**Environmental Indemnity AGREEMENT**

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

{#Property\_Advances\_\_r[0].Property\_\_r.State\_\_c == “TX”}THIS INSTRUMENT CONTAINS INDEMNIFICATION PROVISIONS LIMITING LENDER’S LIABILITY FOR NEGLIGENCE.{/}

This ENVIRONMENTAL INDEMNITY AGREEMENT (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”) is made as of {Deal\_\_r.CloseDate | addDaysFull:0} by {Deal\_\_r.Borrower\_Entity\_\_r.Name}, a {Deal\_\_r.Borrower\_Entity\_\_r.Company\_Jurisdiction\_\_c} {Deal\_\_r.Borrower\_Entity\_\_r.Entity\_Type\_\_c} (“**Indemnitor**”), in favor of COREVEST AMERICAN FINANCE LENDER LLC, a Delaware limited liability company (together with its successors and assigns, collectively, “**Indemnitee**”).

**RECITALS:**

A. Indemnitee is prepared to make a loan (the “**Loan**”) to Indemnitor pursuant to a Loan Agreement, dated as of the date hereof, by and between Indemnitor and Indemnitee (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). The Loan is secured by, among other things, a Security Instrument executed by Indemnitor creating a first priority Lien against certain real property described in the Security Instrument (the “**Property**”). All capitalized terms utilized herein, but that are not otherwise specifically defined herein, shall have the same meaning as given to such terms under the Loan Agreement.

B. Indemnitor is entering into this Agreement to induce Indemnitee to make the Loan and Indemnitee is unwilling to make the Loan thereunder unless Indemnitor agrees to provide the indemnification, representations, warranties, covenants and other matters described in this Agreement for the benefit of Indemnitee.

NOW, THEREFORE, in consideration of the covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor hereby agrees, represents and warrants to and for the benefit of Indemnitee as follows:

# **Environmental Representations and Warranties**. Indemnitor hereby represents and warrants to Indemnitee as of the date hereof, **[as of each Advance Date ]**and as of each date on which representations and warranties are renewed pursuant to the Loan Agreement and the other Loan Documents as follows:

## (i) there are no Hazardous Substances (defined below) or underground storage tanks in, on or under the Property, except those that are both (A) in compliance with all Environmental Laws (defined below) and (B) in compliance with permits issued pursuant thereto; (ii) there are no past or present Releases (defined below) of Hazardous Substances in, on, under or from the Property which have not been fully addressed and/or remediated in accordance with Environmental Law or in accordance with any requirements imposed by any Governmental Authority; (iii) there is no threat of any Release (defined below) of Hazardous Substances migrating to the Property; (iv) no Toxic Mold (defined below) is present in the indoor air of the Property at concentrations exceeding ambient air levels and no visible Toxic Mold is present in or on any building materials or surfaces at the Property for which any Legal Requirement applicable to the Property recommends or requires removal thereof, and (v) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully addressed and/or remediated in accordance with Environmental Law or in accordance with any requirements imposed by any Governmental Authority.

## Indemnitor has no knowledge of, nor has it received, any written notice from any Person (including, but not limited to, any Governmental Authority) relating to Hazardous Substances or Remediation (defined below) in connection with the Property, of liability of any Person pursuant to any Environmental Law or any actual administrative or judicial proceedings in connection with any of the foregoing, and Indemnitor has truthfully and fully provided to Indemnitee, in writing, any and all material information relating to environmental conditions in, on, under or from the Property that is known to Indemnitor or that is contained in the files and records of Indemnitor, including, but not limited, to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

