LOAN AGREEMENT  
(Construction Loan)

by and between

{Deal\_\_r.Account.Name | upperCase},  
a {borrowerdetails.name | upperCase}, a {borrowerdetails.company} {borrowerdetails.entity},  
as Borrower,

and

COREVEST AMERICAN FINANCE LENDER LLC,  
a Delaware limited liability company,   
as Lender,

Dated as of {Deal\_\_r.CloseDate | addDaysFull:0}

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LOAN AGREEMENT  
(Construction Loan)

Loan No. {Deal\_\_r.Deal\_Loan\_Number\_\_c}

Property Address: {Property\_Advances\_\_r[0].Property\_\_r.Name}, {Property\_Advances\_\_r[0].Property\_\_r.City\_\_c}, {Property\_Advances\_\_r[0].Property\_\_r.State\_\_c} {Property\_Advances\_\_r[0].Property\_\_r.ZipCode\_\_c}

THIS LOAN AGREEMENT (this “**Agreement**”), dated as of {Deal\_\_r.CloseDate | addDaysFull:0}, is made by and between {borrowerdetails.name | upperCase}, a {borrowerdetails.company} {borrowerdetails.entity}, (“**Borrower**”), and COREVEST AMERICAN FINANCE LENDER LLC, a Delaware limited liability company (together with its successor and assigns, “**Lender**”).

R E C I T A L S:

Borrower desires to obtain a loan (the “**Loan**”) from Lender in the maximum principal amount of {Deal\_\_r.LOC\_Commitment\_In\_Words\_\_c} and NO/100 DOLLARS ({Deal\_\_r.LOC\_Commitment\_\_c | formatCurrency}) (the “**Loan Amount**”), and Lender is willing to make the Loan Advances on the terms and conditions set forth in this Agreement and the other Loan Documents for the construction of the Improvements (defined below) on certain real property located at {Property\_Advances\_\_r[0].Property\_\_r.Name}, {Property\_Advances\_\_r[0].Property\_\_r.City\_\_c}, {Property\_Advances\_\_r[0].Property\_\_r.State\_\_c} {Property\_Advances\_\_r[0].Property\_\_r.ZipCode\_\_c}.

NOW, THEREFORE, in consideration of the making of the Loan by Lender, the covenants, agreements, representations and warranties set forth in this Agreement, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, Borrower and Lender agree as follows:

# **DEFINITIONS**

## Definitions. As used herein, the following terms shall have the meanings set forth below:

“**Advance**” is defined in Section 2.2 hereof.

“**Advance Amount**” means the amount of an Advance made hereunder.

“**Advance Date**” means the date an Advance is disbursed by Lender to or for the benefit of Borrower.

“**Affiliate**” means, with respect to any Person, any manager, managing member, non-member manager, general partner, officer or director thereof and any Person that is, directly or indirectly, the legal or beneficial owner of or otherwise controls more than 10% of any class of shares or other equity security of such Person, or any Person that directly or indirectly Controls or is Controlled by or is under common Control with such Person.

“**Agreement**” means this Agreement, as the same may be amended, modified, supplemented or restated from time to time.

***“*Appraisal*”*** means a written statement setting forth an opinion of the “As Is” Value and the As Completed Value of the Property that (i) has been independently and impartially prepared by a qualified appraiser directly engaged by Lender, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by Lender, in its sole and absolute discretion.

“**Approved Closing Statement**” has the meaning set forth in Lender’s Closing Instructions.

“**Architect**” means the Person that prepared the architectural Plans and is engaged by Borrower to act as the project architect for the design and construction of the Improvements pursuant to the Architect’s Contract.

***“*Architect Consent and Agreement*”*** means the Architect’s Consent and Agreement dated on or about the date hereof executed by Architect in favor of Lender, as amended from time to time.

***“*Architect’s Contract*”*** means any and all agreements by and between Borrower and Architect relating to the Improvements, and any and all extensions, renewals, modifications, amendments, supplements and replacements thereto or therefor.

“**As Completed Value**” means the “as completed” value of the Property based upon Completion of all of the Improvements as underwritten by Lender, in its sole and absolute discretion based on, an Appraisal dated no earlier than 30 days prior to the Closing Date or other date of determination, as applicable (the cost of which shall be paid for by Borrower).

“**As Is Value**” means the “as is” value of the Property as underwritten by Lender, in its sole and absolute discretion based on, an Appraisal dated no earlier than 30 days prior to the Closing Date or other date of determination, as applicable (the cost of which shall be paid for by Borrower).

“**Award**” means any compensation paid by any Governmental Authority in connection with a Condemnation in respect to all or any part of the Property.

“**Bankruptcy Code**” means 11 U.S.C. §101 et seq., as the same may be amended from time to time.

“**Borrower**” has the meaning set forth in the preamble.

“**Budget**” means the budget attached hereto as **Exhibit A**, setting forth a complete line item breakdown of the total Eligible Project Costs, broken down by Eligible Hard Costs and Eligible Soft Costs necessary to Complete the Improvements, together with a complete line item break down of any other Hard Costs and Soft Costs necessary to Complete the Improvements which are not Eligible Project Costs, all as approved by Lender and Lender’s Consultant.

“**Budgeted Project Costs**” means the Eligible Project Costs and any other Hard Costs and Soft Costs necessary to Complete the Improvements to be constructed on the Property as set forth in the Budget.

“**Business Day**” means any day other than (i) a Saturday and a Sunday and (ii) a day on which federally insured depository institutions in the State of New York, or the state in which the offices of Lender or its Servicer are located, are authorized or obligated by law, governmental decree or executive order to be closed.

“**Casualty**” has the meaning set forth in Section 6.2.2.

“**Change Order**” is defined in Section 6.1.13(c).

“**Claim**” means any loss, judgment, claim, lawsuit, demand, liability, expense or damage of any kind or nature, including consequential, indirect and special damages, legal fees and expenses.

“**Closing Date**” means the date the Loan proceeds constituting the Initial Advance are disbursed by Lender to or for the benefit of Borrower.

“**Collateral**” means collectively, all of the real, personal and mixed property in which Liens are purported to be granted from time to time in favor of Lender pursuant to the Loan Documents as security for the Obligations.

“**Completion**”, “**Complete**” or “**Completed**” means that, in Lender’s sole judgment: (a) the Improvements have been completed in a good and proper manner, free and clear of all defects, mechanics and other liens in accordance with: (i) the Plans approved by Lender, together with any changes thereto approved by Lender, in its sole discretion; (ii) the Budget approved by Lender, without deviation, unless approved by Lender, in its sole discretion and (iii) all Legal Requirements; (b) issuance by the applicable governmental authority of a final certificate of occupancy (or reasonable equivalent) for the Improvements; (c) all notices of completion with respect to the Improvements have been filed and all statutory lien periods have expired; (d) all costs of completing the Improvements shall have been paid, plus interest due and owing on the Principal Indebtedness through the Completion Date; and (e) all of the conditions for the final Advance set forth in Section 4.8 hereof have been satisfied.

“**Completion Date**” means the date Completion of the Improvements in accordance with this Agreement occurs, as determined by Lender and Lender’s Consultant.

“**Completion Guaranty**” means that certain Completion Guaranty of even date herewith executed by Guarantor for the benefit of Lender, as such Completion Guaranty may be amended, modified, extended, renewed, restated or supplemented from time to time.

“**Condemnation**” means a taking or voluntary conveyance of the Property or any interest in, right accruing to, use of or access to the Property, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority.

“**Construction Contract**” means the general construction contract by and between Contractor and Borrower concerning the construction of all of the Improvements at the Property, as owner, and any and all extensions, renewals, modifications, amendments, supplements and replacements thereto or therefor, and any subcontracts with any subcontractors, laborers, suppliers, or any other Person for the performance of any of the Work**.**

“**Construction Documents**” means collectively, the Construction Contract, the Architect’s Agreement and the Engineer’s Agreement.

“**Contracting Party**” is defined in Section 11.1.2.

“**Contractor***”* means the Person engaged by Borrower to construct the Improvements.

*“***Contractor Consent and Agreement***”* means the Contractor’s Consent and Agreement dated on or about the date hereof executed by Contractor in favor of Lender, as amended from time to time.

“**Control**” means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise. The terms “Controlled” and “Controlling” shall have correlative meanings.

“**Default**” means any condition or event that with notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law or (ii) five percent (5%) above the applicable Interest Rate.

***“*Draw Package*”*** has the meaning set forth in Section 4.1.1.

“**Eligible Hard Costs**” means those Hard Costs identified in the Budget as “Eligible Hard Costs”.

“**Eligible Project Costs**” means the Eligible Hard Costs and Eligible Soft Costs set forth in the Budget.

“**Eligible Soft Costs**” means those Soft Costs identified in the Budget as “Eligible Soft Costs”.

“**Embargoed Person**” means a Person subject to trade restrictions under any Federal Trade Embargo.

“**Engineer**” means the Person that prepared the engineering Plans and is engaged by Borrower to act as the engineer for the design and construction of the Improvements pursuant to the Engineer’s Contract.

“**Engineer’s Contract**” means any and all agreements by and between Engineer and Borrower, as owner, and any and all extensions, renewals, modifications, amendments, supplements and replacements thereto or therefor.

“**Engineer Consent and Agreement**” means the Engineer’s Consent and Agreement dated on or about the date hereof executed by Engineer in favor of Lender, as amended from time to time.

“**Environmental Indemnity**” means that certain Environmental Indemnity Agreement of even date herewith executed by the Borrower for the benefit of Lender, as such Environmental Indemnity may be amended, modified, extended, renewed, restated or supplemented from time to time.

“**Environmental Laws**” has the meaning set forth in the Environmental Indemnity.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“**ERISA Affiliate**” at any time, means each trade or business (whether or not incorporated) that would, at the time, be treated together with Borrower as a single employer under Title IV or Section 302 of ERISA or Section 412 of the Code.

**“Event of Bankruptcy”** means, with respect to any Person (i) such Person shall fail generally to pay, or admit in writing its inability to pay, its debts as they come due, or shall make a general assignment for the benefit of creditors; (ii) any case or other proceeding shall be instituted by or with the consent or acquiescence of such Person seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of it or its debts, or the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or all or substantially all of its assets, or any similar action, or such Person shall take any corporate, partnership, limited partnership or limited liability company action to authorize any of such actions; or (iii) a case or other proceeding described in the foregoing clause (ii) shall be commenced, without the application, consent or acquiescence of such Person, and (A) such case or proceeding shall continue undismissed, or unstayed and in effect for a period of sixty (60) consecutive days or (B) an order for relief in respect of such Person shall be entered in such case or proceeding or a decree or order granting such other requested relief shall be entered.

“**Event of Default**” means the occurrence of any of the events listed in Section 8.1.

**“Excluded Taxes”** means Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes that are imposed by the jurisdiction in which Lender is organized or in which Lender’s applicable lending office is located.

“**Federal Trade Embargo**” means any federal law imposing trade restrictions, including (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), (ii) the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq., as amended), (iii) any enabling legislation or executive order relating to the foregoing, (iv) Executive Order 13224, and (v) the PATRIOT Act.

“**Financing Statements**” means such UCC-1 financing statements as may be required from time to time by Lender, in its sole and absolute discretionidentifying Borrower as debtor, in favor of Lender as secured party, perfecting Lender’s security interest in the personal property Collateral now owned or hereafter acquired by Borrower, including the Loan Deficiency Collateral, as applicable. The Financing Statements have been or will be filed with all recording or filing offices in such jurisdictions as Lender shall desire to perfect Lender’s security interest or to reflect such security interest in appropriate public records.

**“Finished Lot**” means (a) the Property is a separate legal lot or parcel, (b) all off-site construction and infrastructure necessary to permit demolition of any existing improvements and vertical construction of the Improvements on the Property has been completed in accordance with all Legal Requirements, (c) all utilities have been installed to the Property and will serve letters have been issued, and (d) the demolition permit, if any, and building permits necessary to construct the Improvements through Completion may be issued and vertical construction commenced without satisfaction of any further material conditions.

“**Governmental Authority**” means any national, federal, state, regional or local government, or any other political subdivision of any of the foregoing, in each case with jurisdiction over Borrower, the Property, or any Person with jurisdiction over Borrower, the Property exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“**Guarantor**” means, individually and collectively, {#Deal\_Contacts\_\_r.Guarantors} {Deal\_Contacts\_\_r.Contact\_Name\_\_c}, individual resident of the State of {Deal\_Contacts\_\_r.Contact\_\_r.MailingState}{/Deal\_Contacts\_\_r.Guarantors}.

“**Guaranty**” means that certain Guaranty of even date herewith executed by Guarantor for the benefit of Lender, as such Guaranty may be amended, modified, extended, renewed, restated or supplemented from time to time.

“**Hard Costs*”*** means costs for work, labor and materials required to structures to construct and complete the Improvements, including, without limitation, those items identified as “hard costs” on the Budget.

“**HOA**” means a home owners or condominium association, board, corporation or a similar entity with authority to create a Lien on the Property as a result of the non-payment of HOA Fees that are payable with respect to the Property.

“**HOA Fees**” means all homeowner’s and condominium dues, fees, assessments and impositions, and any other charges levied or assessed or imposed against the Property, or any part thereof, by an HOA.

“**Impositions**” means all (a) Taxes, assessments, water, sewer and other utility charges, any charges for or arising under any reciprocal easement agreement, declaration of covenants, conditions, restrictions, condominium declaration or condominium arrangement or any other easement or agreement maintained for the benefit of the Property, and all other charges and assessments imposed by any Governmental Authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time may be assessed, levied or imposed upon the Property, or the rent or income received therefrom, or any use or occupancy thereof, (b) HOA Fees; and (c) other Taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against the Borrower or the Property.

“**Improvements**” means the Residential Unit(s) and related site improvements to be constructed on the Property as described in the Plans and as required under Legal Requirements and more particularly as depicted on the Site Plan.

“**In Balance**” is defined in Section 4.3.

“**Increased Costs**” has the meaning set forth in Section 2.7.

“**Indebtedness**” means, the Principal Indebtedness, together with all accrued and unpaid interest thereon, late charges, and all other obligations and liabilities due or to become due to Lender in respect of the Loan and/or pursuant to the Note, this Agreement, the Security Instrument or any of the other Loan Documents (excluding the Guaranty and the Completion Guaranty), and all other amounts, sums and expenses paid by or payable to Lender pursuant to the Loan Documents (excluding the Guaranty and the Completion Guaranty) and any and all obligations and liabilities of Borrower, including without limitation, any increases in the maximum principal amount of the Loan, contained in any written renewal, extension, amendment, modification, consolidation, restatement of, or substitution or replacement for, all or any part of the Note, this Agreement or any of the other Loan Documents (excluding the Guaranty and the Completion Guaranty).

“**Indemnified Taxes**” means all Taxes (including any stamp, court, documentary, intangible, recording, filing or similar Taxes) that arise from or are imposed upon any payment made under, from the execution, delivery, performance, or enforcement of any of the Loan Documents, or the registration of, from the receipt or perfection of any Lien under any Loan Document, other than Excluded Taxes.

“**Initial Advance**” means the Advance in the Advance Amount of {Property\_Advances\_\_r[0].Property\_\_r.Initial\_Disbursement\_\_c | formatCurrency} to be disbursed on the Closing Date in accordance with the terms hereof.

“**Insurance Proceeds**” means property and business interruption insurance proceeds paid or payable to Borrower or Lender in connection with damage to or destruction of the Property.

“**Interest Accrual Period**” means each period from and including the first day of a calendar month through and including the last day of such calendar month; provided, that Lender shall have the right, in connection with a change in the Monthly Payment Date in accordance with the definition thereof, to make a corresponding change to the Interest Accrual Period. Notwithstanding the foregoing, the first Interest Accrual Period shall commence on and include the Advance Date of the Initial Advance made hereunder through and including the last day of the calendar month in which such Initial Advance was made.

“**Interest Owner(s)**” means any Person owning an interest (directly or indirectly) in Borrower.

“**Interest Rate**” means {Deal\_\_r.Interest\_Rate\_In\_Words\_\_c}/100 percent ({Deal\_\_r.Interest\_Rate\_Formula\_\_c}%) per annum.

“**Land**” has the meaning set forth in the Security Instrument.

“**Lease**”means a lease of, or other occupancy agreement with respect to any portion of a Property or space in the Improvements located thereon.

“**Legal Action**” is defined in Section 5.3.

“**Legal Requirements**” means all governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities or any homeowners’ or similar associations (including securities laws, Environmental Laws and zoning restrictions) affecting a Restricted Party, the Property or any other Collateral or any portion thereof or the construction, ownership, use, alteration or operation thereof (whether now or hereafter enacted and in force), and all permits, licenses and authorizations relating thereto.

“**Lender’s Appraisal Costs**” means all fees and costs incurred by Lender in determining the As Is Value and As Completed Value of the Property.

“**Lender’s Closing Instructions**” means the closing instructions to the Title Company and the escrow agent, if different than the Title Company, prepared by Lender in form and substance acceptable to Lender.

“**Lender’s Consultant**” means a construction consultant selected and engaged by Lender, at Borrower’s expense, to act as Lender’s construction consultant for the purposes set forth herein and as otherwise designated by Lender from time to time.

“**Lien**” means any mortgage, lien (statutory or other), pledge, hypothecation, assignment, preference, priority, security interest, restrictive covenant, easement, or any other encumbrance or charge on or affecting any Collateral or any portion thereof, or any interest therein, including any conditional sale or other title retention agreement, any sale-leaseback, any financing lease or similar transaction having substantially the same economic effect as any of the foregoing, the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction, and mechanics’, materialmen’s and similar liens and encumbrances, and any option to purchase, right of first refusal, right of first offer or similar right.

***“*Line Item Cost Savings*”*** means the portion of any Budget line item which Borrower demonstrates to the reasonable satisfaction of Lender is unnecessary for full payment of the cost or expense covered by such Budget line item.

“**Loan**” means the loan from Lender to Borrower described in this Agreement in the maximum principal amount of the Loan Amount.

