



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): April 3, 2025

Commission File Number 1-13610

CREATIVE MEDIA & COMMUNITY TRUST CORPORATION

(Exact name of registrant as specified in its charter)

Maryland
(State or Other Jurisdiction of
Incorporation or Organization)
5956 Sherry Lane, Suite 700, Dallas, TX 75225
(Address of Principal Executive Offices)

75-6446078
(I.R.S. Employer
Identification No.)
(972) 349-3200
(Registrant's telephone number)

None
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 Par Value	CMCT	Nasdaq Global Market
Common Stock, \$0.001 Par Value	CMCT	Tel Aviv Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act ☐

Item 1.01 Entry into a Material Definitive Agreement

On April 3, 2025, Comerica Bank (the “Lender”) originated a first lien mortgage loan of up to \$35.5 million (the “Mortgage Loan”) to CIM Urban REIT Properties IX, L.P. (the “Borrower”) (the “New Loan Agreement”), which is a subsidiary of Creative Media & Community Trust Corporation (the “Company”) managed on a day-to-day basis by affiliates of CIM Group Management, LLC. The Mortgage Loan is secured by, among other things, a first priority deed of trust and security agreement on the Borrower’s fee simple interest in Penn Field, an office campus located at 3601 S. Congress Avenue, Austin, Texas (the “Property”).

The Mortgage Loan consists of (a) a \$32.0 million closing day advance that was or will be used by the Company for general corporate purposes and to paydown existing debt in the amount of \$15.0 million under the Company’s Amended and Restated Credit Agreement, dated as of December 16, 2022 by and among the borrowers party thereto, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (the “Existing Credit Agreement”), and to pay certain of the fees and expenses incurred in connection with the entry of the New Loan Agreement, and (b) a future advance component of up to \$3.5 million to fund future tenant allowance costs in connection with a new lease that is expected to be entered into for a portion of the Property.

In connection with entry into the New Loan Agreement, the Company repaid in full the outstanding obligations under the Existing Credit Agreement and terminated the Existing Credit Agreement.

The Mortgage Loan is a floating-rate, partially amortizing (with a required principal repayment of \$50,000 each month), non-recourse loan with a three-year term ending on April 3, 2028, with the Borrower having the right to extend the term for up to two years upon the satisfaction of certain customary conditions. The Mortgage Loan has an interest rate of one-month Term SOFR plus 2.95%.

The Mortgage Loan may be prepaid in whole, or in part, as provided in the New Loan Agreement, at any time and without penalty other than the payment by Borrower of any Term SOFR breakage costs.

In connection with the New Loan Agreement, the Company (as the guarantor) delivered a customary non-recourse carveout and carry guaranty to the Lender (the “Guaranty Agreement”), under which the Company agreed to indemnify the Lender with respect to (i) certain “non-recourse carveout events” and to be fully liable for the Mortgage Loan in certain circumstances (e.g., the voluntary bankruptcy of the Borrower and other insolvency events) and (ii) carry costs relating to the Property until the earliest of certain dates, as described in the Guaranty Agreement. The Company also delivered a customary environmental indemnity agreement, pursuant to which the Borrower and the Company agreed to protect, defend, indemnify, release and hold harmless the Lender from and against certain environmental liabilities relating to the Property (the guaranty and indemnity documents described above are referred to collectively as the “Guaranties”). The Guaranty Agreement requires the Company to maintain a net worth of no less than \$35.0 million, exclusive of the value of the collateral for the Mortgage Loan, and liquid assets of no less than \$3.0 million.

The New Loan Agreement and the Guaranties contain representations, warranties, covenants, events of default and indemnities that are customary for agreements of these types.

