARANTY. This Guaranty is a guarantee of payment and not of collection. The Guaranteed Obligations of the Guarantor are direct and unconditional. The Guarantor hereby acknowledges and agrees to waive any right the Guarantor may have otherwise had (now or in the future) to require any action be brought first against the Borrower or any Co-Guarantor/Co-{{borrower}} or to require that resort be made to any security or the Collateral or to any balance of any deposit account or credit on the books of the Lender in favor of the Borrower or any Co-Guarantor/Co-{{borrower}}. Nothing herein contained, however, shall prevent Lender from foreclosing the Security Instrument, or from exercising any other rights under the Loan Documents. If such foreclosure or other remedy is availed of, only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due hereunder or under the Note, Security Instrument, and/or the other Loan Documents. Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the security or collateral for the indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of such collateral so sold or offered for sale for its own account and may apply the amount bid therefor against the balance due it pursuant to the terms of the Note and/or the other Loan Documents.

IF LENDER FORECLOSES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER OR GUARANTOR: (1) THE UNDERSIGNED'S GUARANTEED OBLIGATIONS/INDEBTEDNESS MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT A FORECLOSURE SALE, LESS ANY COSTS, FEES, OR EXPENSES RELATED TO THE SALE EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE; AND (2) LENDER MAY COLLECT FROM THE UNDERSIGNED EVEN IF LENDER, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT THE UNDERSIGNED MAY HAVE TO COLLECT FROM BORROWER.

1. **WAIVER AND CONSENTS.** The undersigned hereby waives and agrees not to assert or take advantage of any defense based upon:
   1. Notice of acceptance of this Guaranty and of the making of the Loan by Lender to Borrower;
   2. Presentment and demand for payment of the debt evidenced by the Note or any portion thereof;
   3. Protest and notice of dishonor or default to the undersigned with respect to the debt evidenced by the Note or any portion thereof;
   4. Notice of intent to accelerate, notice of acceleration, and all other notices to which the undersigned might otherwise be entitled;
   5. Any demand for payment under this Guaranty;
   6. The incapacity, lack of authority, death, or disability of Borrower or any other person or entity;
   7. The failure of Lender to commence an action against Borrower and/or Guarantor or to proceed against or exhaust any security held by Lender at any time, or to pursue any other remedy whatsoever at any time;
   8. Any duty on the part of Lender to disclose to the undersigned any facts Lender may now or hereafter know regarding Borrower, regardless of whether Lender has reason to believe (i) that any such facts materially increase the risk beyond that which the undersigned intends to assume, or (ii) that such facts are unknown to the undersigned, the undersigned acknowledging that he, she, or it is fully responsible for being and keeping informed of the financial condition and affairs of Borrower;
   9. Lack of notice of default, demand of performance or notice of acceleration to Borrower or any other party with respect to the Loan or Borrower's obligations guaranteed hereby;
   10. The consideration for this Guaranty (or lack or inadequacy thereof);
   11. Any acts or omissions of Lender which vary, increase, or decrease the risk on the undersigned;
   12. Any rights or defenses based upon an offset by the undersigned against any obligation now or hereafter owed to the undersigned by Borrower;
   13. Any statute of limitations affecting the liability of the undersigned hereunder, the liability of Borrower or Guarantor under the Loan Documents, or the enforcement hereof, to the extent permitted by law;
   14. The application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender and the undersigned or intended or understood by Lender or the undersigned;
   15. An election of remedies by Lender, including any election to proceed against any collateral by foreclosure, whether real {{property}} or personal {{property}}, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of the undersigned or the rights of the undersigned to proceed against Borrower or any {{guarantor}} by way of subrogation or for reimbursement or contribution, or all such rights;
   16. Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of the {{principal}} obligor;
   17. Lender's election, in any proceeding instituted under Title 11 of the United States Code (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code or any successor statute; and
   18. Any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code.

THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES THE UNDERSIGNED MAY HAVE RELATED TO DEBT SECURED BY INTERESTS IN REAL PROPERTY.

Guarantor consents to any and all forbearances and extensions of the time for payment of the Note or performance under the Loan Documents, and to any and all changes in the terms, covenants, and conditions of the Loan Documents hereinafter made or granted, and to any and all substitutions, exchanges, or releases of all or any part of the collateral therefor. It is the intention hereof that Guarantor shall remain liable hereunder until the full amount of the {{principal}} of the Note, with interest, and any other sums due or to become due under the Loan Documents, shall have been fully paid, and the terms, covenants, and conditions of the Loan Documents shall have been fully kept, observed, and performed by Borrower notwithstanding any act, omission, or thing which might otherwise operate as a legal or equitable discharge of Guarantor.