# **Environmental Covenants**. Indemnitor covenants and agrees that, during the period of time that Indemnitor owns or controls the Property: (a) all uses, activities and operations on or of the Property, including, any activities or operations relating to the construction, renovation or repair of improvements, now existing or to be constructed or installed on the Property, subject to the terms of the Loan Agreement, whether by Indemnitor or by any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances in, on, under or from the Property in violation of or which require Remediation pursuant to any Environmental Laws; (c) there shall be no Hazardous Substances used or stored on the Property, except those that are both (i) in compliance with all Environmental Laws and (ii) in compliance with permits issued pursuant thereto; (d) Indemnitor shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of any of the Indemnitor or any other Person (the “**Environmental Liens**”); (e) Indemnitor shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 3 of this Agreement, including, but not limited to, providing all material information and making knowledgeable Persons available for interviews at reasonable times upon reasonable notice; (f) Indemnitor shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Indemnitee (including, but not limited to, sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Indemnitee the reports and other results thereof, and Indemnitee shall be entitled to rely on such reports and other results thereof; (g) Indemnitor shall, at its sole cost and expense, comply with all reasonable written requests of Indemnitee to (i) effectuate Remediation of any environmental condition (including, but not limited to, a Release of a Hazardous Substance) in, on, under or from the Property to the extent required by Environmental Law; (ii) comply with any Environmental Law; (iii) comply with any directive, order, or other requirement from any Governmental Authority; and/or (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Indemnitor shall not do or permit any Person affiliated with Indemnitor and/or any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Property), materially impairs the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste or violates any covenant, condition, agreement or easement applicable to the Property in any material respect; (i) if prior to the date hereof, it was determined that the Property contains paint containing more than 0.5% lead by dry weight or meeting any other definition of “lead-based paint” in any applicable Environmental Law (“**Lead Based Paint**”), Indemnitor has prepared and has provided to Indemnitee an assessment report describing the location and condition of the Lead Based Paint (a “**Lead Based Paint Report**”), or if at any time hereafter, Lead Based Paint is suspected of being present on the Property, Indemnitor agrees, at its sole cost and expense and within fifteen (15) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Indemnitee; (j) if prior to the date hereof, it was determined that the Property contains asbestos or asbestos-containing material (“**Asbestos**”), Indemnitor has prepared and provided to Indemnitee an assessment report describing the location and condition of the Asbestos (an “**Asbestos Report**”), or if at any time hereafter, Asbestos is suspected of being present on the Property, Indemnitor agrees, at its sole cost and expense and within fifteen (15) days thereafter, to cause to be prepared an Asbestos Report prepared by an expert, and in form, scope and substance, reasonably acceptable to Indemnitee; (k) if it has been, or if at any time hereafter it is, determined that the Property contains Lead Based Paint or Asbestos, on or before fifteen (15) days following (i) the date hereof, if such determination was made prior to the date hereof, or (ii) the date of such determination, if such determination is hereafter made, as applicable, Indemnitor shall, at its sole cost and expense, provide any disclosures required under applicable Environmental Laws and shall further undertake, subject to the rights and obligations of any tenant of such Property, those repairs or other preventative measures reasonably recommended by any Lead Based Paint Report or Asbestos Report to mitigate any identified risks to human health, or material adverse effects to the value of such Property, in each case caused by the presence or condition of such Lead Based Paint or Asbestos. For the Property so affected, Indemnitor shall provide to Indemnitee, as reasonably requested, periodic notices or reports confirming the adequacy of any preventative measures so implemented and, as reasonably requested, access to the Property by Indemnitee, its agents or servicer, to review and assess the environmental condition of the Property; (l) in the event that any inspection or audit reveals the presence of Toxic Mold in the indoor air of the Property at concentrations exceeding ambient air levels or visible Toxic Mold in or on any building materials or surfaces at the Property for which any Legal Requirement applicable to the Property requires or recommends removal thereof, Indemnitor shall promptly address and remediate the Toxic Mold and perform post-remedial clearance sampling in accordance with such applicable Legal Requirement and Environmental Law, following which remediation of the Toxic Mold, Indemnitor shall prepare and implement an O&M Plan for Toxic Mold acceptable to Indemnitee and in accordance with the guidelines issued by the National Multi Housing Council; and (m) Indemnitor shall notify Indemnitee in writing promptly upon Indemnitor obtaining knowledge of (i) any presence or Release or threatened Release of Hazardous Substances in, on, under, from or migrating towards the Property; (ii) any non-compliance with any Environmental Laws related in any way to the Property; (iii) any actual or potential Environmental Lien on the Property; (iv) any required or proposed Remediation of environmental conditions relating to the Property; and/or (v) any written or oral notice or other communication which Indemnitor receives from any source whatsoever (including, but not limited to, any Governmental Authority) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property or any actual or potential administrative or judicial proceedings pertaining to a violation of Environmental Law with respect to the Property.