The foregoing summary of the New Loan Agreement and the Guaranties does not purport to be a complete description and is qualified in its entirety by the full text of the New Loan Agreement and the Guaranties, which are attached hereto as Exhibit 10.1, Exhibit 10.2 and Exhibit 10.3, respectively, and are incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

The information provided in Item 1.01 and Item 8.01 of this Current Report on Form 8-K is incorporated by reference into this Item 1.02.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

Exhibit Number	Exhibit Description
10.1	Term Loan Agreement, dated as of April 3, 2025, by and between the Borrower and the Lender.
10.2	Guaranty, dated as of April 3, 2025, by the Company for the benefit of the Lender.
10.3	Environmental Indemnity, dated as of April 3, 2025, by the Borrower and the Company for the benefit of the Lender.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: April 9, 2025

CREATIVE MEDIA & COMMUNITY TRUST CORPORATION

By: /s/ Barry N. Berlin
Barry N. Berlin
Chief Financial Officer

TERM LOAN AGREEMENT

THIS TERM LOAN AGREEMENT (this "**Agreement**") is made as of April 3, 2025 by and between CIM URBAN REIT PROPERTIES IX, L.P., a Delaware limited partnership ("**Borrower**"), and COMERICA BANK ("**Bank**").

1. DEFINITIONS OF TERMS USED IN THIS AGREEMENT.

1.1 **Additional Environmental Indemnity:** Shall have the meaning ascribed to such term in Article 9 hereof.

1.2 **Additional Guarantor:** An entity that (i) owns a direct or indirect interest in Borrower, (ii) possesses, in Bank's sole and absolute determination, the creditworthiness, net worth, liquidity and other financial characteristics not less than those of Guarantor as of the date hereof, and (iii) is otherwise acceptable to Bank in its sole and absolute discretion.

1.3 **Additional Guaranty:** Shall have the meaning ascribed to such term in Article 9 hereof.

1.4 **Affiliate:** With respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person for the purposes of this definition if such Person possesses, directly or indirectly, the power (i) to vote 25% or more of the ownership interests of such other Person having ordinary voting power for the election of directors or managers of such other Person or (ii) to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

1.5 **Appraisal:** A written appraisal of the Property and Improvements prepared by an Appraiser and requested by or delivered to Bank, in each case in form, content and methodology satisfactory to Bank, in Bank's reasonable discretion, and in compliance with all applicable legal and regulatory requirements (including the requirements of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. §§ 3331, et seq., as amended (or any successor statute thereto), and the regulations promulgated thereunder).

1.6 **Appraiser:** Any independent certified appraiser selected by Bank who meets all regulatory requirements applicable to Bank, who is a member of the Appraisal Institute with a national practice and who has experience with real estate of the same type as the Property and Improvements to be appraised.

1.7 **Approved Lease:** Shall have the meaning ascribed to such term in Section 8.3 hereof.

1.8 **Beneficial Ownership Certification:** Means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, in form and substance satisfactory to Bank.

1.9 **Beneficial Ownership Regulation:** Means 31 C.F.R. § 1010.230.

1.10 **Borrower's Interest Rate:** The per annum rate of interest to be paid to Bank with respect to the Loan, absent an Event of Default, as set forth in the Note.

1.11 **Boston Scientific:** Means Boston Scientific Corporation, a Delaware corporation.

1.12 **Business Day:** Shall, except as used in the definition of "Treasury Note Rate" below, have the meaning ascribed to such term in the Note.

1.13 **Debt Service Coverage Ratio:** A fraction, the numerator of which is the Net Operating Income from the Project before payment of debt service for the preceding three-month period, annualized and normalized, and the denominator of which is an amount equivalent to the sum of (a) an amount, as reasonably determined by Bank, equivalent to the interest that would accrue on the then outstanding principal balance of the Loan plus any undisbursed portion of the Loan (if any) during a twelve-month period, at a rate of interest which is the greater of (i) seven percent (7.0%) per annum, (ii) the rate of two percent (2.00%) per annum above the Treasury Note Rate (herein defined), or (iii) the Applicable Interest Rate (as defined in the Note) and (b) an amount for such period, as reasonably determined by Bank, equivalent to the amount of principal that would be payable during such twelve-month period, according to a schedule that would fully amortize the then outstanding principal balance of the Loan plus any undisbursed portion of the Loan (if any) over a 30-year period given the foregoing rate of interest.

1.14 **Default:** An event that with the giving of notice and/or the passage of time would become an Event of Default.

1.15 **Default Rate:** The per annum rate of interest specified in the Note which shall be in effect in the event of a "Default" (as defined in the Note) or during an Event of Default hereunder.

1.16 **Disbursement Schedule:** The schedule of disbursement of the Loan proceeds attached hereto as Exhibit A.