“**Loan Amount**” means the maximum principal amount of {Deal\_\_r.LOC\_Commitment\_In\_Words\_\_c} and NO/100 DOLLARS ({Deal\_\_r.LOC\_Commitment\_\_c | formatCurrency}).

“**Loan Deficiency Funds**” is defined in Section 4.3).

“**Loan Documents**” means this Agreement, the Note, the Security Instrument, the Guaranty, the Completion Guaranty, the Environmental Indemnity, each Request for Advance, the Lender’s Closing Instructions and any and all other agreements, documents, certificates or instruments now or hereafter evidencing, securing or otherwise executed in connection with the Loan, as each of the same may be amended, modified, extended, renewed, supplemented or restated from time to time.

“**Loan Parties**” means, collectively, Borrower and Guarantor, each of which shall be individually a “**Loan Party**”.

“**Loss Proceeds**” means (i) Insurance Proceeds or (ii) Awards, whichever the case may be, and in each case after deduction of Lender’s reasonable costs and expenses (including reasonable counsel fees) in collecting and disbursing the same.

“**Loss Proceeds Deficiency**” is defined in Section 6.2.4(d).

“**Material Adverse Effect**” means a material adverse effect on (a) the property, business, operations or financial condition of a Restricted Party, (b) the use, operation or value of the Property, (c) the ability of Borrower to repay the principal and interest of the Loan when due or the ability of a Loan Party to satisfy its Obligations under the Loan Documents when due, or (d) the enforceability or validity of any Loan Document, the perfection or priority of any Lien created under any Loan Document or the rights, interests and remedies of Lender under any Loan Document.

“**Maturity Date**” means the Stated Maturity Date, or such earlier date as may result from acceleration of the Loan in accordance with this Agreement.

**“Maximum Aggregate Construction Advance Amount**” means {Property\_Advances\_\_r[0].Property\_\_r.Approved\_Renovation\_Holdback\_\_c | formatCurrency}

**“Monthly Debt Service Payment”** means for each Monthly Payment Date, an amount equal to interest accrued on the Principal Indebtedness at the Interest Rate for the preceding Interest Accrual Period.

“**Monthly Payment Date**” means, with respect to each Interest Accrual Period, the first (1st) day of the calendar month immediately succeeding such Interest Accrual Period; provided, that Lender shall have the right from time to time to change the Monthly Payment Date in connection with a change to the Interest Accrual Period.

“**Note**” means that certain Secured Promissory Note, of even date herewith, executed by Borrower and payable to the order of Lender, as the same may be amended, modified, extended, renewed, restated or supplemented from time to time.

“**Obligations**” means (i) the Indebtedness; plus (ii) the performance of each and every covenant, condition, and agreement contained in this Agreement and the other Loan Documents, including without limitation, the Security Instrument whether now or hereafter executed from time to time; plus (iii) any and all Protective Advances made by Lender and any and all other amounts due and owing under the Loan Documents.

“**OFAC List**” means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any applicable governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities, including trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible at http://www.treasury.gov/ofac/downloads/t11sdn.pdf.

“**Organizational Documents**” means, with respect to any Person: (a) if such Person is a limited liability company, such Person’s articles of organization, operating agreement and other documents governing the management and operation of such Person; (b) if such Person is a general or limited partnership, such Person’s certificate of limited partnership, partnership agreement and other documents governing the management and operation of such Person; (c) if such Person is a corporation, such Person’s articles of incorporation, bylaws and the other documents and instruments governing the management and operation of such Person; (d) if such Person is a trust, such Person’s certificate of trust, trust agreement and the other documents and instruments governing the management and operation of such Person; and (e) if such Person is another type of entity, the documents and instruments pursuant to which such Person is formed, managed and operated; in each case, certified by (i) the applicable Secretary of State (for any Organizational Documents that have been filed with any Secretary of State) or (ii) an authorized representative of the Person (for any Organizational Documents that have not been filed with any Secretary of State).

“**Origination Fee**” means a fee payable to Lender on the Closing Date in an amount equal to {Deal\_\_r.Origination\_Fee\_In\_Words\_\_c}/100 percent ({Deal\_\_r.Origination\_Fee\_Formula\_\_c}%) of the Loan Amount, which Origination Fee shall be fully earned by Lender upon payment, and not refundable to Borrower for any reason.

“**Outside Advance Date**” means the earlier to occur of (a) the Outside Completion Date and (b) the date that is thirty (30) days following the Completion Date.

“**Outside Completion Date**” means {Deal\_\_r.Requested\_Advance\_Date\_\_c | addDaysFull:0}.

“**PATRIOT Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time.

“**Permitted Exceptions**” means (i) the Liens created by the Loan Documents; (ii) all Liens and other matters specifically disclosed on Schedule B of the Title Insurance Policy obtained by Lender with respect to the Property; (iii) Liens for Taxes not yet delinquent; (iv) Liens for Taxes or Impositions becoming delinquent after the date hereof, in each case only if being diligently contested in good faith and by appropriate proceedings pursuant to and in accordance with Section 6.12, (v) any workers’, mechanics’ or other similar Liens on the Property arising after the date the Security Instrument is recorded against the Property that are (a) discharged of record within sixty (60) days of attachment, or by the expiration of such sixty (60) day period, Borrower deposits with Lender an amount that at all times equals at least 125% of the dollar amount of such Lien (including any increases thereto from time to time) or a bond in the aforementioned amount from such surety, and upon such terms and conditions, as is reasonably satisfactory to Lender as security for payment or release of such Lien and (b) if contested, are contested in good faith and by appropriate proceedings pursuant to and in accordance with Section 6.12.

**“Permits”** means all licenses, permits, variances, approvals and certificates required in connection with the ownership, operation, construction, use or occupancy of the Property (including certificates of occupancy, business licenses, state health department licenses, licenses to conduct business and all such other permits, licenses, consents, approvals and rights, obtained from any Governmental Authority or private Person concerning ownership, operation, construction, renovation, repair, use or occupancy of the Property).

“**Person**” means any natural person, unincorporated association, corporation, partnership, joint venture, limited liability company, trust, other legal entity or any Governmental Authority.

“**Plan Assets**” means assets of any (i) employee benefit plan (as defined in Section 3(3) of ERISA) subject to Title I of ERISA, (ii) plan (as defined in Section 4975(e)(1) of the Code) subject to Section 4975 of the Code, or (iii) governmental plan (as defined in Section 3(32) of ERISA) subject to federal, state or local laws, rules or regulations substantially similar to Title I of ERISA or Section 4975 of the Code.

“**Plans**” means the final plans and specifications and working drawings with respect to the Improvements accepted by Lender and all applicable Governmental Authorities, as modified and supplemented from time to time in accordance with the terms and provisions of this Agreement.

**“Policy(ies)”** is defined in Section 6.2.

**“Principal Indebtedness”** means the principal balance of the Loan outstanding from time to time.

“**Property**” means that certain real property located at {Property\_Advances\_\_r[0].Property\_\_r.Name}, {Property\_Advances\_\_r[0].Property\_\_r.City\_\_c}, {Property\_Advances\_\_r[0].Property\_\_r.State\_\_c} {Property\_Advances\_\_r[0].Property\_\_r.ZipCode\_\_c}, and more particularly described on Exhibit A to the Security Instrument.

“**Property Documents**” means collectively the Permitted Exceptions, the Construction Documents, any reciprocal easement agreement, declaration of covenants, conditions, restrictions, condominium declaration or condominium arrangement and any easements, reciprocal operating agreements, restrictive covenants, management agreements, leases, agreements regarding utilities and other agreements affecting or governing the operation, management or permitted uses of the Property.

“**Protective Advances**” means all sums expended by Lender: (a) to protect the priority, validity and enforceability of the Lien of the Security Instrument and any and all other Loan Documents encumbering any of the Collateral; (b) to protect or preserve the value or the security of any of the Collateral, including without limitation, payment of Taxes, Impositions, Insurance Premiums, and any amounts expended in accordance with Section 8.2 of this Agreement; (c) if a receiver is appointed for the Borrower or the Property at the request of Lender, amounts expended in connection with the ownership of the Property or to complete, lease, sell or operate the Improvements or the Property; and (d) any other amount advanced by Lender and permitted by law to be secured as an additional or protective advance.

“**Regulatory Change**” means any change after the Closing Date in Legal Requirements or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person in Control of Lender or to a class of banks or companies Controlling banks of or under any Legal Requirements by any court or Governmental Authority.

“**Rents**” means all right, title and interest of Borrower, its successors and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code.

“**Request for Advance**” means a Request for Advance duly executed by Borrower in form and substance acceptable to Lender, in its sole and absolute discretion.

“**Residential Unit**” means each residential dwelling unit to be constructed on the Land in accordance with the Plans, the Budget and the Site Plan.

“**Restoration**” means the repair and restoration of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such material alterations as may be approved by Lender, which such approval shall not to be unreasonably withheld.

“**Restoration Conditions**” means (a) no Event of Default shall have occurred and be continuing, (b) within thirty (30) days after the occurrence of the Casualty or Condemnation, Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration of the Property in accordance with the terms of this Agreement, (c) Lender shall be satisfied that any debt service and operating deficits which will be incurred with respect to the Property as a result of the occurrence of the Casualty will be covered out of (i) the applicable Loss Proceeds or (ii) by other funds of Borrower; (d) Lender shall be satisfied that the Restoration will be completed on or before the earliest of (i) six (6) months prior to theStated Maturity Date or (ii) such time as may be required under applicable Legal Requirements and (e) the Loss Proceeds together with any Loss Proceeds Deficiency deposited by Borrower with Lender are sufficient to cover the cost of the Restoration, as determined by Lender.

“**Restoration Threshold Amount**” means, as of any date of determination, an amount equal to ten percent (10%) of then disbursed portion of the Loan Amount.

“**Restricted Parties**” means, collectively, Borrower and the other Loan Parties, and any partner, member, shareholder, non-member manager, and any other direct or indirect legal or beneficial owner of Borrower, any other Loan Party, or any non-member manager of Borrower or any other Loan Party, each of which shall be individually a “**Restricted Party**”.

“**Revenues**” means all rents, rent equivalents, moneys payable as damages pursuant to a Lease or in lieu of rents (including lease termination fees), royalties, revenues, deposits (including security, utility and other deposits that have been forfeited), charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower from any and all sources including proceeds from the sale, lease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower and proceeds, if any, from business interruption or other loss of income insurance.

“**Security Instrument**” means the mortgage, deed of trust, trust deed, deed to secure debt or security deed, as applicable, executed by Borrower in favor of Lender and recorded against the Property on the Closing Date, as the same may be amended, supplemented, or amended and restated from time to time.

“**Security Deposits**” means all security deposits held or to be held with respect to the Property, pursuant to the applicable Leases.

“**Servicer**” means the Lender’s designated servicer or other firm that Lender may approve from time to time. The initial Servicer selected by Lender is set forth on Schedule 1.1 attached hereto.

“**Site Plan**” means a site plan of the Property prepared by Borrower and approved by Lender showing the proposed location of the Residential Unit to be constructed on the Property, the square footage of the Residential Unit and any other site improvements as well as the location of existing streets providing ingress and egress to and from the Property.

**“Soft Costs”** means those costs associated with the development, construction, operation and maintenance of the Improvements which are not Hard Costs, including, without limitation, any developer fees, architectural and engineering fees, consultant fees, professional fees, marketing fees and expenses, real estate taxes, insurance and bonding costs, and any other items identified as “soft costs” on the Budget.

“**Solvent**” means, with respect to any Person on a particular date, that on such date (a) the fair value of the assets of such Person is greater than the total amount of indebtedness and other liabilities of such Person, (b) the present fair market value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its indebtedness and other liabilities as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its indebtedness and other liabilities as they mature in the normal course of business and (d) such Person does not intend to, and does not believe that it will, incur indebtedness and other liabilities beyond such Person’s ability to pay such indebtedness and other liabilities as they mature.

“**Stated Maturity Date**” means {Deal\_\_r.Stated\_Maturity\_Date\_\_c | addDaysFull:0}.

“**Taxes**” means all real estate and personal property taxes, assessments, fees, Indemnified Taxes, taxes on rents or rentals, water rates or sewer rents, facilities and other governmental, municipal and utility district charges or other similar taxes or assessments now or hereafter levied or assessed or imposed against the Property or Borrower with respect to the Property or rents therefrom or that may become Liens upon the Property, without deduction for any amounts reimbursable to Borrower by third parties and including any interest, additions to tax or penalties applicable thereto.

“**Title Company**” means such title company selected from time to time by Lender, in its sole discretion.

“**Title Insurance Policy**” means an ALTA Lender’s Policy of Title Insurance in form and substance satisfactory to Lender issued by the Title Company in the amount of the Loan Amount insuring the Security Instrument as a first priority lien on the Property, containing such endorsements and excepting only such items as shall be acceptable to Lender and otherwise in form and substance acceptable to Lender.

“**Transfer**” means:

1. any sale, transfer, or conveyance of the Property, or any part thereof or interest therein, to any Person, or grant of any options with respect thereto, (whether directly or indirectly, voluntary or involuntary, by operation of law or otherwise and whether or not for consideration or of record);
2. any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any interest in Borrower or any other Restricted Party, including without limitation, by consolidation or merger, whether voluntary, involuntary, by operation of law, or otherwise;
3. the creation, sufferance or granting of any lien, encumbrance, security interest or collateral assignment (whether voluntarily, involuntarily or by operation of law) in all or any part of the Property or other Collateral, other than the Permitted Exceptions;
4. any Lease of the Property except for Leases in compliance with the terms of this Agreement and the Security Instrument, and which at all times remains, subordinate to the lien of the Security Instrument;
5. any change in Control of Borrower or any other Loan Party;
6. the issuance or other creation of ownership interests in a Restricted Party;
7. the reconstitution or conversion of a Restricted Party from one entity to another type of entity;
8. a merger, consolidation, reorganization or any other business combination of any Restricted Party;
9. a conversion to or operation of all or any portion of the Property as a cooperative or condominium form of ownership; and
10. the execution of any agreements to do any of the foregoing.

“**Work**” means all work and materials relating to the construction of the Improvements on the Property through Completion in accordance with the Plans, the Budget and this Agreement.

“**Work and Payment Schedule**” means a schedule setting forth the timetable for completing the Improvements for the Property and the corresponding payments of the Budgeted Projects Costs which shall have been approved by Lender and Lender’s Consultant.

## Rules of Construction. Unless otherwise specified, (a) all references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Agreement, (b) all meanings attributed to defined terms in this Agreement shall be equally applicable to both the singular and plural forms of the terms so defined, (c) “including” means “including, but not limited to,” (d) the words “hereof,” “herein,” “hereby,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision, article, section or other subdivision of this Agreement, (e) unless otherwise indicated, all references to “this Section” shall refer to the Section of this Agreement in which such reference appears in its entirety and not to any particular clause or subsection or such Section, (f) the use of the phrases “an Event of Default exists,” “during the continuance of an Event of Default” or similar phrases in the Loan Documents shall not be deemed to grant Borrower any right to cure an Event of Default, and each Event of Default shall continue unless and until the same is waived by Lender in writing in accordance with the requirements of the Loan Documents, and (g) terms used herein and defined by cross-reference to another agreement or document shall have the meaning set forth in such other agreement or document as of the date of this Agreement, notwithstanding any subsequent amendment or restatement of or modification to such other agreement or document. Except as otherwise indicated, all accounting terms not specifically defined in this Agreement shall be construed in accordance with GAAP, as the same may be modified in this Agreement.

# **THE LOAN**

## The Loan. On the Closing Date, subject to, and upon the terms and conditions set forth herein, Lender shall make a Loan to Borrower (the “**Loan**”) in the maximum principal amount of the Loan Amount. The Loan shall be evidenced by the Note and secured by the Security Instrument and other Loan Documents.

## Disbursements; Purpose. Upon satisfaction of the terms and conditions set forth in this Agreement, the proceeds of the Loan shall be disbursed to or for the benefit of Borrower in multiple advances (each an “**Advance**” and collectively, “**Advances**”) as follows: (a) the Initial Advance will be disbursed to or for the benefit of Borrower for the acquisition or refinancing of the Property as set forth in Lender’s Closing Instructions and the Approved Closing Statement and (b) subsequent Advances up to Maximum Aggregate Advance Amount will be disbursed at the Advance Rate for the sole purpose of reimbursing Borrower for Eligible Project Costs incurred and paid for by Borrower, subject to satisfaction of the conditions precedent set forth in Article 4.

## No Reborrowing. Any amount borrowed and repaid in respect of the Loan may not be re-borrowed. The Loan shall be evidenced by the Note.

## Evidence of Indebtedness. Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to Lender, including amounts of principal and interest payable and paid to Lender from time to time hereunder. The entries maintained in the accounts maintained pursuant to this Section 2.4 shall be prima facie evidence of the existence of the amounts of, and other information regarding, the Indebtedness therein recorded; provided, however, that the failure of Lender to maintain such accounts, or any error therein, shall not in any manner affect the obligation of Borrower to repay the Indebtedness and other Obligations in accordance with the terms of this Agreement, the Note and the other Loan Documents.

## Principal and Interest.

### The Principal Indebtedness shall bear interest at the Interest Rate.

### On each Monthly Payment Date through and including the Monthly Payment Date occurring immediately prior to the Maturity Date, Borrower shall pay to Lender a monthly payment of interest equal to the Monthly Debt Service Payment.

### The Principal Indebtedness, accrued and unpaid interest to and including the date of payment, and all other amounts due under the Loan Documents shall be due and payable in full, on the Maturity Date.

### Interest shall be computed on the Principal Indebtedness by multiplying the actual number of days elapsed in the period for which interest is being calculated by a daily rate based on the Interest Rate and a 360-day year.

### For so long as any Event of Default is continuing, the Principal Indebtedness and all other portions of the Indebtedness, shall accrue interest at the Default Rate. Interest at the Default Rate shall be paid immediately upon demand, which demand may be made as frequently as Lender shall determine.

### If any amount due under the Loan Documents is not paid on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (i) five percent (5.00%) of such unpaid sum or (ii) the maximum amount permitted by Legal Requirements in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment.