# **Indemnified Rights/Cooperation and Access**. In the event Indemnitee has reason to believe that an environmental hazard exists on the Property that does not, in the sole discretion of Indemnitee, (a) endanger any tenants or other occupants of the Property or their guests or the general public, or (b) materially and adversely affects the value of the Property, upon reasonable notice from Indemnitee, Indemnitor shall, at its sole cost and expense, promptly cause an engineer or consultant satisfactory to Indemnitee to conduct any environmental assessment, investigation, or audit (the scope of which shall be determined in the sole and absolute discretion of Indemnitee) and take any samples of soil, groundwater or other water, air or building materials or any other invasive testing reasonably requested by Indemnitee and promptly deliver to Indemnitee the results of any such assessment, audit, sampling or other testing; provided, however, if such results are not delivered to Indemnitee within a reasonable period or if the Indemnitee has reason to believe that an environmental hazard exists on the Property that, in the sole discretion of the Indemnitee, endangers any tenant or other occupant of the Property or their guests or the general public or may materially and adversely affect the value of the Property, upon reasonable notice to Indemnitor, the Indemnitee and any other Person designated by the Indemnitee, including, but not limited to, any receiver, any representative of any Governmental Authority and/or any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including, but not limited to, conducting any environmental assessment, investigation, or audit (the scope of which shall be determined in the sole and absolute discretion of the Indemnitee) and taking samples of soil, groundwater or other water, air or building materials and reasonably conducting other invasive testing. Indemnitor shall cooperate with and provide the Indemnitee and any such Person designated by the Indemnitee with access to the Property.

# **Indemnification**. Indemnitor covenants and agrees, at its sole cost and expense, to protect, defend, indemnify, release and hold Indemnitee harmless from and against any and all Losses (defined below) imposed upon, or actually incurred by, or asserted against, Indemnitee and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any Hazardous Substances in, on, above or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Indemnitor, any agent, contractor, subcontractor, employee or consultant of Indemnitor or of any affiliate of Indemnitor, any Person affiliated with Indemnitor and/or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Indemnitor, any Person affiliated with Indemnitor, any agent, contractor, subcontractor, employee or consultant of Indemnitor or of any affiliate of Indemnitor, and/or any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including, but not limited to, any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violation of any Environmental Law (or of any permit issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including, but not limited to, any failure by Indemnitor, any Person affiliated with Indemnitor, any agent, contractor, subcontractor, employee or consultant of Indemnitor or of any affiliate of Indemnitor and/or any tenant or other user of the Property to comply with any directive, order or other requirement of any Governmental Authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Agreement; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including, but not limited to, costs to investigate and assess such injury, destruction or loss; (i) any acts or omissions of Indemnitor, any Person affiliated with Indemnitor, any agent, contractor, subcontractor, employee or consultant of Indemnitor or of any affiliate of Indemnitor and/or any tenant or other user of the Property in arranging for the disposal or treatment, or arranging with a transporter for transport for the disposal or treatment, of Hazardous Substances at any facility or incineration vessel containing such or similar Hazardous Substances; (j) any acts or omissions of Indemnitor, any Person affiliated with Indemnitor, any agent, contractor, subcontractor, employee or consultant of Indemnitor or of any affiliate of Indemnitor and/or any tenant or other user of the Property in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites from which there is a Release or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death or property or other damage arising as a result of any of the acts, omissions or conditions described in the immediately preceding subclauses (a)-(j), including, but not limited to, damages assessed for private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (l) any material misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Agreement.