1.17 **Draw Request:** A draw request in a form reasonably acceptable to Bank.

1.18 **Environmental Indemnity:** The unsecured Environmental Indemnity executed by Borrower and Guarantor in favor of Bank dated as of even date herewith, and, as applicable, the Additional Environmental Indemnity, as the same may be modified or amended from time to time.

1.19 **Environmental Report:** Collectively, (a) that certain Phase I Environmental Site Assessment Report prepared by Bureau Veritas, and dated December 20, 2024 (Project No. 171692.24R000-001.135), (b) that certain Phase I Environmental Site Assessment Report prepared by EBI Consulting, and dated October 11, 2022 (Project No. 1122006844), and (c) that certain Environmental Peer Review prepared by SKA Consulting, L.P., and dated March 26, 2025 (Project No. 24010-0113).

1.20 **Event of Default:** Shall have the meaning set forth in Article 9 hereof.

1.21 **Extension Period:** Shall have the meaning ascribed to such term in Section 2.3.

1.22 **Extension Request:** Shall have the meaning ascribed to such term in Section 2.3.

1.23 **Financial Statements:** Financial statements of Borrower, Guarantor and such other Persons reasonably required by Bank including operating statements, balance sheets and such other financial reports that Bank may require, which financial statements may be prepared internally.

1.24 **First Extended Maturity Date:** Shall have the meaning ascribed to such term in Section 2.3.

1.25 **Governmental Authority:** The authority of the United States, the state in which the Property is located, any political subdivision thereof, any city and any governmental or quasigovernmental agency, department, commission, board, bureau or instrumentality of any of them, or any court, administrative tribunal, or public utility.

1.26 **Governmental Requirements:** Any present or future law, ordinance, order, rule or regulation of a Governmental Authority applicable to Borrower or the construction, maintenance, use, operation or sale of the Property.

1.27 **Guarantor:** Creative Media & Community Trust Corporation, a Maryland corporation and, where applicable, Additional Guarantor, collectively, jointly, and severally.

1.28 **Guaranty:** That certain Guaranty of even date herewith executed by Guarantor in favor of Bank, which guaranties the performance of Borrower's obligations specified therein, as the same may be modified or amended from time to time.

1.29 **Hazardous Substance or Hazardous Substances:** Shall have the meaning ascribed to such terms in the Environmental Indemnity.

1.30 **Hedging Agreement:** Any agreement relating to a Hedging Transaction entered into between Borrower (or an Affiliate of Borrower) and Bank (or an Affiliate of Bank).

1.31 **Hedging Transaction:** Each interest rate swap transaction, basis swap transaction, forward rate transaction, equity transaction, equity index transaction, foreign exchange transaction, cap transaction or floor transaction (including any option with respect to any of these transactions and any combination of any of the foregoing) relating to the Loan.

1.32 **Improvements:** The approximately 231,240 square foot office campus consisting of eleven (11) low-rise buildings on approximately 16.7 acres and related improvements located at 3601 S Congress Avenue, Austin, Texas 78704.

1.33 **Initial Disbursement:** The initial disbursement of proceeds of the Loan as set forth in Section 6.2.

1.34 **Initial Maturity Date:** April 3, 2028.

1.35 **Letter Agreement:** That certain letter agreement among Bank, Guarantor and Borrower, dated as of the date hereof, in connection with the incorporation of reference provisions into any agreement, instrument or document entered into by Borrower and/or Guarantor with or in favor of Bank.

1.36 **Litigation Amount:** One Million Dollars (\$1,000,000).

1.37 **Loan:** The amount evidenced by the Note, *i.e.*, Thirty-Five Million Five Hundred Thousand and No/100 Dollars (\$35,500,000.00).

1.38 **Loan Documents:** This Agreement, the documents and instruments listed in Sections 4.1.1, 4.1.2, 4.1.3, 4.1.6, 4.1.7, 4.1.8, and 4.1.11, of this Agreement, and all documents given to Bank from time to time to secure the Loan, as the same may be modified or amended from time to time; provided, however, that the Guaranty and the Environmental Indemnity are not Loan Documents. Notwithstanding any provision of any Loan Document, neither Borrower's

nor any Guarantor's obligations under the Environmental Indemnity nor any Guarantor's obligations under the Guaranty are secured by the Trust Deed.