### Except as otherwise specifically provided in this Agreement, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 1:00 p.m., New York City time, on the date when due and shall be made in lawful money of the United States of America by wire transfer in federal or other immediately available funds to the account specified from time to time by Lender. Any funds received by Lender after such time shall be deemed to have been paid on the next succeeding Business Day. Whenever any payment to be made under any Loan Document shall be stated to be due on a day that is not a Business Day, the due date thereof shall be deemed to be the immediately preceding Business Day.

### Funds representing the proceeds of the Loan which are disbursed by Lender by wire transfer to or for the benefit of Borrower, for all purposes, shall be deemed outstanding and to have been received by Borrower as of the date of such wire transfer notwithstanding the fact that such funds may not at any time have been remitted from escrow or otherwise to Borrower or for its benefit. Lender may submit monthly billings reflecting the amount of the monthly payments due. Neither the failure of Lender to submit a billing nor any error in any such billing shall excuse Borrower from the obligation to make full payment of all Borrower’s payment obligations when due. Lender may record the date and amount of all Advances and all payments of principal, interest and other amounts hereunder in the records Lender maintains with respect thereto. Lender’s books and records showing the account between Lender and Borrower shall be admissible in evidence in any action or proceeding and shall constitute prima facie proof of the items therein set forth, absent manifest error.

### Notwithstanding anything to the contrary contained herein, during the continuance of an Event of Default amounts received by Lender in respect of the Indebtedness may be applied by Lender toward interest, principal and other components of the Indebtedness or to other Obligations in such order, priority and proportion as Lender shall determine, in its sole and absolute discretion.

### All payments made by Borrower under the Loan Documents shall be made irrespective of, and without any deduction for, any offsets, counterclaims or defenses, including without limitation in respect of any undertakings or obligations in connection with the making of additional Advances. Borrower waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with the Loan Documents or the Indebtedness. Any assignee of Lender’s interest in the Loan, or any portion thereof, shall take the same free and clear of all offsets, counterclaims or defenses against the assigning Lender.

## Principal Prepayment. Prior to the Maturity Date so long as no Event of Default has occurred upon not less than ten (10) Business Days prior written notice, Borrower shall have the right, without penalty or premium, to pay in whole but not in part, the total Principal Indebtedness, provided that such prepayment is accompanied by payment of all interest accrued and unpaid through the date of prepayment and any other sums due and owing under the Loan Documents.

## Increased Costs. If as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation to Lender or its Affiliate of payments in respect of a Loan is changed or Lender or its Affiliate becomes subject to any increased cost, reduction in income or additional expense in respect of the Loan Documents, including, without limitation (i) any Indemnified Tax (without duplication of payment of Indemnified Taxes under Section 2.8 or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities (such increase in cost, reduction in income or additional expense being herein called “**Increased Costs**”), then Borrower shall upon demand promptly pay to Lender such Increased Costs to the extent that Lender reasonably determines that such Increased Costs are allocable to the Loan.

## Taxes. Any payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Tax; provided, however, that if Legal Requirements require deduction or withholding of a Tax, then Borrower shall deduct or withhold and pay such Tax to the relevant Governmental Authority in accordance with Legal Requirements, and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased so that after such deduction or withholding (including deductions or withholdings applicable to additional amounts payable) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. Borrower shall promptly indemnify Lender for all Indemnified Taxes (including Taxes in respect of additional amounts payable) and related expenses, and such indemnity obligation shall survive any assignment or replacement of Lender or satisfaction or discharge of other obligations under the Loan Documents. Borrower shall promptly deliver evidence reasonably satisfactory to Lender of any payments made pursuant to this Section 2.8. Borrower shall pay (i) to the applicable Governmental Authority as and when due all Indemnified Taxes, in accordance with the applicable Legal Requirements, and (ii) to Lender, within ten (10) days after written request by Lender, all other Indemnified Taxes. Promptly following written request therefor by Lender, Borrower shall deliver to Lender evidence, reasonably satisfactory to Lender, of payment of Indemnified Taxes.

## Origination Fee. Borrower shall pay the Origination Fee to Lender on the Closing Date. The Origination Fee shall be payable by wire transfer of immediately available funds or may be paid by netting the Origination Fee from the Initial Advance to Borrower on the Closing Date to the extent set forth as such on the Approved Closing Statement. The Origination Fee shall be deemed fully earned by Lender on the Closing Date and will be not be refundable for any reason.

### 

# **CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THIS AGREEMENT AND INITIAL ADVANCE**

## The effectiveness of this Agreement and the funding of the Initial Advance hereunder are subject to the satisfaction of the condition precedent that Lender shall have received from Borrower all of the following items, each of which shall be satisfactory in form and substance to Lender and its counsel, and the following fees and reserve deposits, if applicable:

#### Loan Documents and Certain Third Party Documents. Lender shall have received on the date hereof the following documents fully executed and in form and substance satisfactory to Lender and the following fees, as applicable:

##### This Agreement, duly completed, executed and delivered by each of the parties hereto (including any exhibits hereto);

##### The Note, duly executed and delivered by Borrower;

##### The Guaranty, duly executed and delivered by Guarantor;

##### The Completion Guaranty, duly executed and delivered by Guarantor;

##### The Environmental Indemnity, duly executed and delivered by Borrower;

##### The Security Instrument, duly executed and delivered by Borrower, and in recordable form;

##### The Financing Statements, as required by Lender;

##### The Architect Consent and Agreement (with all exhibits attached);

##### The Engineer’s Consent and Agreement (with all exhibits attached);

##### The Contractor Consent and Agreement;

##### Lender’s Closing Instructions, duly executed by Borrower and Title Company and the escrow agent, if different than the Title Company and all conditions precedent set forth therein shall have been satisfied, to Lender’s satisfaction, including without limitation, Lender’s receipt of a copy of the Approved Closing Statement executed by Borrower;

##### The Origination Fee shall have been received by Lender from Borrower in immediately available funds or netted from the Initial Advance, if and as provided on the Approved Closing Statement.

#### Additional Closing Deliveries. Lender shall have received and approved the following in form and substance satisfactory to Lender:

##### certificates of insurance or other evidence in form and substance satisfactory to Lender that all insurance required under this Agreement is or will be in full force and effect as of the Closing Date, together with evidence that the premiums for such insurance have been paid;

##### Title Company shall be unconditionally committed to issue the Title Insurance Policy;

##### if required by Lender, an ALTA survey, or other survey acceptable to Lender, of the Property certified in a manner acceptable to Lender (the ***“*Survey*”***);

##### evidence that all accrued and unpaid Taxes and other Impositions levied or assessed against the Property have been paid in full.

##### current UCC, tax and judgment searches made in such places as Lender may specify, covering Borrower and such other Persons required by Lender and showing no filings relating to, or which could relate to, the Property other than those made hereunder;

##### a fully executed copy of the purchase agreement and final settlement statement for Borrower’s acquisition of the Property, together with such further documentation and/or information concerning the Property as may be requested by Lender to complete Lender’s evaluation and underwriting of the Property;

##### evidence indicating whether the Property is located within a one hundred year flood plain or identified as a special flood hazard area as defined by the Federal Insurance Administration; and, if so, a flood notification form signed by Borrower and evidence that flood insurance is in place for the building and contents, all in form and substance satisfactory to Lender;

##### Lender shall have approved of the As Is Value and the As Completed Value of the Property, the Loan Amount, and the Maximum Aggregate Construction Advance Amount, in each case, in Lender’s sole and absolute discretion;

##### a soils report, an environmental report, and copies of all other inspection and test reports with respect to the Property made by or for Borrower;

##### evidence that the Property is a Finished Lot;

##### evidence that all utilities and municipal services required for the construction and operation of the Improvements are available at the Property;

##### if required by Lender, opinions of Borrower’s outside counsel reasonably acceptable to Lender (including, but not limited to, those relating to enforceability and corporate matters);

##### good standing certificate from the jurisdiction of formation, and certified copies of the Organizational Documents) of Borrower, Guarantor and any Interest Owners, if applicable, and of all corporate or other authority for Borrower, Guarantor and each Interest Owner with respect to the execution, delivery and performance of the Loan Documents and each other document to be delivered by Borrower, Guarantor and any Interest Owner from time to time in connection herewith, and a certified copy of Borrower’s registration to do business and a current good standing certificate from the State in which the Property is located;

##### payment to Lender of all costs and expenses, including appraisal fees and costs, title and recording fees and costs, attorney’s fees and costs, incurred by Lender in connection with the origination of the Loan less any expense deposit previously paid to Lender by Borrower as set forth on the Approved Closing Statement;

##### financial statements of Borrower and Guarantor in form and substance satisfactory to Lender, certified by Borrower and Guarantor, respectively, and in form and substance satisfactory to Lender; and

##### all such other and further documents and documentation as Lender in its sole and absolute discretion shall require.

#### Construction Documents. Lender shall have received and approved of the following on or before the Closing Date and funding of the Initial Advance in form and substance satisfactory to Lender:

##### the Plans; the Budget, the Work and Payment Schedule; the Site Plan and all other Construction Documents;

##### A plan and cost review from Lender’s Consultant in form and substance acceptable to Lender;

##### Copies of all Permits obtained as of the Property Closing Date and a list of all other Permits required under all applicable Legal Requirements for the construction of the Improvements on the Property through Completion;

##### A schedule prepared by Borrower showing (A) all construction contracts and any subcontracts entered into as of the Closing Date, including name, type of work, contract amount and percentage retainage provided in each such contract; (B) the amount of the estimates of value for each contract and any subcontract not awarded as of such date; and (C) a total overall schedule of values;

##### Copies of any contracts or subcontracts executed as of the Closing Date for the construction of the Improvements, as may be requested by Lender; and

##### Such additional documentation and information relating to the Work and customarily required by construction lenders for projects similar to the Improvements.

# **CONDITIONS PRECEDENT TO ALL SUBSEQUENT ADVANCES**

## Conditions Precedent to Each Advance. In addition to the conditions set forth in Section 3.1 above and subject to Section 4.1 hereof, each Advance for reimbursement of Eligible Project Costs is subject to the satisfaction, in Lender’s judgment, of the following further conditions precedent, both immediately prior to funding such Advance and also after giving effect to the consummation thereof:

### Draw Package. Lender shall have received and approved of the following in form and substance satisfactory to Lender (collectively, a ***“*Draw Package*”***) at least ten (10) Business Days prior to the date of the requested Advance:

#### a Request for Advance duly executed by Borrower for such Advance, in form and substance acceptable to Lender;

#### a draw request certification from the Borrower, as required by Lender’s Consultant, covering the requested Advance in the form of AIA Form G702 and G703 or an equivalent form acceptable to Lender (with Borrower’s sworn statement and application for payment attached thereto);

#### copies of invoices, bill of sale, statements, receipted vouchers and any other supporting document for the Work that is the subject of the Request for Advance; evidence of payment of all invoices and bills for which prior Advances were made; and conditional (subject only to payment of the amount specified in the Draw Package) or unconditional lien waivers or releases of lien for all lienable work done or materials delivered;

#### a list of Eligible Soft Costs to be paid from the requested Advance, and copies of invoices and cancelled checks or other evidence of payment acceptable to Lender’s Consultant for each item of Eligible Soft Costs;

#### a copy of the then current Change Order log;

#### evidence that any Budgeted Project Costs (not shown on the Budget as an Eligible Project Cost) incurred by Borrower have been paid by Borrower.

#### to the extent not previously delivered to Lender, copies of all Permits required under applicable Legal Requirements for the construction of the Improvements as of the date of the requested Advance and copies of any contracts or subcontracts for the Work requested by Lender, to the extent not previously delivered to Lender; and

#### such additional documentation and information reasonably requested by Lender.

### Lender’s Consultant Report. Lender shall have received a report from Lender’s Consultant approving the subject Draw Package.

### Title Endorsements. Lender shall have received a commitment from the Title Company to issue an endorsement to the Title Insurance Policy extending the coverage to include the date and the amount of the requested Advance, without exception for any matter not previously approved by Lender in writing and insuring over all mechanics’ and material suppliers’ liens arising (or which may arise) from work performed on the Improvements through the date of the applicable Contractor’s sworn statement. Lender shall have also received a foundation endorsement to the extent required by Section 6.1.13(g).

### Loan In Balance. The Loan shall be *“*In Balance*”* as determined by Lender in accordance with Section 4.3 hereof.

### No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing; provided, however, that the absence of a Default which will be cured by the requested Advance shall not be a condition to such Advance.

### No Material Adverse Effect. No Material Adverse Effect shall have occurred and be continuing.

### Representations and Warranties. The representations and warranties made hereunder or under any of the other Loan Documents, or in any certificate or other document executed by Borrower or Guarantor and delivered to Lender pursuant to or in connection with this Agreement, shall be true and correct in all material respects as of the applicable Advance Date except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct on and as of such specified date.

### Each Draw Package submitted by Borrower shall constitute a representation and warranty by Borrower that, except as otherwise specifically disclosed in such Draw Package and labeled as a “Disclosure” (a ***“*Disclosure*”***): (i) Borrower is in compliance with all of the conditions to the applicable Advance set forth in this Agreement, (ii) all representations and warranties made hereunder or under any of the Loan Documents, or in any certificate or other document executed by Borrower or Guarantor and delivered to Lender pursuant to or in connection with this Agreement, are true and correct in all material respects as of the applicable Advance Date except to the extent such representation and warranty is made as of a specified date, in which case such representation and warranty shall have been true and correct on and as of such specified date, and (iii) no Default or Event of Default (other than a Default which will be cured by the subject Advance) exists as of the applicable Advance Date. If Lender elects to make an Advance notwithstanding matters which are the subject of a Disclosure, the waiver of such matters shall be effective for that Advance only, and such matters must be corrected before the next Advance.

### Payment of Costs and Expenses. Borrower shall pay all of Lender’s costs and expenses associated with the proposed Advance whether or not the Advance is ultimately made and all costs and fees of the Title Company.

## Advances for Eligible Project Costs. Lender will, subject to compliance with all of the other terms, conditions and provisions of this Agreement as determined by Lender, make Advances to Borrower at the Advance Rate, in accordance with the Work and Payment Schedule, and for the purpose of reimbursing Borrower for Eligible Project Costs actually incurred and paid for by Borrower, and for no other purpose. The aggregate Advances (excluding the Initial Advance) made under this Agreement shall in no event exceed the Maximum Aggregate Construction Advance Amount and the total Advances made under this Agreement shall in no event exceed the Loan Amount. No Advance will be made after the Outside Advance Date.

## Balancing.

### “In Balance” Determination. Advances shall only be made at such times as the Loan is “In Balance.” The Loan shall be deemed to be “In Balance” only at such times as Lender determines in its reasonable discretion that (a) amounts available for disbursement under the Loan Documents for Eligible Project Costs together with (b) available undisbursed Loan Deficiency Funds will be sufficient (giving effect to the expected timing of availability) to Complete the Improvements in accordance with the requirements of this Agreement and pay all Eligible Project Costs as and when expected to be incurred through the Outside Completion Date.

### Balancing Deposits. Within ten (10) days after written notice from Lender that the Loan is not “In Balance,” and prior to any subsequent Advance, Borrower shall deposit sufficient funds with Lender to bring the Loan “In Balance” (the “**Loan Deficiency Funds**”) or at Lender’s sole election (if requested by Borrower), Borrower shall first pay from its own funds (and not from the proceeds of the Loan) Eligible Project Costs in an amount equal to such deficiency as determined by Lender (and Lender’s Consultant shall have received and approved evidence, satisfactory to Lender of same) before Borrower shall be entitled to receive any further Advances. Lender shall not be obligated to make any Advances if and for as long as the Loan is not In Balance as determined by Lender. Any Loan Deficiency Funds so deposited will be held by Lender in a non-interest bearing account collaterally assigned to Lender, to secure the Obligations. Borrower hereby grants to Lender a security interest in any and all such Loan Deficiency Funds now or hereafter deposited with Lender. Any Loan Deficiency Funds so deposited with Lender shall be disbursed for the payment of Eligible Project Costs before any additional Advances are made for such Eligible Project Costs. Disbursements of Loan Deficiency Funds shall be subject to the same conditions as would be applicable to an Advance hereunder. Upon the occurrence and during the continuance of an Event of Default, Lender may apply all or any portion of any Loan Deficiency Funds to the payment of the Obligations or any Eligible Project Costs.

## Budget, Line Item Reallocations; Utilization of Contingency.

### Lender shall not be obligated to disburse more than the amount shown in the Budget for any line item of Eligible Project Costs.

### Line Item Cost Savings from any Budget line item that is an Eligible Project Cost shall be available for costs in any other Budget line item that is also an Eligible Project Cost.

### 100% of the funds allocated to the contingency line item shall be available for Eligible Project Costs in the same proportion as the percent of completion of the Improvements.

## Stored Materials Not Yet Incorporated. No Advance shall be made for materials not yet incorporated into the Improvements (whether stored on-site or off-site).

## Eligible Hard Costs. Advances for Eligible Hard Costs shall be limited to reimbursing Borrower for amounts incurred and paid by Borrower to each contractor and subcontractor providing labor or materials for the construction of the Improvements subject to and in accordance with the amounts set forth in the Budget (including, without limitation, the provisions therein for the withholding and payment of retainage which for each contractor and subcontractor providing labor or materials shall not be less than 10% of the contract price unless approved by Lender’s Consultant).

## Eligible Soft Costs. Advances for Eligible Soft Costs shall be limited to reimbursing Borrower for amounts incurred and paid by Borrower under the applicable contract, on the basis of invoices, statements, cancelled checks or other evidence thereof acceptable to Lender.