# **Duty to Defend and Attorneys’ and Other Fees and Expenses**. Upon written request by Indemnitee, Indemnitor shall defend Indemnitee against any claim for which indemnification is required hereunder (if requested by Indemnitee, in the name of Indemnitee), by attorneys and other professionals approved by Indemnitee. Notwithstanding the foregoing, Indemnitee may, in its sole and absolute discretion, engage its own attorneys and other professionals to defend or assist it, and, at the option of Indemnitee, its attorneys shall control the resolution of any claim or proceeding; provided, that no compromise or settlement shall be entered without Indemnitor’s consent, which consent shall not be unreasonably withheld. Upon demand, Indemnitor shall pay or, in the sole and absolute discretion of Indemnitee, reimburse, Indemnitee for the payment of the fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

# **Definitions**. Capitalized terms used and not defined in this Agreement shall have the meaning given to such term in the Loan Agreement. As used in this Agreement, the following terms shall have the following meanings:

“**Asbestos**” has the meaning specified in Section 2.

“**Asbestos Report**” has the meaning specified in Section 2.

“**Environmental Laws**” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances and/or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term “Environmental Laws” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including, but not limited to, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; the River and Harbors Appropriation Act; and those relating to Lead Based Paint. The term “Environmental Laws” also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the Property; requiring notification or disclosure of the presence of or Releases of Hazardous Substances or other environmental condition of the Property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such Property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury or property or other damage in connection with any physical condition or use of the Property.

“**Environmental Liens**” has the meaning specified in Section 2.

“**Hazardous Substances**” includes, but is not limited to, any and all substances (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, contaminants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes or words of similar meaning or regulatory effect under any present or future Environmental Laws, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, Lead Based Paint and Toxic Mold. Notwithstanding anything to the contrary contained herein, solely for purposes of Section 1 of this Agreement, the term “Hazardous Substances” will not include: (i) substances which otherwise would be included in such definition but which are of kinds and in amounts ordinarily and customarily used or stored in similar properties, including, without limitation substances used for the purposes of cleaning, maintenance, or operations, substances typically used in construction, and typical products used in properties like the Property, and which are otherwise stored and used in compliance with all Environmental Laws and any permits issued pursuant thereto; or (ii) substances which otherwise would be included in such definition but which are of kinds and amounts ordinarily and utilized in residential properties and which are otherwise in compliance with all Environmental Laws and any permits issued pursuant thereto.

“**Lead Based Paint**” has the meaning specified in Section 2.

“**Lead Based Paint Report**” has the meaning specified in Section 2.

“**Legal Action**” means any claim, suit or proceeding, whether administrative or judicial in nature.

“**Losses**” includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including, but not limited to, strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, reasonable fees of attorneys, engineers and environmental consultants and investigation costs (including, but not limited to, costs for sampling, testing and analysis of soil, water, air, building materials and other materials and substances, whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

“**Notice**” has the meaning specified in Section 17.

“**Release**” with respect to any Hazardous Substance includes, but is not limited to, any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

“**Remediation**” includes, but is not limited to, any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain, remediate or otherwise address any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance (including, with respect to Toxic Mold, providing any moisture control systems at the Property); any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing or laboratory or other analysis or evaluation relating to any Hazardous Substances or to anything referred to herein.

“**Toxic Mold**” means fungi that reproduces through the release of spores or the splitting of cells or other means that may pose a risk to human health or the environment or negatively affect the value of the Property, including, but not limited to, mold, mildew, fungi, fungal spores, fragments and metabolites such as mycotoxins and microbial volatile organic compounds.