1. DEFAULT BY BORROWER. In the Event of Default by Borrower under the terms of the Note, and if Lender declares the then outstanding {{principal}} amount of the Note to be immediately due and payable, then Guarantor shall, within 5 business days after demand in writing by the Lender to the Guarantor/Borrower pay to Lender the amount of all outstanding Guaranteed Obligations due and owing Lender. Payment by Guarantor to Lender shall be made at the address indicated herein or at any other address that may be specified in writing from time to time by Lender.
2. **NO SUBROGATION.** Guarantor agrees that it shall have no right of subrogation whatsoever with respect to the Note, Security Instrument, and/or Loan Documents, or to original monies due and unpaid thereon, or any collateral securing the same, unless and until Lender shall have received payment in full of all sums due under the Note, Security Instrument, and/or Loan Documents.
3. **ACCEPTANCE OF RISKS.** Guarantor acknowledges the absolute and continuing nature of this Guaranty and voluntarily accepts the full range of risks associated herewith including, but not limited to, the risk that Guarantor's financial condition shall deteriorate and the risk that Guarantor shall incur additional indebtedness to Lender in the future.
4. **TERMINATION.** This Guaranty shall remain in full force and effect until at such time as the Guaranteed Obligations are paid in full, and the Lender executes and delivers to Guarantor a written release thereof.
5. **ASSIGNMENT.** Guarantor agrees not to assign any of Guarantor's rights or Guaranteed Obligations described in this Guaranty without Lender's prior written consent, which consent may be withheld by Lender in its sole discretion. Guarantor agrees that Lender is entitled to assign some or all of its rights and remedies described in this Guaranty without notice to, or the prior consent of, Guarantor in any manner. Unless the Lender shall otherwise consent in writing, the Lender shall have an unimpaired right, prior and superior to that of any assignee, to enforce this Guaranty for the benefit of the Lender, as to those Guaranteed Obligations that the Lender has not assigned.
6. **MODIFICATION AND WAIVER.** The modification or waiver of any of the Guaranteed Obligations or Lender's rights under this Guaranty must be contained in a writing signed by Lender. Lender may delay in exercising or failing to exercise any of its rights without causing a waiver of those rights. A waiver on one occasion shall not constitute a waiver on any other occasion.
7. **SUCCESSORS AND ASSIGNS.** This Guaranty shall be binding upon and inure to the benefit of Guarantor and Lender and their respective heirs, successors, assigns, trustees, receivers, administrators, personal representatives, legatees, and devisees.
8. **NOTICE.** Any notice or other communication to be provided under this Guaranty shall be in writing and sent to the parties at the addresses described in this Guaranty or such other addresses as the parties may designate in writing from time to time, with copies of notices to Lender sent to the following address: LWI INVESTMENTS, LLC, 4611 Hard Scrabble Rd, Suite 109 #336, Columbia, SC 29229.

Any notice, demand, consent, approval, request, or other communication or document to be given hereunder to a party hereto shall be (a) in writing, and (d) deemed to have been given (i) on the 3rd business day after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (ii) on the next business day after being deposited (with instructions to deliver it on that business day) with a reputable overnight courier service, or (iii) (if the party's receipt thereof is acknowledged in writing) on being sent by telefax or another means of immediate electronic communication, in each case to the party's address set forth above or any other address in the United States of America which it designates from time-to-time by notice to each other party hereto, or (iv) (if the party's receipt thereof is acknowledged in writing) on being given by hand or other actual delivery to the party.