## Final Construction Advance; Release of Retainage. Advances for the payment of final Eligible Project Costs and release of retainage to the Borrower or applicable contractor or subcontractor shall not be made until Lender has received and approved all of the following:

### evidence of completion of the Improvements including: (a) a Certificate of Completion in the form acceptable to Lender signed by the Architect, if requested by Lender, and (b) a permanent certificate of occupancy (or equivalent approval) with respect to the Improvements for the Property issued by the applicable Governmental Authority and (c) evidence that Borrower is in compliance with Legal Requirements with regard to the retainage requirements;

### a conditional lien waiver from Contractor and each contractor or subcontractor performing Work, followed by a final, unconditional lien waiver, as applicable;

### a final inspection of the Improvements by Lender’s Consultant;

### evidence that all claims of lien that may have been recorded or notice thereof served on Lender have either been paid in full and released, or Borrower has posted or caused to be posted an appropriate surety bond or other assurances (including, without limitation, title insurance) to discharge or insure over the same;

### such title insurance endorsements as Lender may require, including, without limitation, endorsements to the Title Insurance Policy insuring the Security Instrument as a first lien upon the Property, excepting only such items as shall be permitted under the Loan Documents, and insuring over all mechanics’ and material suppliers’ liens arising (or which may arise) from the completion of the Improvements;

### if requested by Lender, an ALTA as-built survey or other satisfactory evidence showing that (a) the Improvements have been built in accordance with the Plans and do not encroach on any easement or public or private right of way, (b) the Improvements have been constructed within the boundaries of the Property, and (c) the Improvements have been constructed within the setback lines as required by applicable zoning ordinances and do not encroach upon any other lot or property.

### if requested by Lender, “as-built” Plans, showing the final specifications of all the Improvements;

### if requested by Lender, a warranty book, together with all guaranties and maintenance agreements, on all Improvements;

### copies of all licenses, permits and agreements necessary for the use, operation and occupancy of the Property not previously delivered to Lender.

### 

# **REPRESENTATIONS AND WARRANTIES**

As a material inducement to Lender to execute this Agreement and to make Advances of the proceeds of the Loan, Borrower represents and warrants to Lender that the statements set forth in this Article 5 are true, correct and complete as of the Closing Date, as of each Advance Date, and as of each date on which representations and warranties are renewed pursuant to this Agreement and the other Loan Documents:

## Organization, Powers and Good Standing.

### Organization and Powers of Borrower. Borrower is duly organized and validly existing under the laws of the jurisdiction of its organization and has all requisite power, authority, rights and franchises to own and operate its properties, to carry on its businesses as now conducted and as proposed to be conducted, and to enter into and perform this Agreement and the other Loan Documents to which it is a party or signatory. The sole business of Borrower is the acquisition, development, management, leasing, ownership, maintenance and operation of real estate and activities incidental thereto.

### Good Standing. Borrower has made all filings and is in good standing in the state of its formation and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a materially adverse effect on the business, operations, assets or condition (financial or otherwise) of Borrower.

### Non-Foreign Status. Borrower is not a “foreign corporation,” “foreign partnership,” “foreign trust,” or “foreign estate,” as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder.

## Authorization of Loan Documents.

### Authorization. The execution, delivery and performance of the Loan Documents to which Borrower is a signatory are within Borrower’s powers and have been duly authorized by all necessary action of Borrower.

### No Conflict. The execution, delivery and performance of the Loan Documents by Borrower will not: (i) violate (A) the Organizational Documents of any Loan Party, (B) any legal requirement affecting Borrower or any of its properties or assets or (C) any agreement to which Borrower is bound or to which it is a party; or (ii) result in or require the creation (except as provided in or contemplated by this Agreement) of any lien upon any of its properties or assets.

### Binding Obligations. This Agreement and the other Loan Documents executed by Borrower have been duly executed by Borrower and are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity.

### Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might reasonably be expected to have a Material Adverse Effect. Borrower is not in default with respect to any order or decree of any court or any order, regulation or demand of any Governmental Authority, which default might have consequences that might reasonably be expected to have a Material Adverse Effect. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Exception or any other agreement or instrument to which Borrower is a party or by which Borrower or the Property is bound.

## Litigation; Adverse Facts; Bankruptcy. There is no action, suit, investigation, proceeding or arbitration at law or in equity or before or by any foreign or domestic court or other governmental entity (a “**Legal Action**”), pending or, to Borrower’s knowledge, threatened (a) against or affecting the Property, Borrower or any other Loan Party or any of their respective properties or assets, or (b) questioning the validity or the enforceability of this Agreement or any of the other Loan Documents or affecting the Property. Neither Borrower nor any other Loan Party is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of Borrower’s assets or properties (a “**Bankruptcy Proceeding**”), and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or such constituent Persons. In addition, neither Borrower nor any other Loan Party, nor any principal or Affiliate of any Loan Party has been a party to, or the subject of a Bankruptcy Proceeding for the past ten (10) years.

## Disclosure. There is no fact known to Borrower that (and, to Borrower’s knowledge, no event has occurred which, upon the giving of notice or passage of time or both) would materially and adversely affects the Property or the business, operations, properties, assets or condition (financial or otherwise) of Borrower or any Loan Party which has not been disclosed in this Agreement or in other documents, certificates and written statements furnished to Lender in connection herewith.

## Payment of Taxes. Borrower has filed all tax returns (federal, state, local and foreign) required to be filed by it (including interest and penalties). Borrower is not liable for Taxes payable by any other Person. All transfer Taxes, deed stamps, intangible Taxes and other amounts required to be paid under applicable Legal Requirements in connection with the transfer of the Property to Borrower have been paid. All Taxes and governmental assessments due and owing in respect of the Property have been paid and none of the same is delinquent.

## Use of Loan Proceeds. The Loan is solely for the business purpose of Borrower or for distribution to Borrower’s equity holders in accordance with the Loan Documents and Legal Requirements and no portion thereof shall be used for personal, consumer, household purposes for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose.

## Government Regulations. Borrower is not subject to regulation under the Investment Company Act of 1940, the Federal Power Act, the Public Utility Holding Company Act of 1935, the Interstate Commerce Act or to any federal or state statute or regulation limiting its ability in incur indebtedness for money borrowed.

## Financial Condition. The financial statements, operating statements and all financial data previously delivered to Lender in connection with the Loan or the Property or relating to Borrower are true, correct and complete in all material respects. Such financial statements, operating statements and other financial data comply with the requirements of Section 6.4 and fairly present the financial position of the Persons who are the subject thereof as of the date thereof; and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

## Disclosures to Loan Parties. Before each Loan Party became obligated in connection with the Loan, Borrower made full disclosure to each Loan Party regarding Borrower’s financial condition and business operations, and all other circumstances bearing upon Borrower’s ability to pay and perform its obligations under the Loan Documents.

## Insurance. Borrower has obtained insurance policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. All premiums on such insurance policies required to be paid as of the Closing Date have been paid for the current policy period. No Person, including Borrower, has done, by act or omission, anything that would impair the coverage of any such policy.

## Solvency. Borrower and each other Loan Party is Solvent as of the Closing Date and as of each date on which this representation and warranty is renewed pursuant to this Agreement and the other Loan Documents and will be Solvent after giving effect to the transactions contemplated by the Loan Documents, including all Obligations incurred thereby, the security interests granted therein and the payment of all fees related thereto.

## Representations Regarding the Property. Borrower represents and warrants as follows:

### Title to Property. Borrower is the sole owner of and has good and marketable title to the fee interest in the Property, the Improvements and all other real and personal property described in the Security Instrument, free from any lien or encumbrance of any kind whatsoever, excepting only the Permitted Exceptions.

### Utilities and Access. Telephone services, electric power, storm sewers, sanitary sewer, potable water facilities and all other utilities and services necessary for the construction, use, operation and maintenance of the Improvements are available to the Property, are adequate to serve the Improvements located thereon, and are not subject to any conditions limiting the use of such utilities, other than normal charges to the utility supplier. All publicly dedicated, physically open and publicly maintained streets and easements necessary for the operation and maintenance of the Improvements are available to the boundaries of the Property.

### Compliance with Legal Requirements and Property Documents. The Property, and the present and contemplated construction, use, occupancy, and operation thereof, are and will remain in full compliance with all Legal Requirements and all Property Documents and obligations created by private contracts.

### No Condemnation. No condemnation proceedings or moratorium is pending or, to Borrower’s actual knowledge, threatened against the Property (or any portion thereof).

### Leases and Rents. Borrower represents and warrants with respect to the Property:

#### No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

#### Security Deposits. Borrower is in compliance with all applicable Legal Requirements relating to all Security Deposits, if any.

#### Leases. (i) As of the Closing Date, there are no Leases affecting the Property and no Person has any possessory or right to occupy the Property. Following Completion of the Improvements, with respect to any Lease entered into affecting the Property, Borrower is the sole owner of the entire lessor’s interest in the Leases, if any; (ii) the Leases, if any, are and will remain subordinate to the lien of the Security Instrument; (iii) none of the Rents have been collected for more than one (1) month in advance; (iv) there exists no offset or defense to the payment of any portion of the Rents; (v) no Lease contains an option to purchase, right of first refusal to purchase or any other similar provision; (vi) no Person has any possessory interest in, or right to occupy the Property, except under and pursuant to a Lease that is and shall remain subordinate to the lien of the Security Instrument; and (vii) all leasing broker fees and commissions payable by Borrower with respect to any Lease(s) have been paid in full, in cash or other form of immediately available funds.

### Finished Lot; Permits; Certificates of Occupancy. The Property is a Finished Lot. Borrower has obtained all Permits necessary for the construction of the Improvements on each Property (except for the building permit which may be obtained by payment of the applicable fee and without satisfaction of any further material conditions). Upon Completion of the Improvements, the uses being made of the Property will be in conformity in all material respects with the certificate of occupancy and/or Permits for the Property and any other restrictions, covenants or conditions affecting the Property (including any homeowners association requirements). The certificate of occupancy for the Property will not permit the use of the Property for any purpose other than as a 1-4 unit residential occupancy. The Property is not (i) zoned for, or being used for, any purpose other than 1-4 unit residential occupancy, (ii) an assisted living or similar facility, (iii) subject to any rent control, rent stabilization or similar Legal Requirements limiting, or placing conditions upon, the amount of rent that can be charged under a Lease or the ability of a landlord to decline the renewal or extension of a Lease.

### Property Documents. The Property Documents are in full force and effect and neither Borrower nor any other party thereto is in material default thereunder. Borrower has delivered to Lender a true, correct and complete copy of all Property Documents.

### Personal Property. Borrower is now and shall continue to be the sole owner of the personal property Collateral free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for liens or security interests in favor of Lender.

### Entire Property; No Encroachments. (a) the Improvements are, or will be constructed, wholly within the boundaries and building restriction lines of the Property, (b) no improvements on adjoining properties (now or will) encroach upon the Property, so as to materially adversely affect the value, use or marketability of the Property; and (c) all easements, licenses and other rights necessary or desirable in order to own and operate the Property have been granted and obtained and are in full force and effect.

### Separate Tax Parcels. Each Property is comprised of one or more tax parcels that are separately identified from and assessed separately from any other real property.

### Assessments. There are no pending or, to Borrower’s knowledge, proposed special or other assessments (whether by any Governmental Authority or homeowners association or any similar association) 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. No extension of time for assessment or payment by Borrower of any federal, state or local tax is in effect. There are no delinquent Impositions outstanding with respect to the Property and there are no pending or, to Borrower’s knowledge, proposed, special or other assessments for HOA improvements affecting the Property.

### No Joint Assessment. Neither Borrower nor any of its Affiliates have suffered, permitted or initiated the joint assessment of the Property (i) with any other real property constituting a separate tax lot, or (ii) with any personal property, or any other procedure whereby the Lien of any Taxes that may be levied against such other real property or personal property shall be assessed or levied or charged to the Property as a single Lien.

### Property Condition. Following Completion of the Improvements, the Property, including all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, shall be and remain in good condition, order and repair in all material respects; there shall exist no structural or other material defects or damages to the Property, whether latent or otherwise. Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or any termination or threatened termination of any policy of insurance or bond. The Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid. No portion of the Property is located in an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency or any successor thereto as an area having special flood or seismic hazards, or, if now or hereafter located within any such area, Borrower has obtained and will maintain the applicable flood hazard and/or earthquake insurance prescribed herein or in the other Loan Documents.

## Federal Trade Embargos. Each Restricted Party is in compliance with all Federal Trade Embargos in all material respects. No Embargoed Person owns any direct or indirect equity interest in Borrower. No Tenant at the Property is identified on the OFAC List. Borrower has implemented procedures, and will consistently apply those procedures throughout the term of the Loan, to ensure that the foregoing representations and warranties remain true and correct with respect to each Tenant at the Property at the time such Tenant is initially screened by Borrower.

## ERISA. Neither Borrower nor any ERISA Affiliate of Borrower has incurred or could be subjected to any liability under Title IV or Section 302 of ERISA or Section 412 of the Code or maintains or contributes to, or is or has been required to maintain or contribute to, any employee benefit plan (as defined in Section 3(3) of ERISA) subject to Title IV or Section 302 of ERISA or Section 412 of the Code. The consummation of the transactions contemplated by this Agreement will not constitute or result in any non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Code or substantially similar provisions under federal, state or local laws, rules or regulations.

## Full and Accurate Disclosure. No documents or information delivered by, or on behalf of any Restricted Party or any of their Affiliates to Lender in respect of the Property or any Restricted Party contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not misleading (except that the foregoing representation, as it relates to any title policies delivered to Lender in connection with the making of Advances hereunder, shall be limited to Borrower’s knowledge). There is no event or condition that has not been disclosed to Lender that has had or could reasonably be expected to have a Material Adverse Effect.

## Budget; Work and Payment Schedule. The Budget submitted to Lender is a true and accurate reflection of the scope and cost of the Work necessary to cause the Improvements to be Completed in accordance with the terms and conditions of this Agreement. After diligent investigation of all relevant conditions and due consultation with such parties as Borrower deems appropriate, Borrower represents that the Budget reflects Borrower’s best true, accurate, and complete estimate of the costs necessary to Complete the Improvements. Borrower represents that no portion of the Work will be commenced until after the Closing Date and no other work or action has been taken or will be taken that could give rise to a mechanic lien or stop notice against the Property. To the best of Borrower’s knowledge, the Work and Payment Schedule is true, accurate and complete.

## Plans. The Plans have been approved by all applicable Governmental Authorities, and upon completion in accordance with the Plans, the Improvements and the use and occupancy thereof will comply in all material respects with all applicable Legal Requirements. Neither the zoning nor any other right to construct, use or operate the Improvements is to any extent dependent upon or related to any real estate other than the Property. All Permits required from Governmental Authorities under applicable Legal Requirements in connection with the construction of the Improvements have been obtained.

## Property Management. No property management agreements are in effect with respect to the Property.

## Survival. All of the representations of the Restricted Parties set forth herein and in the other Loan Documents shall survive for so long as any portion of the Obligations are outstanding. All representations, covenants and agreements made by Borrower in the Loan Documents shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

# **COVENANTS OF BORROWER**

As a material inducement to Lender to execute this Agreement and to make each Advance, Borrower hereby covenants as set forth in this Article 6, which covenants shall remain in effect until the payment and performance in full of all of the Obligations.

## Property Covenants.

### Compliance with Laws; Governmental Approvals. Borrower will comply, and will cause the Improvements to be constructed in accordance with all Legal Requirements and will at all times comply with all Legal Requirements having jurisdiction over the Property or the construction of the Improvements, and will promptly furnish Lender with reports of any violations or official searches for violations of any such Legal Requirements established by Governmental Authorities.

### Lender Inspections. Throughout the term of the Loan and during normal business hours, Borrower will permit Lender and Lender’s representatives, inspectors, appraisers and consultants, to (a) inspect the Property, the Improvements and any materials to be used therein, (b) audit, examine and copy all contracts, records (including financial and accounting records pertaining to the Loan or the Property) and Plans which are kept at the Property or at Borrower’s offices, and (c) discuss the affairs, finances and accounts of Borrower with designated representatives of Borrower. Borrower will cooperate with any such representatives, inspectors, appraisers or consultants retained by Lender to enable them to perform their functions under this Agreement.

### Maintenance of Property.

#### Borrower shall cause the Property to be maintained in a good and safe condition and repair and following Completion, shall not remove, demolish or alter the Improvements (except for normal replacement of fixtures and personal property of equivalent value and functionality). Borrower shall promptly comply with all Legal Requirements and promptly cure any violation of a Legal Requirement. Borrower shall notify Lender in writing within three (3) Business Day after Borrower first receives notice of any such non-compliance. Borrower shall promptly repair, replace or rebuild any part of the Property that becomes damaged, worn or dilapidated and shall complete and pay for any Improvements at any time in the process of construction or repair.

### Title to Fixtures. Borrower will not acquire, purchase or install materials, personal property, equipment or fixtures subject to any security agreement or other contract wherein the right is reserved to any Person to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at the time of installation, without prior written consent of Lender.

### Ownership of Personal Property. Borrower will be the sole owner of all personal property Collateral acquired after the date hereof, free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for security interests and liens in favor of the interest of a lessor pursuant to a lease of personal property approved in writing by Lender and the liens and security interests approved by Lender pursuant to the Loan Documents.

### Mechanic Liens.

#### Subject to the right to contest in strict accordance with Section 6.12, Borrower, at Borrower’s sole cost and expense, shall promptly discharge or cause to be discharged (i) any mechanic’s or materialmen’s liens or claims of lien filed or otherwise asserted against the Property or (ii) any proceedings for the enforcement thereof. Borrower shall obtain lien waivers from all contractors engaged to work on the Property prior to the final payment of amounts owed to such contractors.

#### If Borrower fails to promptly discharge liens or claims of lien and provide the security or indemnity in the manner provided in this Section 6.1.6, then Lender may, but shall not be required to, procure the release and discharge of any such lien and any judgment or decree thereon, and in furtherance thereof may effect any settlement or furnish any security or indemnity as may be required by the Title Company to induce it to issue an endorsement to the Title Insurance Policy insuring against all such claims or liens. All amounts expended by Lender in connection with the provisions of this Section 6.1.6 shall be immediately due and payable together with interest thereon at the Default Rate from the date incurred by Lender and shall be deemed to constitute a protective advance, added to the Indebtedness and secured by the Security Instrument. In settling, compromising or arranging for the discharge of any liens under this Section 6.1.6, Lender shall not be required to establish or confirm the validity or amount of the lien.

### Other Liens. Borrower shall not grant or permit, and shall promptly pay and discharge, at Borrower’s sole cost and expense, all Liens and claims thereof on the Property or any part thereof or interest therein other than the Liens in favor of Lender.