# **Unimpaired Liability**. The liability of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents. In addition, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by (i) any extensions of time for performance required by the Loan Documents, (ii) any Transfer or Refinancing of all or part of the Property, (iii) except as provided herein, any exculpatory provision in the Loan Documents limiting Indemnitee’s recourse to the Property or to any other security for the Obligations, or limiting Indemnitee’s rights to a deficiency judgment against Indemnitor, (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under the Loan Documents, (v) the release of Indemnitor or any other Person from performance or observance of any of the agreements, covenants, terms or condition contained in any of the other Loan Documents by operation of law, Indemnitee’s voluntary act, or otherwise, (vi) the release or substitution in whole or in part of any security for the Obligations, or (vii) Indemnitee’s failure to record the Security Instrument or file any UCC financing statements (or Indemnitee’s improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Obligations; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

# **Enforcement**. Indemnitee may enforce the obligations of Indemnitor without first resorting to or exhausting any security or collateral or without first having recourse to the Loan Documents or the Property, through foreclosure proceedings or otherwise; provided, however, that nothing herein shall inhibit or prevent Indemnitee from exercising any power of sale under any Loan Document or exercising any other rights and remedies thereunder. It is not necessary for an Event of Default to have occurred pursuant to and as defined in the Loan Agreement for Indemnified Parties to exercise their rights pursuant to this Agreement. Notwithstanding any provision of the Loan Documents to the contrary, the obligations of Indemnitor pursuant to this Agreement are exceptions to any non-recourse or exculpation provision of the Loan Documents; and Indemnitor expressly acknowledges and agrees that it is fully and personally liable for such obligations, and such liability is not limited to the amount of the Obligations or the value of the Property.

# **Survival**. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Indemnitee of the Loan and the execution and delivery to Indemnitee of the Loan Documents, and shall continue in full force and effect and shall survive indefinitely notwithstanding the full repayment of the Obligations or any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Indemnitor, shall inure to the benefit of the legal representatives, successors and assigns of Indemnitee.

# **Interest**. Any amounts payable to Indemnitee under this Agreement shall become immediately due and payable on demand and, if not paid within ten (10) days of such demand therefor, shall bear interest at the Default Rate.

# **Waivers**.

## Indemnitor hereby waives and relinquishes (i) any right or claim of right to cause a marshaling of Indemnitor’s assets or to cause Indemnitee to proceed against any of the security for the Loan before proceeding under this Agreement against Indemnitor; (ii) all rights and remedies accorded by applicable law to indemnitors or guarantors, including any rights of subrogation or contribution which Indemnitor may have; provided, that the indemnity provided for hereunder shall neither be contingent upon the existence of any such rights of subrogation or contribution nor subject to any claims or defenses whatsoever which may be asserted in connection with the enforcement or attempted enforcement of such subrogation or contribution rights, including, without limitation, any claim that such subrogation rights were abrogated by any acts of Indemnitee; (iii) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against or by Indemnitee; (iv) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (v) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice or demand; and (vi) all homestead exemption rights against the obligations hereunder and the benefits of any statutes of limitations or repose. Notwithstanding anything to the contrary contained herein, Indemnitor hereby agrees to postpone the exercise of any rights of subrogation or contribution with respect to any Collateral securing the Obligations until the Obligations shall have been paid in full.

## EACH OF INDEMNITOR AND INDEMNITEE, BY ITS ACCEPTANCE HEREOF, HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY INDEMNITOR AND INDEMNITEE AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. INDEMNITOR AND INDEMNITEE ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

# **Subrogation**. Indemnitor hereby agrees that it shall take any and all reasonable actions, including the institution of legal action against third parties, necessary or appropriate to obtain reimbursement, payment or compensation from such Persons responsible for the presence of any Hazardous Substances at, in, on, under or near the Property or otherwise obligated by law to bear the cost. Indemnitee shall be and hereby is subrogated to all of Indemnitor’s rights now or hereafter in such claims.