1. **SEVERABILITY.** In the event that any one or more provisions contained in this Guaranty or the accompanying Arbitration Agreement (if applicable) is determined to be invalid, illegal, or unenforceable under applicable law for any reason, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
2. **APPLICABLE LAW.** This Guaranty shall be governed, construed, and enforced in accordance with the laws of the State of South Carolina and federal law, as applicable. Unless applicable law provides otherwise, Guarantor consents to the jurisdiction and venue of any court located in such state selected by Lender, in its discretion, in the event of any legal proceeding under this Guaranty.
3. **COLLECTION COSTS.** To the extent permitted by law, Guarantor agrees to pay Lender's reasonable fees and costs, including, but not limited to, fees and costs of attorneys and other agents (including without limitation paralegals, clerks, and consultants), whether or not any attorney or agent is an employee of Lender, which are incurred by Lender in collecting any amount due or enforcing any right or remedy under this Guaranty, including, but not limited to, all fees and costs incurred on appeal, in bankruptcy, for post-judgment collection actions, and whether or not suit is brought.
4. REPRESENTATIONS OF GUARANTOR. To induce Lender to enter into the Loan and extend credit to Guarantor/Borrower, Guarantor acknowledges and represents to Lender the following: (a) Guarantor has full power, authority, and legal right to enter into this Guaranty and to perform the Guaranteed Obligations under the terms hereof; (b) This Guaranty constitutes a legal, valid, and binding obligation of the Guarantor, and Guarantor has received reasonably equivalent value in consideration for the execution of this Guaranty; (c) As of the date hereof, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is solvent and has assets which, fairly valued, exceed its obligations, liabilities (including contingent, subordinate, and unliquidated liabilities), and debts, and has sufficient cash flow, {{property}}, and assets to satisfy and repay its obligations and liabilities; (d) There is no action, suit, proceeding or investigation pending or, to the best of the knowledge of Guarantor, threatened against or affecting Guarantor/Borrower at law or equity, or before any arbitrator of any kind, or before any governmental department, commission, board, bureau agency or instrumentality (domestic or foreign) which is likely to result in any material adverse change in the {{property}} or assets, or in the condition (financial or otherwise) of the Guarantor, or materially impair its ability to perform its Guaranteed Obligations; and (e) All representations and warranties made by the Guarantor shall survive the execution hereof.
5. **ENTIRE AGREEMENT.** This Guaranty represents the complete and integrated understanding between Guarantor and Lender regarding the terms hereof.
6. **NO ALTERATION OR OTHER DOCUMENTS.** No provision of this Guaranty shall be construed to alter or amend the Loan Documents, or to relieve Borrower of any duties or obligations under the Loan Documents.
7. **WAIVER OF JURY TRIAL.** THE GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF, OR IN ANY WAY PERTAINING TO, THE NOTE, THIS GUARANTY, OR ANY MORTGAGE OR SECURITY INSTRUMENT ARISING FROM THIS GUARANTY. THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY MADE BY THE GUARANTOR, AND THE GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE UNDERSIGNED WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS GUARANTY.
8. REMEDIES CUMULATIVE. Guarantor hereby agrees with Lender that all rights, remedies, and recourses afforded to {{lender}} by reason of this Guaranty, or otherwise, are separate and cumulative and may be pursued separately, successively, or concurrently, as occasion therefore shall occur, and are nonexclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse which {{lender}} may have.
9. **CONSENT TO RELIEF FROM AUTOMATIC STAY.** Guarantor hereby agrees that if any of them shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended; (ii) be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended;(iii) file or be the subject of any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors; (iv) seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator; (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against Guarantor for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or stale act or law relating to bankruptcy, insolvency, or relief for debtors, Lender shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or from any other stay or suspension of remedies imposed in any other manner with respect to the exercise of the rights and remedies otherwise available to Lender hereunder and/or under the Loan Documents.
10. **MISCELLANEOUS.** Guarantor and Lender agree that time is of the essence. Guarantor agrees, upon written request of Lender, to execute and deliver to Lender from time to time any additional instruments or documents considered reasonably necessary by Lender or its counsel, and Guarantor will provide Lender with current financial statements and other financial information upon request. All references to Guarantor in this Guaranty shall include all entities or persons signing this Guaranty. If there is more than one Guarantor, their Guaranteed Obligations under this Guaranty shall be joint and several. Nothing in this Guaranty is intended to require, nor should it be construed to require, the signature of Guarantor's spouse in violation of Regulation B (12.C.F.R Part 202.7) in connection with this or any other indebtedness of Guarantor to Lender. The captions herein are for reference purposes only.

THE UNDERSIGNED ACKNOWLEDGES THAT HE OR SHE HAS READ, UNDERSTANDS, AND AGREES TO THE TERMS AND CONDITIONS OF THIS GUARANTY, THE NOTE AND THE LOAN DOCUMENTS, AND HAS EXECUTED THIS GUARANTY KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY, WITH THE INTENT TO BE LEGALLY BOUND THEREBY. GUARANTOR HAS HAD THE OPPORTUNITY TO CONSULT WITH AND OTHERWISE BE ADVISED BY COUNSEL OF GUARANTOR'S CHOOSING AS NECESSARY OR APPROPRIATE. GUARANTOR ACKNOWLEDGES RECEIPT OF AN EXACT COPY OF THIS GUARANTY, THE NOTE, THE LOAN DOCUMENTS, AND/OR THE ARBITRATION AGREEMENT (IF APPLICABLE).

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty under as of October 11, 2024.

GUARANTOR(S):

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

Daniel Furtick, individually