### Management.

#### Borrower shall at all times be responsible for the management and operation of the Property. Any management and operations conducted by a Person other than Borrower shall be conducted pursuant to a bona fide management agreement which must (i) provide for management fees obtained through arm’s-length negotiations and comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms, (iii) provide that such management agreement, and the management fees payable thereunder, are subordinate in lien and payment to the Security Instrument and the other Loan Documents, (iv) not contain any terms which would have a Material Adverse Effect, (v) be terminable on thirty (30) days’ notice or less without cause and without payment of any termination fees or other penalty, and (vi) not be with a Restricted Party or an Affiliate thereof unless disclosed in writing to Lender prior to the date of this Agreement and upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party. Upon Lender’s request, Borrower shall promptly provide to Lender a true and correct copy of any such management agreement. Upon Lender’s request, any such management agreement shall be assigned to Lender, for the benefit of Lender, as additional security for the Loan and subordinated to the Security Instrument and other Loan Documents, with the express written consent of such manager pursuant to an assignment and subordination agreement in form and substance satisfactory to Lender in its sole and absolute discretion.

#### Lender may terminate or require Borrower to terminate the engagement of any existing property manager and engage a replacement manager selected by Lender pursuant to a management agreement approved by Lender (i) during the continuance of an Event of Default, (ii) following any foreclosure, conveyance in lieu of foreclosure or other similar transaction, (iii) during the continuance of a material default by such manager under such management agreement (after the expiration of any applicable notice and/or cure periods), (iv) if an Event of Bankruptcy occurs in respect of such manager, (v) if such manager engages in gross negligence, willful misconduct, fraud or misappropriation of funds in respect of the Property or its duties with respect thereto, or (vi) the terms and conditions of the management agreement with such manager are not in compliance with the provisions of Section 6.1.8(a).

#### Notwithstanding that the Property may be managed by a property manager, Borrower shall ensure that the Property is managed in a commercially reasonable manner and that its obligations as the lessor under any Leases are performed. Borrower shall enforce, in a commercially reasonable manner, the obligations of the tenants under such Leases.

### Revenues from Property; Restriction on Distributions. Borrower shall first apply all Revenues from the Property, to pay amounts due Lender under this Agreement and the other Loan Documents and then to costs and expenses associated with the ownership, maintenance, development and operation of the Property. Borrower shall not make, declare or permit any distribution to any officer, member, manager, partner or other direct or indirect beneficial owner of Borrower at any time that an Event of Default has occurred and is continuing.

### Impositions. Borrower shall pay or discharge all Impositions prior to the date upon which penalties attach thereto, and shall submit evidence satisfactory to Lender confirming such payment.

### Utilities. Borrower shall pay when due all charges that are incurred by Borrower for the benefit of the Property or that may become a charge or lien against the Property for gas, telephone, electricity, water, sewer, or other services furnished to the Property.

### No Change in Use. Borrower shall not permit any change in use or additional uses on the Property without the prior written consent of Lender, in its sole and absolute discretion.

### Construction Covenants.

#### Construction Documents. Borrower has delivered to Lender true, correct and complete copies of the Construction Documents, and there are no other contracts or agreements between Borrower, or any of its affiliates, and any other Person concerning the design, development or construction of the Improvements other than the Construction Documents. Borrower shall enter into no other agreements for the Work other than the Construction Documents without the prior written consent of Lender.

#### Permits; Legal Requirements. Borrower shall obtain, and at all times thereafter, keep in full force, all Permits that are required by any Government Authority. Borrower shall comply with all Legal Requirements. Borrower shall, upon request by Lender, provide to Lender copies of all Permits required by Government Authorities or applicable Legal Requirements in connection with the Work. All Work has, and will at all times be, performed in accordance with all Legal Requirements and the Plans.

#### Change Orders. Any change in the Work or the Work and Payment Schedule must be in a written agreement signed by Borrower and the Contractor and approved by Lender or Lender’s Consultant (each a “**Change Order**”).

#### Plans and Changes. No construction at the Property has been or will be undertaken with respect to any Improvements constructed or to be constructed on the Property except substantially as shown in the Plans. Borrower assumes full responsibility for the compliance of the Plans and the Improvements with all Legal Requirements and sound building and engineering practices. No plans or specifications, or any changes thereto, shall be included as part of the Plans until approved by Lender and all applicable Governmental Authorities. Borrower shall not change or modify the Plans, without Lender’s prior written consent, except for minor changes that do not (i) increase the Budgeted Project Costs; (ii) extend the time to Complete the Improvements beyond the Outside Completion Date, or (iii) require the approval of any Governmental Authority. Any request for a change in the Plans must be in writing signed by Borrower and the Architect and delivered to Lender’s Consultant for its and Lender’s approval.

#### Completing the Work; Outside Completion Date. The Work will begin promptly after the Closing Date. The Work will continue diligently without undue delay and in a good and workmanlike manner, free of defects and lien, in strict accordance with the Construction Contracts, the Plans, all Legal Requirements, the Budget, the Work and Payment Schedule and this Agreement. The Work will not violate any of the conditions, covenants or restrictions on the Property or other Legal Requirements. Borrower will notify Lender and Lender’s Consultant immediately in writing if (i) Borrower knows or has reason to believe that the Work does not comply with the Construction Documents, the Plans, Legal Requirements or this Agreement; (ii) any notice of lien on the Property is served on Borrower; or (iii) any Government Authority issues any notice or claim relating to the Property. Borrower agrees to cause the Improvements to be Completed on or before the Outside Completion Date. No Work has been commenced prior to the Closing Date except as expressly disclosed to Lender in writing prior to the Closing Date, and any such Work has been, or will be, paid for in full as of the Closing Date.

#### Inspections. Lender or Lender’s consultant or representatives has the right to enter the Property to inspect the Work or exercise any of its rights and remedies, without notice to Borrower, during normal business hours, or any other times that Lender arranges with Borrower. Borrower shall promptly pay for all inspections performed at the request of Lender. Each inspection will cost $150.00. Failure of Lender or Lender’s Consultant to (1) discover defects in the Improvements, or (2) to otherwise reject workmanship due to non-compliance with the Construction Contracts, the Plans or this Agreement, or due to defects in any of the foregoing, shall not make any of them liable to Borrower or to any other Person on account of such defect, nor shall any prior failure constitute a waiver of Lender’s right to subsequently reject any such design and workmanship. All inspections conducted by Lender’s Consultant are for the sole and exclusive benefit of Lender, and neither Borrower nor any other Person may rely upon such inspections and neither Borrower nor any other Person is or shall be deemed or construed to be a third party beneficiary of such inspections.

#### Foundation Survey and Endorsement. If required by Lender, within thirty (30) days after completion of the construction of the foundation of the Improvements on a Property, and as a condition precedent to any further Advances for the Property, Borrower shall deliver or cause to be delivered to Lender an update to the Survey showing the location of such foundation and an endorsement to the Title Insurance Policy insuring that such foundation is within the boundary lines of the Property, does not violate any applicable covenants, conditions, restrictions or agreements affecting the Property, and does not encroach upon any easements or rights of way affecting the Property or any portion thereof, provided, however, Lender will not require an updated survey if Title Company issues a foundation endorsement to the Title insurance Policy in form and substance reasonably acceptable to lender without requiring a survey update.

#### Defects and Variances. Borrower will, upon demand of Lender and at Borrower’s sole expense, correct any structural or other defect in the Improvements, or any variance from the Plans which is not either (i) permitted pursuant to a Change Order approved by Lender’s Consultant, or (ii) approved in writing by Lender’s Consultant.

#### Responsibility for Construction Work. Borrower has full and sole responsibility to make sure that the Work complies with the Construction Documents, the Plans, the Budget the Work and Payment Schedule and all applicable Legal Requirements. Lender has no liability, obligation or responsibility for the Work. Lender shall not liable for any failure to construct, complete, protect, or insure the Work. Lender shall not be liable for any costs of the Work. Nothing Lender does (including inspecting the Work or making any Advances) will be deemed to be an acknowledgement, representation or warranty by Lender that the Work complies with the Plans, this Agreement, the Permits or Legal Requirements. Borrower shall repair or replace at Borrower’s sole cost and expense any Work that does not comply with the Plans or Legal Requirements. Borrower will not have the right to assert or claim any offset, counterclaim or defense against Lender or Lender’s Consultant based on any claim Borrower may have against any Contracting Party, any contractors, subcontractors, suppliers or any other Person.

## Insurance. Borrower, at its sole cost and expense, shall obtain and deliver to Lender policies (or certificates) of insurance as required by Lender, in Lender’s sole and absolute discretion, meeting the requirements set forth in this Section 6.2 and Schedule 6.2 attached hereto (collectively, the “**Policies**” and each a “**Policy**”).

### Delivery of Policies, Payment of Premiums.

#### All Policies required pursuant to Section 6.2 above shall (i) be issued by companies approved by Lender in writing; (ii) name Lender and its successors and/or assigns as their interest may appear as the mortgagee/lender’s loss payable (in the case of property insurance and business interruption/loss of rents coverage) and an additional insured (in the case of liability insurance); (iii) contain (in the case of property insurance) a Non-Contributory Standard Mortgagee Clause/Lender’s Loss Payable Endorsement, or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) with respect to property (including business interruption/loss of rents), commercial general liability and excess/umbrella liability policies, contain a waiver of subrogation in favor of Lender; (v) with respect to property policies (including business interruption/loss of rents), contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including (A) endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under the Policies, (B) that Lender shall receive at least thirty (30) days’ prior written notice of cancellation of any of the property Policies, except ten (10) days’ notice for cancellation due to non-payment of premium and, when available, liability policies, (C) such policy shall not contain any provision that would make the Lender liable for any premiums and commissions, provided that the policy need not waive the requirement that the premium be paid in order to effect continuation of coverage if the policy will be cancelled due to non-payment of premium and (D) providing that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums; (vi) in the event any property insurance policy shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Lender, such insurance policy shall not be invalidated by and shall insure Lender regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Loan Documents; and (vii) be satisfactory in form and substance to Lender and approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds and complete copies thereof delivered to Lender.

#### In the event of foreclosure or other transfer of title, Borrower agrees that all proceeds payable thereunder pertaining to the Property shall thereupon vest in the purchaser at such foreclosure or in Lender or other transferee in the event of such other transfer of title.

#### Borrower shall pay the premiums for the Policies (the “**Insurance Premiums**”) as the same become due and payable and furnish to Lender evidence of the renewal of each of the Policies together with receipts for or other evidence of the payment of the Insurance Premiums reasonably satisfactory to Lender. If at any time Lender is not in receipt of written evidence all insurance required herein is in full force and effect, Lender has the right, 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 determines. All cost incurred by Lender in connection with such action or in obtaining such insurance and keeping insurance in-force shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Loan Documents and shall bear interest at the Default Rate. Borrower shall deliver to Lender a complete copy of each Policy within thirty (30) days after its effective date. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like. Lender agrees that the Policies may be in the form of a blanket policy provided that (i) such policy otherwise meets the requirements set forth in this Section 6.2 and (ii) Lender shall be satisfied by evidence required by Lender that the blanket policy provides the same protection as would a separate Policy insuring only the Property in accordance with the terms of this Agreement.

#### **WARNING**

**IF BORROWER FAILS TO PROVIDE LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, FLOOD INSURANCE TO THE EXTENT EXPRESSLY REQUIRED HEREUNDER, LENDER MAY, IN ITS SOLE DISCRETION (AND WITHOUT PRIOR NOTICE TO BORROWER IF THERE IS A LAPSE IN COVERAGE), PURCHASE INSURANCE AT BORROWER’S EXPENSE TO PROTECT THE PROPERTY; SUCH INSURANCE MAY BE PLACED BY LENDER DURING ANY STATUTORY OR OTHER REQUIRED NOTICE PERIOD. BORROWER MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE TO LENDER THAT BORROWER HAS OBTAINED THE APPLICABLE INSURANCE COVERAGE ELSEWHERE. LENDER SHALL HAVE NO DUTY TO PLACE SUCH INSURANCE, LENDER SHALL HAVE NO LIABILITY WITH RESPECT TO THE TERMS OF SUCH INSURANCE OR THE CREDIT OF THE INSURER IF LENDER ELECTS TO PLACE SUCH INSURANCE, AND BORROWER IS NOT ENTITLED TO RELY ON THE EXISTENCE OF ANY LENDER PLACED COVERAGE EVEN IF BORROWER HAS BEEN NOTIFIED THAT LENDER HAS ELECTED TO PLACE SUCH COVERAGE.**

**BORROWER IS RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY LENDER, INCLUDING INSURANCE PURCHASED DURING ANY NOTICE PERIOD. ALL ACTUAL AND REASONABLE EXPENSES INCURRED BY LENDER 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 BEAR INTEREST AT THE DEFAULT RATE. AT LENDER’S OPTION, THE COST OF THIS INSURANCE MAY BE ADDED TO THE LOAN BALANCE. IF THE COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF THE LENDER PURCHASED COVERAGE MAY BE THE DATE THE PRIOR COVERAGE LAPSED OR THE DATE BORROWER FAILED TO PROVIDE PROOF OF COVERAGE TO LENDER.**

**THE COVERAGE PURCHASED BY LENDER MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE BORROWER CAN OTHERWISE OBTAIN ON ITS OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.**

### Casualties; Insurance Proceeds. If the Property is damaged or destroyed, in whole or in part, by fire or other casualty (in either case, a “**Casualty**”), Borrower shall give prompt written notice thereof to Lender, whether or not covered by insurance. Lender shall be named as a mortgagee/loss payee under Borrower’s property insurance policies and as an additional insured under Borrower’s liability insurance policies. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies and Borrower shall not settle or permit any settlement of any claim without Lender’s approval, (i) if an Event of Default is continuing or (ii) with respect to any Casualty in which the Loss Proceeds thereof or the costs of completing the Restoration are reasonably expected to be equal to or greater than the Restoration Threshold Amount and Borrower shall deliver to Lender all instruments required by Lender to permit such participation. Any Insurance Proceeds in connection with any Casualty (whether or not Lender elects to settle and adjust the claim or Borrower settles such claim) shall be due and payable solely to Lender and held and disbursed by Lender in accordance with the terms of this Agreement. If Borrower or any party other than Lender receives any Insurance Proceeds, Borrower shall immediately deliver such proceeds to Lender and shall endorse, and cause all such third parties to endorse, check payable therefor to the order of Lender. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to endorse any such check payable to the order of Lender. Borrower hereby releases Lender from any and all liability with respect to the settlement and adjustment by Lender of any claims in respect of any Casualty other than for actions that constitute gross negligence or intentional misconduct. Notwithstanding any Casualty, Borrower shall continue to pay the Indebtedness at the time and in the manner provided for in this Agreement.

### Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of all or any portion of the Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings which is reasonably expected to involve an Award of an amount greater than the Restoration Threshold Amount. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Indebtedness at the time and in the manner provided for in this Agreement and the Indebtedness shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Indebtedness. If Borrower or any party other than Lender receives any Award, Borrower shall immediately deliver such proceeds to Lender and shall endorse, and cause all such third parties to endorse, a check payable therefore to the order of Lender. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the applicable rate provided herein. Loss Proceeds from a Condemnation shall be applied as follows:

#### If a partial Condemnation of the Property does not interfere with the construction of the Improvements in accordance with the Plans, the Budget or Completion of the Improvements on or before the Outside Completion Date,, or upon Completion, with the use of the Property as a residential property, as determined by Lender, then, unless Lender approves the use of Loss Proceeds for the Restoration of the Property and the Restoration Conditions are satisfied with respect to the Restoration of the Property, the Loss Proceeds thereof paid by the condemning authority shall be applied to the prepayment of the Indebtedness, whether or not then due and payable, in such order, proportion and priority as Lender in its sole discretion shall deem proper.

#### If a partial Condemnation of the Property does interfere with the construction of the Improvements in accordance with the Plans, the Budget or Completion of the Improvements on or before the Outside Completion Date, or upon Completion, with the use of the Property as a residential property or the Restoration Conditions are not satisfied, as determined by Lender, or if there occurs a complete Condemnation of the Property (each, a “**Fully Condemned Property**”), then (i) Lender may retain any Award received by it, (ii) Borrower shall immediately deliver to Lender any Award paid to Borrower, (iii) the Loss Proceeds of such Award shall be applied to the prepayment of the Indebtedness, whether or not then due and payable, in such order, proportion and priority as Lender in its sole discretion shall deem proper.

### Restoration. The following provisions shall apply in connection with the Restoration of the Property affected by a Casualty:

#### If (i) the Loss Proceeds reasonably expected to be received in connection with any single Casualty event is less than the Restoration Threshold Amount and (ii) the Restoration Conditions are satisfied, then (A) if Insurance Proceeds are paid by the insurance company directly to Borrower subsequent to delivering the undertaking required by the Restoration Conditions, such Insurance Proceeds may be retained by Borrower (for the avoidance of doubt, Insurance Proceeds received by Borrower prior to delivering the undertaking required by the Restoration Conditions shall be immediately paid to Lender as required by Section 6.2.2), (B) if Insurance Proceeds are paid by the insurance company to Lender, such Insurance Proceeds will be disbursed by Lender to Borrower and (C) Borrower shall conduct the Restoration of the Property in accordance with the terms of Section 6.2.4(d) and Section 6.2.4(e).

#### If (i) the Loss Proceeds reasonably expected to be received in connection with any single Casualty event is greater than the Restoration Threshold Amount and (ii) the Restoration Conditions are satisfied, then (A) Borrower shall immediately deliver to Lender any Insurance Proceeds paid to Borrower and (B) Borrower shall conduct the Restoration of the Property in accordance with the terms of and subject to the conditions of Section 6.2.4(d**)** and Section 6.2.4(e).

#### If following a Casualty, the Restoration Conditions are not satisfied, as determined by Lender, then (i) Lender may retain any Insurance Proceeds received by it, (ii) Borrower shall immediately deliver to Lender any Insurance Proceeds paid to Borrower,(iii) the Loss Proceeds of such Insurance Proceeds shall be applied to the prepayment of the Indebtedness, whether or not then due and payable, in such order, proportion and priority as Lender in its sole discretion shall deem proper.