# **Indemnitor’s Representations and Warranties**. Indemnitor represents and warrants that:

## it has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; the execution, delivery and performance of this Agreement by Indemnitor has been duly and validly authorized; and all requisite action has been taken by Indemnitor to make this Agreement valid and binding upon Indemnitor, enforceable in accordance with its terms;

## its execution of, and compliance with, this Agreement is in the ordinary course of business of Indemnitor and will not result in the breach of any term or provision of the charter or operating agreement of Indemnitor or result in the breach of any term or provision of, or conflict with or constitute a default under, or result in the acceleration of any obligation under, any agreement, indenture or loan or credit agreement or other instrument to which Indemnitor or the Property is subject, or result in the violation of any law, rule, regulation, order, judgment or decree to which Indemnitor or the Property is subject;

## there is no action, suit, proceeding or investigation pending or threatened against it which, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties or assets of Indemnitor, or in any material impairment of the right or ability of Indemnitor to carry on its business substantially as now conducted, or in any material liability on the part of Indemnitor, or which would draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of Indemnitor contemplated herein, or which would be likely to impair materially the ability of Indemnitor to perform under the terms of this Agreement;

## no approval, authorization, order, license or consent of, or registration or filing with, any Governmental Authority or other Person, and no approval, authorization or consent of any other Person, is required in connection with this Agreement; and

## this Agreement constitutes a valid, legal and binding obligation of Indemnitor, enforceable against it in accordance with the terms hereof.

# **No Waiver**. Neither any failure nor any delay on the part of Indemnitee in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, 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 hereunder, Indemnitee shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, or to declare a default for failure to effect prompt payment of any such other amount.

# **Notice of Legal Actions**. Each party hereto shall, (i) within two (2) Business Days of receipt thereof, give written notice to the other parties hereto of any notice, advice or other communication from any Governmental Authority or any source whatsoever with respect to Hazardous Substances on, from or affecting the Property, and (ii) within two (2) Business Days of obtaining knowledge thereof, give written notice to the other parties hereto of any legal action brought against such party or related to the Property, with respect to which Indemnitor may have liability under this Agreement. Such notice shall comply with the provisions of Section 17 hereof.

# **Examination of Books and Records**. Indemnitee and its accountants and other representatives shall have the right, upon reasonable prior notice and at reasonable times, to examine the records, books and management and other papers of Indemnitor which reflect upon its financial condition at the office regularly maintained by Indemnitor where the books and records are located. Indemnitee and its accountants and other representatives shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Indemnitee and its accountants and other representatives shall have the right to examine and audit the books and records of Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at the office of Indemnitor where the books and records are located.

# **Notices**. All notices, consents, approvals and requests (any of the foregoing, a “**Notice**”) required or permitted hereunder 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.

If to Indemnitor: {Deal\_\_r.Borrower\_Entity\_\_r.Name}, a {Deal\_\_r.Borrower\_Entity\_\_r.Company\_Jurisdiction\_\_c} {Deal\_\_r.Borrower\_Entity\_\_r.Entity\_Type\_\_c}  
{Deal\_\_r.Borrower\_Entity\_\_r.Address\_1\_\_c}  
{Deal\_\_r.Borrower\_Entity\_\_r.City\_\_c}, {Deal\_\_r.Borrower\_Entity\_\_r.State\_\_c} {Deal\_\_r.Borrower\_Entity\_\_r.Zip\_\_c}

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

# **Duplicate Originals; 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.

# **Modification**. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in a 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, any Loan Party shall entitle any Loan Party 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 Indemnitee 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.

# **Headings, Schedules and Exhibits**. The Article and/or Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

# **Successors and Assigns**. Without limiting the effect of specific references in any provision of this Agreement, the term “Indemnitor” shall be deemed to refer to each and every Person constituting an Indemnitor from time to time, as the sense of a particular provision may require, and to include the heirs, executors, administrators, legal representatives, successors and permitted assigns of Indemnitor, all of whom shall be bound by the provisions of this Agreement. Each reference herein to Indemnitee shall be deemed to include its successors and assigns. This Agreement shall inure to the benefit of Indemnitee and its successors, permitted assigns, heirs and legal representatives forever. Indemnitee shall have the right to assign or transfer their rights under this Agreement in connection with any assignment of the Loans and the Loan Documents. Any assignee or transferee of Indemnitee shall be entitled to all the benefits afforded to Indemnitee (and the other Indemnified Parties) under this Agreement. No Indemnitor shall have the right to assign or transfer its rights or obligations under this Agreement without the prior written consent of Indemnitee, as provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

# **Release of Liability**. Any one or more parties liable upon or in respect of this Agreement may be released without affecting the liability of any party not so released.

# **Rights Cumulative**. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies which Indemnitee has under the Loan Documents or would otherwise have at law or in equity.

# **Inapplicable Provisions**. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

# **Governing Law** 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.

# **Consent to Jurisdiction**. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST INDEMNITORS OR INDEMNITEE ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK. INDEMNITOR AND INDEMNITEE, BY ITS ACCEPTANCE HEREOF, EACH 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 17 HEREOF (AND AGREE 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).

# **Miscellaneous**.

## Wherever pursuant to this Agreement (i) Indemnitee exercises any right given to it to approve or disapprove any matter, (ii) any arrangement or term is to be reasonably satisfactory to Indemnitee or (iii) any other decision or determination is to be made by Indemnitee, the decision of Indemnitee to approve or disapprove such matter, all decisions that arrangements or terms are satisfactory or not satisfactory to Indemnitee and all other decisions and determinations made by Indemnitee, shall be made in a commercially reasonable manner, except as may be otherwise expressly and specifically provided herein.

## Wherever pursuant to this Agreement it is provided that Indemnitor pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements of Indemnitee (limited to one outside counsel for Indemnitee and one local counsel in each applicable jurisdiction).

# **Construction**. All references to sections are to sections in or to this Agreement unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “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 hereof or thereof. When used in this Agreement, the word “including” shall mean “including but not limited to”. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. References herein to any Loan Document include such document as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time. The recitals to this Agreement shall be deemed a part hereof and all exhibits and schedules attached hereto, if any, are incorporated herein by reference for all purposes. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined and “including” means including without limitation. Whenever the context requires, each gender shall include all other genders. Each reference to the “Indemnitor” herein shall be deemed a reference to each Indemnitor if more than one Indemnitor.

# **Prior Agreements**. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO IN RESPECT OF THE MATTERS CONTEMPLATED HEREBY, 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 THIS AGREEMENT.

# [**State-Specific Provisions**]. [[1]](#footnote-2)

## **California Specific Provisions***.* The following California provisions are not intended to, and do not, limit the express choice of New York law set forth in Section 25 of this Agreement and as set forth in the other Loan Documents, and are set forth herein, if and to the extent that, notwithstanding the choice of law provisions contained in this Agreement and the other Loan Documents, California law is held to govern this Agreement:

### The amount of Indemnitor’s liability under this Agreement is unrelated to, and independent of, the amount of any loss that Indemnitee may suffer by reason of the failure of the Loan to be repaid in full, and shall not be determined by reference to the amount of any Loan loss. No amount paid to Indemnitee pursuant to this Agreement shall be considered to be paid on account of the Loan or any deficiency or loss suffered by Indemnitee by reason of the failure of the Loan to be repaid in full. The enforcement of this Agreement by Indemnitee shall not be construed as an indirect attempt to recover any such Loan loss. Indemnitor acknowledges that Indemnitor may have liability under this Agreement even if the Loan is repaid in full by reason of a full credit bid at any foreclosure sale under the Security Instrument, and that the amount of Indemnitor’s liability hereunder could exceed the entire amount paid by Indemnitor for the Property.