#### If the Restoration Conditions are satisfied then (i) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than thirty (30) days after payment of Loss Proceeds by the insurance company or condemning authority (as applicable) with respect to the Casualty or Condemnation) and shall diligently pursue the Restoration to satisfactory completion; (ii) Borrower shall cause the Property and the use thereof after the Restoration to be in compliance with and permitted under all applicable Legal Requirements and the Property, after Restoration, shall be of the same character as prior to such damage or destruction; (iii) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements and (iv) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower’s architect or engineer stating the entire cost of completing the Restoration, which budget shall be reasonably acceptable to Lender. If at any time the Loss Proceeds or the unused portion thereof shall not, in the opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by Lender to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the “**Loss Proceeds Deficiency**”) with Lender before any further use or disbursement of the Loss Proceeds shall be made. The Loss Proceeds Deficiency deposited with Lender shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Loss Proceeds pursuant to Section 6.2.4(e), and until so disbursed, shall constitute additional security for the Obligations.

#### If the Restoration Conditions are satisfied, then Lender may impose such reasonable requirements on the use or expenditure of Loss Proceeds as Lender may require, in accordance with Lender’s standard construction lending practices or in any other manner approved by Lender. Without limiting the generality of the foregoing, Lender may, at its option, condition disbursement of Loss Proceeds on (i) delivery of a renovation certificate in form and substance satisfactory to Lender, (ii) completion of a property inspection reasonably satisfactory to Lender, (iii) Lender’s approval of plans and specifications of an architect satisfactory to Lender; (iv) the identity, experience, reputation and financial condition of contractors and subcontractors; (v) contractor’s cost estimates; (vi) architect’s certificates; (vii) waivers of liens; (viii) sworn statements of mechanics and materialmen and such other evidence of costs; (ix) percentage completion of construction; (x) frequency of disbursements; (xi) application of payments; (xii) customary retainage and satisfaction of liens, in each case, as Lender may reasonably require. The excess, if any, of the Loss Proceeds and the remaining balance, if any, of the Loss Proceeds Deficiency deposited with Lender after the Restoration has been completed, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, **provided** no Event of Default shall have occurred and shall be continuing.

## Records. Borrower shall keep and maintain full and accurate accounts and records of Borrower’s operations with respect to the Obligations according to sound accounting practices consistently applied.

## Reporting Requirements.

### Borrower shall deliver to Lender, within ten (10) Business Days of Lender’s request therefor such financial statements relating to Borrower and each Loan Party reasonably required by Lender, in Lender’s reasonable discretion. Such financial statements shall be certified by an authorized officer, manager or member of Borrower and such other Loan Parties, as applicable.

### Borrower shall deliver to Lender, within ten (10) Business Days of Lender’s request therefor, a rent roll for the Property, containing such information reasonably requested by Lender, certified by Borrower as true and correct.

### Borrower shall deliver to Lender, within ten (10) Business Days of Lender’s request therefor, copies of any requested Tax, HOA or condo assessment or insurance bills, statements or invoices received by Borrower with respect to the Property together with evidence satisfactory to Lender of payment in full of same on or before the applicable due date.

### Borrower shall, as soon as reasonably practicable after request by Lender, furnish or cause to be furnished to Lender in such manner and in such detail as may be reasonably requested by Lender, such evidence of compliance with the Loan Documents, copies of Leases and such additional information, documents, records or reports as may be reasonably requested with respect to the Property or the conditions or operations, financial or otherwise, of the Loan Parties.

## Environmental Matters. As soon as possible, and in any event within ten (10) days after receipt by Borrower, Borrower shall provide Lender with a copy of (a) any notice or claim to the effect that the Borrower or any other Loan Party, or any of their respective Affiliates, is or may be liable to any Person as a result of the release of any toxic or hazardous waste or substance into the environment, and (b) any notice alleging any violation of any federal, state or local environmental, health or safety law or regulation by the Borrower or any Loan Party, or any of their respective Affiliates.

## Notice of Litigation; Material Event. Borrower will give prompt written notice (containing reasonable detail) to Lender of (a) any litigation or governmental proceeding pending or threatened in writing by or against Borrower, any other Loan Party or the Property, (b) any Default or Event of Default, (c)  any default under any of the Property Documents, (d) any Event of Bankruptcy occurs in respect of Borrower, any Loan Party or an Affiliate of any of the foregoing, and (e) any other circumstance or event that could reasonably be expected to result in a Material Adverse Effect.

## General Covenants.

### Compliance with Loan Documents. Borrower will comply with all conditions of this Agreement, whether or not an Advance under the Loan is requested. It will comply and, to the extent it is able, will cause compliance by parties thereto, with all other Loan Documents and the Property Documents.

### Representations and Warranties. Until the payment and performance in full of all of the Obligations, the representations and warranties contained in this Agreement and the other Loan Documents shall remain true and complete.

### Maintenance of Existence; Trade Names. Borrower and each of the other Loan Parties that is not an individual shall maintain and preserve its existence and all rights and franchises material to its business. Borrower does not and will not use any trade name and has not and will not do business under any name other than its actual name set forth herein. The principal place of business of Borrower is the address set forth in Section 10.1, and Borrower has no other place of business.

### Further Assurances. Borrower shall execute and deliver from time to time, promptly after any request by Lender, any and all instruments, agreements and documents, and shall take such other action, as may be necessary or desirable in the opinion of Lender to maintain, perfect or insure the security of Lender provided for herein and in the other Loan Documents, and Borrower shall pay all fees and expenses (including attorneys’ fees) related thereto.

### Keeping Loan Parties Informed. Borrower shall at all times keep each of the Loan Parties informed of Borrower’s financial condition and business operations, the condition and use of each Property, and all other circumstances which affect Borrower’s ability to pay or perform the Obligations.

### Actions Affecting Property. Borrower shall appear in and contest any action or proceeding purporting to affect the Property or any other Collateral or the rights or powers of Lender and shall pay all costs and expenses (including costs of evidence of title, litigation, and attorneys’ fees) in any such action or proceeding.

## Special Purpose. Borrower hereby represents, warrants and covenants that as of the date hereof and until such time as all of the Obligations have been paid and performed in full:

### Borrower shall conduct and operate its business as presently conducted and operated.

### Borrower has not and will not enter into any contract or agreement with any Affiliate of Borrower, any constituent party of Borrower or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party.

### No indebtedness of Borrower other than the Indebtedness may be secured (senior, subordinate or *pari passu*) by the Collateral.

### Borrower has not made and will not make any loans or advances to any third party (including any Affiliate or constituent party), and shall not acquire obligations or securities of its Affiliates.

### Borrower has been, is, and intends to remain Solvent and Borrower has paid and intends to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets; provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

### Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not, nor will Borrower permit any constituent party to, amend, modify or terminate the Organizational Documents of Borrower without the prior written consent of Lender.

### Borrower has maintained and will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person. Borrower’s assets will not be listed as assets on the financial statement of any other Person, provided, however, that Borrower’s assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower’s assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets shall be listed on Borrower’s own separate balance sheet. Except to the extent that Borrower is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law, Borrower will file its own tax returns (to the extent that Borrower is required to file any such tax returns) and will not file a consolidated, combined, or unitary income tax return (as provided for in IRC Sec. 1501 or any applicable state or local law) with any other Person. Borrower has maintained and shall maintain its books, records, resolutions and agreements as official records.

### Borrower has been, will be, and at all times has held and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or member, manager, partner or shareholder in Borrower, or any constituent party of Borrower), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or department or part of the other and shall maintain and utilize separate stationery, invoices and checks bearing its own name.

### Borrower has maintained and intends 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; provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

### Neither Borrower nor any constituent party has sought or will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of Borrower or transfer or otherwise dispose of all or substantially all of its assets.

### Borrower has not and will not commingle the funds and other assets of Borrower with those of any Affiliate or constituent party or any other Person, and has held and will hold all of its assets in its own name.

### Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party or any other Person.

### Borrower has not and will not assume or guarantee or become obligated for the debts of any other Person and Borrower has and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person, except, in each case, as contemplated by this Agreement or the other Loan Documents.

### Borrower has paid and will pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

## Leasing.

### Provided that no Event of Default is continuing, renewals, amendments and modifications of any Leases and proposed leases, shall not be subject to the prior approval of Lender provided the proposed lease or Lease as amended or modified (a) shall be a valid enforceable Lease that complies with all applicable Legal Requirements, (b) shall provide for net effective rental rates comparable to existing local market rates, (c) shall have an initial term (together with all renewal options) of not greater than three (3) years, (d) shall provide for automatic self-operative subordination to the Security Instrument and, at Lender’s option, (i) attornment to Lender and (ii) the unilateral right by Lender, at the option of Lender, to subordinate the liens of the Security Instrument to the Lease, (e) shall not contain any option to purchase or any right of first refusal to purchase all or any portion of the Property, (f) requires monthly rent payments, (g) complies with all regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury and (h) shall be in writing and on terms and conditions which are consistent with then existing market conditions for leases in the same market, and of similar size and with similar tenants, as such Lease and negotiated on arm’s length terms with a Person who is not an Affiliate Borrower or an Affiliate of or related to any Guarantor. Borrower shall deliver to Lender copies of all Leases which are entered into pursuant to the preceding sentence together with Borrower’s certification that it has satisfied all of the conditions of the preceding sentence within ten (10) days after Lender’s written request.

### Borrower (a) shall observe and perform the material obligations imposed upon the lessor under the Leases and shall not do or permit anything to impair the value of the Leases as security for the Indebtedness; (b) shall promptly send copies to Lender of all notices of default that Borrower shall send or receive under any Lease; (c) shall enforce, in accordance with commercially reasonable practices for properties similar to the Property, the terms, covenants and conditions in the Leases to be observed or performed by the lessees; (d)  shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (e) shall not execute any other assignment of lessor’s interest in the Leases or the Rents (except in favor Lender as contemplated by the Loan Documents); (f) shall not modify any Lease in a manner inconsistent with the Loan Documents; (g) shall not convey or transfer or suffer or permit a conveyance or transfer of the Property so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees under Leases; (h) shall not consent to any assignment of or subletting under any Lease without the prior consent of Lender, which, with respect to a subletting, may not, so long as no Event of Default is continuing, be unreasonably withheld or delayed; and (i) shall not cancel or terminate any Lease or accept a surrender thereof (except in the exercise of Borrower’s commercially reasonable judgment in connection with a tenant default) without the prior consent of Lender, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed.

## Prohibited Persons. Borrower shall not (i) knowingly conduct any business, or engage in any transaction or dealing, with any Embargoed Person, including the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Embargoed Person, or (ii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any Federal Trade Embargo. Borrower shall cause the representation set forth in Section 5.14 to remain true and correct at all times.

## Plan Assets. Borrower will do, or cause to be done, all things necessary to ensure that it will not be deemed to hold Plan Assets at any time.

## Taxes, Impositions and Other Claims. Borrower shall pay and discharge all Taxes and Impositions levied upon it, its income and its assets as and when such Taxes and Impositions are due and payable, as well as all lawful claims for labor, materials and supplies or otherwise. Borrower shall file all federal, state and local tax returns and other reports that it is required by law to file. Notwithstanding the foregoing, after prior written notice to Lender, Borrower may contest by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of any such Taxes, Impositions and claims and, in such event, may permit such Taxes, Impositions and claims being so contested to remain unsatisfied or unpaid during such contest so long as (a) no Event of Default shall exist, (b) such proceeding shall be permitted under and conducted in accordance with all applicable Legal Requirements, (c) no Property or other Collateral nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, as determined by Lender, (d) enforcement of the contested such Taxes, Impositions and claims is effectively stayed for the entire duration of such contest, (e) any such Taxes, Impositions and claims determined to be due, together with any interest or penalties thereon, shall be promptly paid as required after final resolution of such contest, (f) Borrower has set aside on its books adequate reserves in accordance with GAAP, (g) Borrower shall deliver to Lender cash security in an amount determined by Lender to be sufficient to insure the payment of such Taxes, Impositions and other claims, together with all interest and penalties thereon, (h) failure to pay such Taxes, Impositions and other claims will not, as determined by Lender, present an unreasonable risk of any civil or criminal liability to Lender or any Material Adverse Effect, (i) such contest shall not affect the ownership, construction, use or occupancy of the Property or other Collateral, (j) if any such claim results in a workers’, mechanics’ or other similar Lien on the Property, Borrower shall be in compliance with the provisions of clause (v) of the definition of Permitted Exceptions, and (k) Borrower shall, upon request by Lender, give Lender prompt notice of the status of such proceedings and/or confirmation of the continuing satisfaction of the conditions set forth above. Notwithstanding the foregoing, Borrower shall comply with all Legal Requirements and pay any contested Taxes, Impositions and other amounts (or, if cash or other security has been provided, Lender may pay over any such cash or other security held by Lender to the claimant) if, in the Lender’s reasonable judgment, any of the foregoing conditions is not satisfied at any time or there shall be any danger of the Lien of the Security Instrument being extinguished. Borrower shall promptly pay for all utility services provided to the Property as they become due and payable (other than any such utilities, which are, pursuant to the terms of any Lease, required to be paid by the tenant thereunder directly to the applicable service provider).

# **NEGATIVE COVENANTS**

As a material inducement to Lender to execute this Agreement and to make any Advance, Borrower hereby covenants as set forth in this Article 7, which covenants shall remain in effect until payment and performance in full of all of the Obligations.

## Fundamental Changes. Neither Borrower nor any other Loan Party (that is not a natural person) shall dissolve or liquidate or become a party to any merger or consolidation.

## Prohibited Transfers. Borrower shall not directly or indirectly make, suffer or permit the occurrence of any Transfer.

## Organizational Documents. Borrower will not amend, modify or terminate its Organizational Documents without the prior written consent of Lender.

## Government Regulation. Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. OFAC Lists) that prohibits or limits Lender from making any Advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower’s identity as may be requested by Lender at any time to enable Lender to verify Borrower’s identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

## Business Purpose; Non-Owner Occupied. The Loan is for the sole purpose of financing the Property as a business or commercial investment, and all proceeds of the Loan shall be used solely for said business or commercial investment purpose and not for personal, family or household purposes. No proceeds of the Loan will be used for the purchase of any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto, including without limitation, Regulations U, T and X of the Board of Governors of the Federal Reserve System. The Property has been or will be acquired and owned by Borrower for investment purposes only and will at no time be occupied by Borrower, any Loan Party or any Interest Owner, or by any of their respective affiliates, family members or relatives or by any Person related to any Loan Party or any Interest Owner that is a natural person. Borrower shall not purchase or own any real property other than the Property and shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

## No Liens. Without Lender’s prior written consent, Borrower shall not create, incur, assume, permit or suffer to exist any Lien on all or any portion of the Property or any direct or indirect legal or beneficial ownership interest in Borrower, except liens in favor of Lender and Permitted Exceptions.

## ERISA. Borrower shall not maintain or contribute to, or agree to maintain or contribute to, or permit any ERISA Affiliate of Borrower (as applicable) to maintain or contribute to or agree to maintain or contribute to, any employee benefit plan (as defined in Section 3(3) of ERISA) subject to Title IV or Section 302 of ERISA or Section 412 of the Code. Borrower shall not engage in a non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Code, or substantially similar provisions under federal, state or local laws, rules or regulations or in any transaction that would cause any obligation or action taken or to be taken hereunder (or the exercise by Lender of any of its rights under any other Loan Document) to be a non-exempt prohibited transaction under such provisions.

# **EVENTS OF DEFAULT AND REMEDIES**

## Events of Default. The occurrence of any one or more of the following shall constitute an “Event of Default” under this Agreement:

### Any portion of the Indebtedness is not paid when due;

### Any of the Taxes or Impositions are not paid prior to delinquency;

### Any of the Policies are not kept in full force and effect, or certified copies thereof are not delivered to Lender within ten (10) days of written request;

### Any certification, representation or warranty made by Borrower or any other Loan Party herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished by Borrower or any other Loan Party in connection with any Loan Document, shall be false or misleading in any material respect as of the date the representation or warranty was made;

### An Event of Bankruptcy shall occur with respect to any Restricted Party;

### An Event of Default as defined or described elsewhere in this Agreement or in any other Loan Document occurs;

### A default occurs under any term, covenant or provision set forth herein or in any other Loan Document which specifically contains a notice requirement or grace period and such notice has been given and such grace period has expired;

### Borrower breaches any covenant contained in Section 6.8;

### Any litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower any other Loan Party, or the Property that if adversely determined would have a Material Adverse Effect, as determined by Lender in its sole judgment;

### A final judgment or decree for monetary damages or a monetary fine or penalty in excess of $10,000.00 is entered against Borrower by any Governmental Authority;

### Commencement of any action or proceeding which seeks as one of its remedies the dissolution of Borrower or any other Loan Party or a final judgment is entered dissolving Borrower or any other Loan Party;

### All or any material part of the property of Borrower is attached, levied upon, garnished or otherwise seized by legal process, and such attachment, levy, garnishment or seizure is not quashed, stayed, or released within twenty (20) days of the date thereof;

### Any Transfer in violation of Section 7.2 occurs;

### Any uninsured damage to or loss, theft or destruction of any of the Improvements in excess of $10,000 occurs;

### Borrower or any Person on behalf of Borrower, shall claim or assert that the Loan Documents are not legal, valid and binding agreements enforceable against Borrower in accordance with their respective terms; or the Loan Documents shall in any way be terminated (except in accordance with their terms) or become or be judicially declared ineffective or inoperative or shall in any way cease to give or provide the respective liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby;

### Any Person shall obtain an order or decree in any court of competent jurisdiction (a) enjoining or delaying the construction of the Improvements; or (b) enjoining or prohibiting Lender or Borrower from carrying out the terms and conditions of any of the Loan Documents; in either case, if such order or decree is not vacated or stayed within ten (10) days after the filing thereof;

### Formal charges are filed against Borrower, any other Loan Party or any other Person under any federal, state, or municipal statute, law, or ordinance for which forfeiture of any of the Collateral is a potential penalty, or any Collateral is in fact so seized or forfeited;

### Any Loan Document shall fail to be in full force and effect or to convey the Liens, rights, powers and privileges purported to be created thereby; any Restricted Party shall disaffirm or contest in writing such effectiveness; or a default by any Restricted Party or any of their respective Affiliates shall occur under any of the other Loan Documents, in each case, beyond the expiration of any applicable cure period;;

### Any Loan Party that is a natural person dies or is incapacitated or any Loan Party that is not a natural person is terminated, revoked or dissolved;

### Any failure on the part of Borrower to duly observe or perform any of its covenants set forth in Section 5.14 or Section 6.10;

### Any failure shall occur in the due performance or observance by Borrower of any term, covenant or agreement contained in Section 6.11 or Article 7;

### The appearance of defective workmanship or materials in the Work at the Property, which deviations or defects are not corrected or substantially corrected within ten (10) Business Days after receipt of written notice of such deviations or defects from Lender to Borrower;

### The failure to Complete construction of the Improvements on or before the Outside Completion Date;

### Cessation of the work of construction prior to the Completion of the Improvements for a continuous period of twenty (20) days; or the obtaining by any Person of any order or decree in any court of competent jurisdiction enjoining the construction of the Improvements which order or decree is not vacated within twenty (20) days after the granting of such order or decree;

### Borrower is unable to satisfy any condition of Borrower’s right to receive Advances for a period in excess of thirty (30) days after Lender’s refusal to make any further Advance;

### The failure to deposit any Loan Deficiency Funds with Lender in the time and manner set forth in Section 4.3.

### Unless Borrower is contesting the same in accordance with the provisions of this Agreement, the filing of any claim of lien or encumbrance against the Property or any part thereof that is not released or insured over with a title insurance endorsement (obtained at Borrower’s cost and expense) within thirty (30) days after notice thereof from Lender to Borrower; or the service on Lender or any disburser of funds of a notice or demand to withhold funds, which is not nullified within thirty (30) days after the date of such service;

### The neglect, failure or refusal of Borrower to keep in full force and effect any Permit required for the construction or operation of the Improvements on the Property that is not fully reinstated within twenty (20) days after the lapse of effectiveness of such Permit; or (ii) the curtailment in availability to the Property of utilities or other public services necessary for the full occupancy and utilization of the Improvements that is not restored to full availability within twenty (20) days after such curtailment of availability;

### A default shall be continuing under any of the other terms, covenants or conditions of this Agreement or any other Loan Document not otherwise specified in this Section 8.1, for ten (10) days after notice to Borrower from Lender, in the case of any default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other default; or

### A default or event of default (after the expiration of any applicable grace or cure period) occurs under any loan (other than the Loan) previously, now, or hereafter made by Lender to Borrower.

## Remedies.

### Advances. Upon the occurrence and during the continuance of an Event of Default, at Lender’s election, in its sole and absolute discretion, Borrower shall have no right to request or obtain further Advances.

### Acceleration; Remedies. During the continuance of an Event of Default, Lender may by written notice to Borrower, in addition to any other rights or remedies available pursuant to the Loan Documents, at law or in equity, declare by written notice to Borrower all or any portion of the Indebtedness to be immediately due and payable, whereupon all or such portion of the Indebtedness shall so become due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Collateral (including all rights or remedies available at law or in equity); provided, however, that, notwithstanding the foregoing, if an Event of Default specified in Section 8.1.5 shall occur, then the Indebtedness shall immediately become due and payable without the giving of any notice or other action by Lender.

### Completion of Work. Lender, and its agents, may enter on the Property and complete the Improvements in accordance with the Plans, with such changes as Lender may decide from time to time and in its judgment deems appropriate, all at the risk and expense of Borrower. Lender shall have the right at any time to discontinue any work commenced, in respect to the Improvements or to change any course of action undertaken by it, and not be bound by any limitations or requirements of time, whether set forth in this Agreement or otherwise. Lender shall have the right and power (but shall not be obligated) to assume any contract made by or on behalf of Borrower in any way relating to the Work and to take over and use all or any part of the labor, materials, supplies, and equipment contracted for by or on behalf of Borrower whether or not previously incorporated into the Improvements, all in the discretion of Lender. In connection with any work of construction undertaken by Lender pursuant to the provisions of this Section 8.2.3, Lender may (i) engage builders, contractors, architects, engineers, and others for the purpose of furnishing labor, materials, and equipment in connection with such work; (ii) pay, settle, or compromise all bills or claims that may become liens against the Property or that have been or may be incurred in any manner in connection with the Improvements or for the discharge of liens, encumbrances, or defects in title of the Property; and (iii) take such other action, including the employment of watchmen to protect the Improvements, or refrain from taking action under this Agreement as Lender may in its discretion determine from time to time. Borrower shall be liable to Lender for all reasonable sums paid or incurred for the Work, whether the same shall be paid or incurred pursuant to the provisions of this Section 8.2.3 or otherwise, and all payments made or liabilities incurred by Lender under this Agreement of any kind shall be paid by Borrower to Lender on demand, with interest at the Default Rate, and all of such payments shall be deemed and shall constitute advances under this Agreement and be secured by the Loan Documents. For the purpose of carrying out the provisions and exercising the rights, powers, and privileges granted herein, Borrower unconditionally and irrevocably constitutes and appoints Lender its true and lawful attorney-in-fact to enter into such contracts, perform such acts, and incur such liabilities as are referred to in this Section 8.2.3 in the name and on behalf of Borrower. This power of attorney is coupled with an interest.

### Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under the Loan Documents or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared, or be automatically, due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth in the Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, (i) to the extent permitted by applicable law, Lender is not subject to any “one action” or “election of remedies” or “anti-deficiency” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. To the extent permitted by applicable law, nothing contained in any Loan Document shall be construed as requiring Lender to resort to any particular Collateral, or any portion of the Property for the satisfaction of any of the Indebtedness in preference or priority to any other portion, and Lender may seek satisfaction out of all or less than all of the Collateral including all or less than all of the Property, and in such preference, order or priority, as determined by Lender in its sole and absolute discretion.

### Enforcement of Remedies. Lender may enforce any and all rights and remedies the Security Instrument, the other Loan Documents and all other documents delivered in connection therewith and against any or all Collateral and may pursue all rights and remedies available at law or in equity. If Lender forecloses on any Collateral, Lender shall apply all net proceeds of such foreclosure to repay the Indebtedness, in such order, priority and proportion as Lender shall determine, the Indebtedness shall be reduced to the extent of such net proceeds and the remaining portion of the Indebtedness shall remain outstanding and secured by the remaining Collateral. At the election of Lender, the Note shall be deemed to have been accelerated only to the extent of the net proceeds actually received by Lender with respect to the Property and applied in reduction of the Indebtedness.

### Delay. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default, or the granting of any indulgence or compromise by Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Agreement, Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim in connection with the foreclosure of the Security Instrument or any of the other Loan Documents to the extent necessary to foreclose on all or any portion of the Property, the Rents, or any other Collateral.

### Protective Advances; Right to Cure. During the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make Protective Advances and otherwise take any action to cure such Event of Default. Lender may enter upon the Property upon reasonable notice to Borrower for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Collateral or to foreclose the Security Instrument and the other Loan Documents or collect the Indebtedness. The costs and expenses incurred by Lender in exercising rights under this Section (including reasonable attorneys’ fees), with interest at the Default Rate for the period after notice from Lender that such costs or expenses were incurred to the date of payment to Lender, shall constitute a portion of the Indebtedness, shall be secured by the Security Instrument and other Loan Documents and shall be due and payable to Lender upon demand therefor.

### Preferences; Waiver of Marshalling of Assets. Lender shall have no obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations of Borrower pursuant to the Loan Documents. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Obligations of Borrower hereunder and under the Loan Documents. If any payment to Lender is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then the Obligations hereunder or portion thereof intended to be satisfied by such payment shall be revived and continue in full force and effect, as if such payment had not been made. Borrower hereby waives any legal right otherwise available to Borrower that would require the sale of any Collateral either separate or apart from other Collateral, or require Lender to exhaust its remedies against any Collateral before proceeding against any other Collateral. Without limiting the foregoing, to the fullest extent permitted by law, Borrower hereby waives and shall not assert any rights in respect of a marshalling of Collateral, a sale in the inverse order of alienation, any homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Collateral or any portion thereof in any sequence and any combination as determined by Lender.

### Remedies of Borrower. If a claim is made that Lender or its agents have unreasonably delayed acting or acted unreasonably in any case where by law or under any Loan Document any of such Persons has an obligation to act promptly or reasonably, Borrower agrees that no such Person shall be liable for any monetary damages, and Borrower’s sole remedy shall be limited to commencing an action seeking specific performance, injunctive relief and/or declaratory judgment; provided, however, that the forgoing shall not prevent Borrower from obtaining a monetary judgment against Lender for actual out of pocket losses incurred by Borrower if it is determined by a court of competent jurisdiction that Lender acted with gross negligence, bad faith or willful misconduct. Notwithstanding anything herein to the contrary, Borrower shall not assert, and hereby waives, any claim against Lender and/or its Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable Legal Requirement) arising out of, as a result of, or in any way related to, the Loan Documents or any agreement or instrument contemplated thereby or referred to therein, the transactions contemplated thereby, the Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

# **BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS**

## Binding Effect. 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 neither Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations under the Loan Documents without the prior written consent of Lender, in Lender’s sole and absolute discretion (and any attempted assignment or transfer by Borrower or any other Loan Party without such consent shall be null and void).

## Assignment by Lender. The Loan, the Note, the Loan Documents, any individual Advance separate from other Advances, and/or Lender’s rights, title, obligations and interests therein may be sold, assigned, participated, pledged or otherwise transferred by Lender and any of its successors and assigns to any Person at any time in its sole and absolute discretion, in whole or in part, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise without notice to or consent from any Restricted Party or any other Person and without any other restriction of any kind. Notwithstanding any assignment of individual Advances, all Advances are cross-defaulted with all other Advances. Any sale, assignment, participation, pledge or other transfer of the Loan, the Note, the Loan Documents, any Advance and/or Lender’s rights, title and interests therein may be assigned separately from any covenants by Lender to consider the making of any additional Advances hereunder and under the other Loan Documents. Upon any such sale, assignment, participation, pledge or other transfer, all references to Lender in this Agreement and in any Loan Document shall be deemed to refer to such assignee or successor in interest to the extent of the interest so transferred and such assignee or successor in interest shall thereafter stand in the place of Lender in all respects. To the extent any such assignee or transferee assumes the rights, title and interests of Lender hereunder and under the other Loan Documents, Lender shall be released from such rights, title and interests and shall have no further liability with respect thereto; provided, however, that Lender shall retain any and all covenant to consider the making of future Advances unless Borrower shall have received notice from Lender and such assignee or transferee that such assignee or transferee has assumed the covenant to consider the making of additional Advances. Borrower hereby agrees to execute any amendment and/or any other document that may be necessary to effectuate the foregoing, including an amendment to this Agreement to provide for multiple lenders and an administrative agent to act on behalf of such lenders.

## Dissemination of Information. Borrower authorizes Lender to disclose to any participant, any assignee or any other Person acquiring an interest in the Obligations, the Loan or the Loan Documents by operation of law (each a “**Transferee**”), and to any prospective Transferee, any and all information in Lender’s possession concerning the Property, the Borrower or any other Loan Party, or any of their respective Affiliates. Notwithstanding any such provisions or agreements, Lender may also disclose any and all information in Lender’s possession concerning the Property, Borrower or any other Loan Party or any of their respective Affiliates to: (a) Lender’s Affiliates; (b) the legal counsel, accountants or other professional advisors to Lender, any assignee or participant of Lender’s interest in the Obligations or any portion thereof or their respective Affiliates; (c) regulatory officials; (d) any Person as requested pursuant to or as required by law, regulation, or legal process; and (e) any Person in connection with any legal proceeding to which Lender is a party.

# **MISCELLANEOUS**

## Notices. All notices, consents, approvals and requests required or permitted under any Loan Document (any of the foregoing, a “**Notice**”) shall be given in writing by expedited prepaid delivery service, either commercial or United States Postal Service, with proof of delivery or attempted delivery, addressed as set forth below (except that any party hereto may change its address and other contact information for purposes hereof at any time by sending a written notice to the other parties to this Agreement in the manner provided for in this Section). A Notice shall be deemed to have been given when delivered or upon refusal to accept delivery. Borrower shall not be permitted to designate more than one place for service of Notice concurrently.

If to Borrower: {borrowerdetails.name}  
{borrowerdetails.address1} {borrowerdetails.address2}  
{borrowerdetails.city}, {borrowerdetails.state} {borrowerdetails.zip}

If to Lender: CoreVest American Finance Lender LLC  
4 Park Plaza, Suite 900  
Irvine, CA 92614  
Attn: Loan Administration (Loan No. {Deal\_\_r.Deal\_Loan\_Number\_\_c})

## Retention of Servicer. Lender may delegate any and all rights and obligations of Lender under the Loan Documents to the Servicer upon notice by Lender to Borrower, whereupon any notice or consent from the Servicer to Borrower, and any action by Servicer on Lender’s behalf, shall have the same force and effect as if Servicer were Lender.

## Authority to File Notices. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to file for record, at Borrower’s sole cost and expense and in Borrower’s name, any notices of completion, notices of cessation of labor, or any other notices that Lender considers necessary or desirable to protect its security.

## Inconsistencies with the Loan Documents. In the event of any inconsistencies between any terms of this Agreement and any terms of any of the Loan Documents, the terms of this Agreement shall govern and prevail.

## Modifications; Waivers. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by any Borrower therefrom, shall in any event be effective unless the same shall be in writing signed by the party or parties against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Loan Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under any Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Loan Documents, or to declare an Event of Default for failure to effect prompt payment of any such other amount. Lender shall have the right to waive or reduce any time periods that Lender is entitled to under the Loan Documents in its sole and absolute discretion.

## Lender Determination of Facts; Lender’s Discretion. Lender shall at all times be free to establish independently, to its satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition, term or requirement of this Agreement. Whenever pursuant to this Agreement or any other Loan Document, Lender exercises any right given to it to approve or disapprove, or consent or withhold consent, or any arrangement or term is to be satisfactory to Lender or is to be in Lender’s discretion, the decision of Lender to approve or disapprove, to consent or withhold consent, or to decide whether arrangements or terms are satisfactory or not satisfactory, or acceptable or unacceptable or in Lender’s discretion shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Lender and shall be final and conclusive. Additionally, whenever in this Agreement or any other Loan Document, Lender exercises any right given to it to approve or disapprove, or consent or withhold consent, or any arrangement or term is to be satisfactory to Lender in Lender’s reasonable discretion, or Lender agrees to not withhold, condition or delay its consent, the decision of Lender to approve or disapprove, to consent, condition, delay or withhold consent, or to decide whether arrangements or terms are satisfactory or not satisfactory, or acceptable or unacceptable or in Lender’s discretion shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Lender while an Event of Default is continuing unless otherwise specifically herein provided.

## Incorporation of Preamble, Recitals and Exhibits. The preamble, recitals and exhibits hereto are hereby incorporated in to this Agreement.

## Payment of Expenses. Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender for all out-of-pocket costs and expenses (including reasonable attorneys’ fees and disbursements) incurred by Lender or Servicer in connection with the Loan, including (i) the preparation, negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby, including without limitation all Advances made hereunder; (ii) Borrower’s and Lender’s ongoing performance under and compliance with the Loan Documents, including confirming compliance with environmental and insurance requirements in accordance with the Loan Documents; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Loan Document and any other documents or matters requested by Lender or a Borrower; (iv) filing and recording of any Loan Documents; (v) title insurance, surveys, inspections and appraisals; (vi) the creation, perfection or protection of Lender’s Liens in the Property (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, mortgage recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Lender’s consultant, surveys and engineering reports); (vii) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, the Loan Documents, the Property, or any other security given for the Loan; and (viii)  enforcing any obligations of or collecting any payments due from Borrower under any Loan Document or with respect to the Property or in connection with any refinancing or restructuring of the Loan in the nature of a “work-out,” or any insolvency or bankruptcy proceedings. This Section 10.8 shall survive closing of the Loan and repayment thereof.

## Disclaimer by Lender. Lender shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Property. Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Property. Borrower is not and shall not be an agent of Lender for any direct or indirect purpose. Lender is not a joint venture partner with Borrower or with the partners, members, managers or shareholders in Borrower in any manner whatsoever. Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Property, nor shall any payment of funds directly to any contractor, subcontractor, supplier, laborer, architect, engineer or any other provider of services be deemed to create any third party agent status or recognition of same by Lender. Approvals granted by Lender for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

## Waiver of Recovery. Borrower waives any and all right to claim or recover against Lender, its respective successors and assigns and its directors, officers, employees, agents and representatives, for any loss of or damage to Borrower, the Property, Borrower’s property or the property of others under Borrower’s control from any cause insured against or required to be insured against by this Agreement.

## No Set-Off by Borrower. All Obligations shall be paid by Borrower without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Obligations shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any Condemnation of the Property or any part thereof; (b) any restriction or prevention of, or interference by any Person with, any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Agreement by any trustee or receiver of Lender, or by any court, in any such proceeding; (e) any claim that Borrower has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms of the Loan Documents or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; in each case, whether or not Borrower shall have notice or knowledge of any of the foregoing. Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Obligation.

## Indemnification. Borrower shall protect, indemnify, defend and save harmless Lender and its directors, officers, agents, employees, successors and assigns for, from and against any and all Claims on account of or arising out of: (a) this Agreement or the Loan Documents or otherwise in connection herewith or in connection with the Property, the Improvements, any Collateral or any Obligation, including, without limitation, any Claim arising out of the removal of, or failure to remove, any and all hazardous waste from the Property; (b) any Lease, including, without limitation, any Claim that Borrower has violated any such Lease; (c) any applicable Property Documents, including any Claim that Borrower, any tenant or any other person has violated or failed to comply with any such Property Documents; (d) any applicable approvals by any Governmental Authority, including, without limitation, any Claim that seeks to challenge any approval (including zoning approvals) issued or granted by any such Governmental Authority with respect to the Property; and (e) any matter arising from or related to the Property or any other person providing labor, services or materials with respect to the Property, including, without limitation, any Claim that Lender is obligated to make any disbursements of Loan proceeds to or for the benefit of any such Person. Upon receiving knowledge of any Claim asserted by a third party that Lender believes is covered by this indemnity, Lender shall give Borrower notice of the matter and an opportunity to defend it, at Borrower’s sole cost and expense, with legal counsel satisfactory to Lender. Lender may also require Borrower to so defend the matter. This Section 10.12 shall survive the closing of the Loan and repayment thereof.