### Nothing herein shall be deemed to limit the right of Indemnitee to recover in accordance with California Code of Civil Procedure Section 736 (as such Section may be amended from time to time), any costs, expenses, liabilities or damages, including reasonable attorneys’ fees and costs, incurred by Indemnitee and arising from the breach of any covenant, obligation, liability, representation or warranty contained in this Agreement or any other environmental indemnity agreement given by Indemnitor to Indemnitee in connection with the Obligations, or any order, consent decree or settlement relating to the cleanup of hazardous materials or any other “environmental provision” (as defined in such Section 736) relating to the Property or any portion thereof or the right of Indemnitee to waive, in accordance with the California Code of Civil Procedure Section 726.5 (as such Section may be amended from time to time), the security of the Security Instrument as to any parcel of the Property that is “environmentally impaired” or is an “affected parcel” (as such terms are defined in such Section 726.5), and as to any personal property attached to such parcel, and thereafter to exercise against Indemnitor, to the extent permitted by such Section 726.5, the rights and remedies of any unsecured creditor, including reduction of Indemnitee’s claim against Indemnitor to judgment, and any other rights and remedies permitted by law.

## **Florida Specific Provisions**. The following Florida provisions are not intended to, and do not, limit the express choice of New York law set forth in Section 25 of this Agreement and as set forth in the other Loan Documents, and are set forth herein, if and to the extent that, notwithstanding the choice of law provisions contained in this Agreement and the other Loan Documents, Florida law is held to govern this Agreement:

### Indemnitor acknowledges and agrees that the Default Rate shall also be the rate of interest payable on any judgments entered in favor of Indemnitee in connection with this Agreement.

## **Nevada Specific Provisions**. The following Nevada provisions are not intended to, and do not, limit the express choice of New York law set forth in Section 25 of this Agreement or as set forth in the other Loan Documents, except that Nevada law shall govern the Security Instrument encumbering the Property located in Nevada and the process for default and foreclosure thereof:

### To the extent applicable, nothing herein or in Section 40.509 of the Nevada Revised Statutes (“**NRS**”) shall be deemed to limit the right of Indemnitee to recover, in accordance with NRS 40.508 (as such section may be amended from time to time), any costs, expenses, liabilities or damages, including attorneys’ fees and costs, incurred by Indemnitee and arising from the breach of any covenant, obligation, liability, representation or warranty contained in any environmental indemnity agreement given to Indemnitee in connection with the Loans, or any order, consent decree or settlement relating to the cleanup of Hazardous Substances or any other “environmental provision” (as defined in NRS 40.502) relating to the Property or any portion thereof or the right of Indemnitee to waive, in accordance with NRS 40.512 (as such section may be amended from time to time), the security of the Security Instrument as to the Property that is “environmentally impaired” (as such term is defined in NRS 40.503), and as to any personal property attached to such parcel, and thereafter to exercise against Indemnitor, to the extent permitted by NRS 40.512, the rights and remedies of any unsecured creditor, including reduction of any of Indemnitee’s claims against Indemnitor to judgment, and any other rights and remedies permitted by law. Indemnitee and Indemnitor expressly agree that Indemnitee may recover interest at the Default Rate on the amount advanced to cure or mitigate the breach under any “environmental provision” (as defined in NRS 40.502).

## **Oregon Specific Provisions**. The following Oregon provision does not limit the express choice of New York law set forth in Section 25 of this Agreement and as set forth in the other Loan Documents, and is set forth herein, if and to the extent that, notwithstanding the choice of law provisions contained in this Agreement and the other Loan Documents, Oregon law is held to govern this Agreement or any other Loan Document:

### The following disclosure is made pursuant to Or. Rev. Stat. §41.580:

### UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY INDEMNITEE CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER’S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY INDEMNITEE TO BE ENFORCEABLE.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by Indemnitor and is effective as of the day and year first above written.

INDEMNITOR:

[BORROWER SIGNATURE BLOCK]

1. [↑](#footnote-ref-2)