## Brokers. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Loan. Borrower shall indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses (including attorneys’ fees, whether incurred in connection with enforcing this indemnity or defending claims of third parties) of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower in connection with the transactions contemplated herein. The provisions of this Section 10.13 shall survive the expiration and termination of this Agreement and the repayment of the Indebtedness.

## Preference. Upon the occurrence and continuance of an Event of Default, Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Indebtedness. To the extent Borrower makes a payment to Lender, or Lender receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Indebtedness or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender. This provision shall survive the expiration or termination of this Agreement and the repayment of the Indebtedness.

## Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Copies of originals, including copies delivered by facsimile, pdf or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement.

## Time is of the Essence. Time is of the essence of this Agreement.

## Prior Agreements. THE LOAN DOCUMENTS CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES THERETO IN RESPECT OF THE TRANSACTIONS CONTEMPLATED THEREBY, AND ALL PRIOR AGREEMENTS AMONG OR BETWEEN SUCH PARTIES, WHETHER ORAL OR WRITTEN, INCLUDING ANY TERM SHEETS, CONFIDENTIALITY AGREEMENTS AND COMMITMENT LETTERS, ARE SUPERSEDED BY THE TERMS OF THE LOAN DOCUMENTS.

## Exculpation of Lender. Lender neither undertakes nor assumes any responsibility or duty to Borrower or any other party to select, review, inspect, examine, supervise, pass judgment upon or inform Borrower or any third party of (a) the existence, quality, adequacy or suitability of appraisals of the Property or other Collateral, (b) any environmental report, or (c) any other matters or items, including engineering, soils and seismic reports that are contemplated in the Loan Documents. Any such selection, review, inspection, examination and the like, and any other due diligence conducted by Lender, is solely for the purpose of protecting Lender’s rights under the Loan Documents, and shall not render Lender liable to Borrower or any third party for the existence, sufficiency, accuracy, completeness or legality thereof.

## Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

## Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and the provisions of the other Loan Documents, the provisions of this Agreement shall prevail. The parties acknowledge that they were each represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted same.

## Nonliability of Lender; No Third Party Beneficiaries.

### The relationship between Borrower and the Lender shall be solely that of borrower and lender. Lender shall not have any fiduciary responsibilities to Borrower. Lender shall not have any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of the Borrower’s business or operations. Borrower agrees that Lender shall not have liability to Borrower (whether sounding in tort, contract or otherwise) for losses suffered by Borrower in connection with, arising out of or related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought. Lender shall not have any liability with respect to, and Borrower hereby waives, releases and agrees not to sue for, any special, indirect or consequential damages suffered by Borrower in connection with, arising from or related to the Loan Documents or the transactions contemplated thereby.

### The Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in any Loan Document shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

## Governing Law, Submission to Jurisdiction, Waivers.

### THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

### ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR ANY RESTRICTED PARTY ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS (OTHER THAN ANY ACTION IN RESPECT OF THE CREATION, PERFECTION OR ENFORCEMENT OF A LIEN OR SECURITY INTEREST CREATED PURSUANT TO ANY LOAN DOCUMENTS NOT GOVERNED BY THE LAWS OF THE STATE OF NEW YORK) MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK. BORROWER AND LENDER HEREBY (i) IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, (ii) IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, AND (iii) IRREVOCABLY CONSENT TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 10.1 HEREOF (AND AGREES THAT SUCH SERVICE AT SUCH ADDRESS IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT).

## WAIVER OF SPECIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY FOR SPECIAL INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF PROCEEDS THEREOF.

## TRIAL BY JURY. LENDER AND BORROWER, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LENDER AND BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER AND BORROWER ARE EACH HEREBY INDIVIDUALLY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

## PATRIOT Act Records. Lender hereby notifies Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower, Guarantor and certain other Restricted Parties.

# **COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

## Construction Documents.

### Collateral Assignment and Security Agreement. As additional security for the Obligations, Borrower hereby sells, assigns, transfers, sets over and grants to Lender, a security interest in, all of its right, title and interest in and to the Construction Documents (but not Borrower’s liabilities, duties or obligations thereunder), whether now owned or hereafter acquired.

### Performance; No Advance Payments; Enforcement. Performance; No Advance Payments; Enforcement. Borrower shall perform and observe in a timely manner each and all material covenants, conditions, obligations and agreements on the part of Borrower to be performed or observed under the Construction Documents. Borrower shall not make any advance payments of amounts owing under the Construction Documents. Borrower shall not waive, excuse, condone or in any manner release or discharge any Person that is a party to a Construction Document (each, a “**Contracting Party**”) from any material covenants, conditions, obligations or agreements to be performed or observed by a Contracting Party, but shall, at its sole cost and expense, enforce and secure the performance of all material covenants, conditions, obligations and agreements to be performed or observed by each Contracting Party to the Construction Documents.

### Remedies Upon Default. Upon the occurrence and during the continuance of An Event of Default, Lender shall have the right but not the obligation, and Borrower hereby authorizes Lender to take over and complete construction of the Improvements, to enforce Borrower’s rights under any or more of the Construction Documents, and to receive the performance of the Contracting Parties thereunder, as applicable.

### Notices of Default. Borrower shall send to Lender any written notice of default or breach of or under any of the Construction Documents, that Borrower either sends to (such notice to Lender to be sent simultaneously therewith) or receives from (such notice to Lender to be sent immediately upon receipt by Borrower thereof) a Contracting Party.

### Power of Attorney. Effective upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as its attorney in fact, coupled with an interest, to demand, receive and enforce Borrower’s rights with respect to the Construction Documents, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Lender with the same force and effect as if Borrower had performed such acts.

### License. Provided no Event of Default has occurred and is continuing, Borrower shall have the right under a license granted hereby to exercise its rights under the Construction Documents. The license granted hereby shall be revoked at Lender’s option upon written notice from Lender to Borrower after the occurrence and during the continuance of an Event of Default.

### No Assumption of Liability. Lender does not hereby assume any of Borrower’s obligations or duties under any of the Construction Documents, including, without limitation, the obligation to pay for services rendered or materials supplied thereunder.

### Validity and Enforceability of Contracts. Borrower represents and warrants that, to Borrower’s actual knowledge, the Construction Documents are valid, binding and enforceable (subject to creditor’s rights laws and general equitable principles), are in full force and effect, and there are no material breaches or defaults thereunder and no events have occurred which with notice and/or lapse of time will constitute a material breach or default thereunder. Borrower represents and warrants that it has full power, right and authority to execute and enter into the Construction Documents.

### No Prior Conveyance or Limiting Actions. Borrower represents and warrants that it has not previously conveyed, transferred or assigned any of the Construction Documents or any right, title or interest therein and has not executed any other instrument which might prevent or limit Lender from operating under the terms and provisions of the assignment contemplated hereby, and Borrower covenants and agrees not to do any of the foregoing.

### No Amendments; New Contracts. Borrower shall not alter, amend or change in any material respect, or terminate or cancel, any of the Construction Documents, without obtaining Lender’s prior written consent. Notwithstanding the foregoing, Borrower shall have the right to modify the Construction Contract to reflect changes in the Plans (and the resulting changes in total cost to construct the Improvements) to the extent such changes are permitted under this Agreement. Neither Borrower nor any Affiliate or Borrower or any other Person shall enter into any new Construction Documents for the construction of the Improvements without the prior written consent of Lender. Lender may require, as a condition to its approval of a Construction Document, the execution by the Contracting Party of an agreement, in form and substance acceptable to Lender, whereby said Contracting Party (i) acknowledges the provisions of this Section 12.1, (ii) subordinates its claims against Borrower to payment in full of the Obligations and to the rights of Lender under the Loan Documents and (iii) agrees that upon the occurrence and during the continuance of an Event of Default, Lender has the right (but not the obligation) to terminate the subject Construction Document.

## Plans and Specifications and Permits.

### Collateral Assignment and Security Agreement. As additional security for the Obligations, Borrower hereby sells, assigns, transfers and sets over and grants to Lender, a security interest in, all of Borrower’s right, title and interest in and to the Plans and all Permits.

### Remedies Upon Default. Upon the occurrence and during the continuance of a Default, Lender shall have the right but not the obligation, and Borrower hereby authorizes Lender, to enforce Borrower’s rights with respect to the Plans and the Permits.

### Power of Attorney. Effective upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as its attorney in fact, coupled with an interest, to demand, receive and enforce Borrower’s rights with respect to the Plans and the Permits, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Lender with the same force and effect as if Borrower had performed such acts.

### License. Provided no Event of Default has occurred and is continuing, Borrower shall have the right under a license granted hereby to exercise its rights with respect to the Plans and the Permits. The license granted hereby shall be revoked at Lender’s option upon written notice from Lender to Borrower after the occurrence and during the continuance of an Event of Default.

### No Assumption of Liabilities. Lender does not hereby assume any of Borrower’s obligations or duties with respect to the Plans or the Permits, including, without limitation, the obligation to pay for the preparation or issuance thereof.

### No Prior Conveyance or Limiting Action. Borrower represents and warrants that it has not previously conveyed, transferred or assigned the Plans or the Permits or any right, title or interest therein and has not executed any other instrument which might prevent or limit Lender from operating under the terms and provisions of the assignment contemplated hereby, and Borrower covenants and agrees not to do any of the foregoing.

### Execution and Amendment of Project Documents. Borrower represents and warrants that, as of the date hereof, the only Project Documents in existence is the Development Management Agreement. Borrower shall not enter into any other Project Document, or alter, amend or change in any material respect, or terminate or cancel, any Project Document, in each case without obtaining Lender’s prior written consent. Lender may require, as a condition to its approval of a Project Document, the execution by the contracting party of an agreement, in form and substance acceptable to Lender, whereby said contracting party (i) acknowledges the provisions of this Section 12.3, (ii) subordinates its claims against Borrower to payment in full of the Obligations and to the rights of Lender under the Loan Documents and (iii) agrees that upon the occurrence and during the continuance of an Event of Default, Lender has the right (but not the obligation) to terminate the subject Project Document.

## Loan Deficiency Funds.

### As additional security for the Loan, Borrower hereby grants to Lender a first-priority security interest in any Loan Deficiency Funds deposited from time to time with Lender, and the proceeds thereof (collectively, the “**Loan Deficiency Collateral**”) and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest therein, including executing and delivering to Lender deposit account control agreements, and hereby irrevocably authorizes Lender at any time and from time to time to prepare and file in the appropriate jurisdiction an “all assets” UCC‑1 financing statement, together with any amendments thereto, and continuations thereof deemed advisable by Lender and without any signature by, or further authorization from, Borrower. In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Loan Deficiency Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the Uniform Commercial Code, as if such rights and remedies were fully set forth herein.

### This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law. Borrower acknowledges and agrees that any and all Loan Deficiency Funds deposited with Lender from time to time under this Agreement are and shall be at all times subject to the sole dominion, control and discretion of Lender, its authorized agents or designees, subject to the terms hereof, and neither Borrower nor any other Loan Party shall have any right of withdrawal with respect to any Loan Deficiency Funds. The Loan Deficiency Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

### Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Loan Deficiency Collateral or permit any lien to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall have the right to file a financing statement or statements under the UCC in connection with any of the Loan Deficiency Collateral with respect thereto in the form required to properly perfect Lender’s security interest therein. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any Loan Deficiency Collateral.

## Reassignment. Upon the indefeasible payment by Borrower in full of all of the Obligations and full reconveyance of the Security Instrument, all of Lender’s interest in the Construction Documents, the Plans and the Permits shall automatically be deemed reassigned to Borrower (or terminated if so requested by Borrower) and Lender shall have no further interest therein. Upon written request from Borrower, Lender shall, at Borrower’s expense, execute such documentation as is reasonably necessary to reassign or terminate such interest without recourse to Lender.

## Additional Instruments; Financing Statements. At Lender’s request, Borrower shall execute and deliver to Lender any and all assignments and other documents and instruments reasonably necessary to confirm the collateral assignments contemplated by this Article 11. Borrower hereby irrevocably authorizes Lender at any time and from time to time to prepare and file in the appropriate jurisdiction an “all assets” UCC‑1 financing statement, together with any amendments thereto, and continuations thereof deemed advisable by Lender and without any signature by, or further authorization from, Borrower.

## *[remainder of page intentionally blank*]

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be duly executed and delivered as of the date first above written.

**“BORROWER”**

{borrowerdetails.name | upperCase}, a {borrowerdetails.company} {borrowerdetails.entity},

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

Name: {Deal\_\_r.Authorized\_Signor\_\_c}

Its: {Deal\_\_r.Signor\_Capacity\_\_c}

*[ADDITIONAL SIGNATURE PAGE FOLLOWS]*

**“LENDER”:**

COREVEST AMERICAN FINANCE LENDER LLC,   
a Delaware limited liability company

By:

Paul Basmajian,

Its: Authorized Signor

EXHIBIT A

**BUDGET**

[Attached]

Schedule 1.1

**Initial Servicer Details**

Initial Servicer: Statebridge Company LLC

Servicer Address: Attn: Payment Processing

P.O. Box 173313

Denver, CO 80217-3313 Tel. No.: 866-466-3360

Website: http://www.statebridgecompany.com/

Stated Maturity Date: {Deal\_\_r.Stated\_Maturity\_Date\_\_c | addDaysFull:0}

Outside Completion Date: {Deal\_\_r.Requested\_Advance\_Date\_\_c | addDaysFull:0}

First Monthly Payment Date: {Deal\_\_r.First\_Payment\_Date\_\_c | addDaysFull:0}

Initial Monthly Debt Service Payment: {Deal\_\_r.Initial\_Monthly\_Debt\_Service\_Payment\_\_c | formatCurrency}

Schedule 6.2

Insurance Requirements

1. **Insurance.** Borrower shall at all times during the term of the Loan maintain or cause to be maintained in full force and effect, at Borrower’s cost and expense, the following insurance coverages for each Property:
   1. At all times, Borrower will maintain the following insurance coverages for each Property:
      1. All Risk Insurance against loss by fire, lightning and risk customarily covered by standard extended coverage endorsement, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, or all perils endorsements, all in the amount of not less than 100% of the full replacement cost of the Improvements, pursuant to an appraisal submitted to and approved by Lender, on the Property and Improvements, and together with an agreed-amount endorsement, a replacement cost endorsement, no co-insurance and a waiver of subrogation endorsement.
      2. Flood Insurance in an amount reasonably acceptable to Lender unless evidence is provided that the Property is not within a flood plain as defined by the Federal Insurance Administration and the Premises is not designated as being within a flood plain and earthquake insurance in an amount approved by Lender.
      3. Mechanical Breakdown coverage.
      4. rental value insurance for the perils specified herein for one hundred percent (100%) of the Rents (including operating expenses, real estate taxes, assessments and insurance costs which are lessee’s liability) for a period of twelve (12) months if the Property subject to a Lease.
      5. To the extent such coverage is available for residential properties, Builder’s Risk Insurance and Worker’s Compensation Insurance during the making of any alterations or Improvements to the Property.
      6. Insurance against all other hazards as may be reasonably required by Lender, including, without limitation, insurance against loss or damage by flood and earthquake.
      7. Commercial general liability insurance naming Lender as an additional insured protecting Borrower and Lender against liability for bodily injury or property damage occurring in, on or adjacent to the Property, with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence with not less than a Two Million Dollar ($2,000,000) aggregate limit (if the required insurance is provided under a blanket insurance program, coverage must be on a “Per Location” basis) and excess umbrella liability insurance of not less than Two Million Dollars ($2,000,000).
   2. Such insurance policies shall be written by insurance companies licensed to do business in in the state in which the Property is located, having a minimum noncontingent rating in Best’s Key Rating Guide of A, with a financial class size of IX or better and shall otherwise be satisfactory to Lender as to amount, form, deductibles and insurer, and must cover all risks Lender requires as set forth above.
   3. Such insurance policies and endorsements (A) shall name as the insured parties Borrower and Lender as their interests may appear; provided, all property policies shall name Lender as a loss payee, (B) shall be in amounts sufficient to prevent Borrower from becoming a co-insurer of any loss thereunder, (C) shall bear a satisfactory mortgagee clause in favor of Lender with loss proceeds under any such policies to be made payable to Lender, and (D) shall contain such other endorsements as Lender may reasonably require. All required policies of insurance and acceptable certificates thereof, together with evidence of the payment of current premiums therefore, shall be delivered to Lender and shall provide that Lender shall receive at least thirty (30) days’ advance written notice prior to cancellation, amendment or termination of any such policy of insurance. Borrower shall, within thirty (30) days prior to the expiration of any such policy, deliver other original policies of the insurer evidencing the renewal of such insurance together with evidence of the payment of current premiums therefore. Borrower shall at its expense furnish evidence of the replacement value of the improvements on the Property in form satisfactory to Lender on renewal of insurance policies or upon request of Lender. Insurance coverage must at all times be maintained in proper relationship to such replacement value and must always provide for agreed amount coverage. Failure to maintain proper insurance shall be an Event of Default hereunder.

Lender makes no representations that the above insurance requirements are adequate protection for the Property.

Scaled Insurance Requirements

General Liability Deductible

* $15,000 per occurrence for the Property that is on a policy with less than $5 million in total insurable value
* $25,000 per occurrence for the Property that is on a policy with greater than or equal to $5 million in total insurable value and less than $50 million in total insurable value
* $100,000 per occurrence for the Property that is on a policy with greater than or equal to $50 million in total insurable value or total and less than $100 million in total insurable value

Umbrella – If Umbrella IS NOT per Location Limits shall be as follows:

1 – 50 Residential units - $2MM

50 – 250 Residential units - $5MM

250 – 500 Residential units - $10MM

500 – 1500 Residential units - $25MM