1.39 **Loan Fee:** The fee to be paid to Bank in consideration for Bank agreeing to make the Loan and entering into this Agreement, which fee shall not be subject to reduction or be refundable under any and all circumstances, and which fee is \$266,250.00, payable upon Recordation.

1.40 **Loan Policy:** That certain title insurance policy in the form of a Form T-2 Loan Policy of Title Insurance, insuring that upon Recordation, Borrower owns fee simple title to the Project and that the Trust Deed is a valid first lien on the Project in the amount of the Note. The Loan Policy must provide affirmative insurance against mechanics liens and contain such endorsements as Bank requires, in Bank's sole discretion. Except as approved by Bank in writing prior to Recordation, the Loan Policy must not contain any survey exceptions, exceptions for rights of parties in possession, easements not of record or unpaid installments of special assessments (unless not yet due or payable), or any other exceptions to coverage not approved by Bank. The Loan Policy must contain such reinsurance agreements and direct access agreements as Bank may require.

1.41 **Loan-to-Value Ratio:** At any time of determination, the ratio of (a) the outstanding principal balance of the Loan plus any undisbursed portion of the Loan (if any), to (b) the value of the Project on an "as-is" basis (determined by a new Appraisal ordered by Bank at Borrower's sole expense). The "as-is" value of the Project shall be determined by an Appraisal performed by an Appraiser engaged by Bank using a method which (a) conforms to then-current regulatory requirements, (b) is reasonably determined by Bank to be reasonable and appropriate under the circumstances, and (c) takes into account then-current market conditions, including vacancy factors, estimated date of stabilization, rental rates and concessions, all as reasonably determined by Bank.

1.42 **Management Agreement:** Shall have the meaning ascribed to such term in Section 8.13 hereof.

1.43 **Material Adverse Effect:** Shall mean a material adverse effect on (a) the condition (financial or otherwise), business, performance, operations or properties of Guarantor (provided, however, that no Material Adverse Effect pursuant to this clause (a) shall be deemed to have occurred so long as Guarantor continues to satisfy the financial covenants in Section 18(a) of the Guaranty), (b) the ability of Guarantor to perform its obligations under any Guaranty, the Environmental Indemnity or any other Transaction Document to which it is a party, or (c) the validity or enforceability of any Guaranty, the Environmental Indemnity or any other Transaction Document to which Guarantor is a party, or the rights or remedies of Bank thereunder.

1.44 **Maturity Date:** Shall mean the Initial Maturity Date, as such date may be extended in accordance with the provisions of Section 2.3.

1.45 **Maximum Rate:** Shall mean, at all times, the maximum rate of interest which may be charged, contracted for, taken received or reserved by Bank in accordance with applicable Texas law (or applicable United States federal law to the extent that such law permits Bank to charge, contract for, receive or reserve a greater amount of interest than under Texas law). The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges in respect of the Transaction Documents that constitute interest under applicable law.

1.46 **Net Operating Income:** Shall mean the amount of (a) Rental Income for the applicable three-month period of time in question, plus other regularly occurring, contractual payments received by Borrower with respect to the Project that are reasonably allocable to such period of time, less (b) the amount of Operating Expenses for such period of time.

1.47 **Note:** The Advancing to Loan Amount Note of even date herewith executed by Borrower as maker and payable to Bank or order, in the principal amount of the Loan, as the same may be modified or amended from time to time.

1.48 **Operating Expenses:** Shall mean any and all costs and expenses incurred in connection with the Project (or which should have been incurred to operate and maintain the Project in a commercially reasonable manner, as reasonably determined by Bank) during the applicable three-month time period in question, as reasonably determined by Bank, including without limitation (a) taxes and assessments imposed upon the Project which are reasonably allocable to such time period, (b) bond assessments which are reasonably allocable to such time period, (c) insurance premiums for casualty insurance and liability insurance carried in connection with the Project which are reasonably allocable to such time period, and (d) operating expenses incurred by Borrower for the management, operation, cleaning, leasing, maintenance, and repair of the Project which are reasonably allocable to such time period. Operating Expenses shall not include any interest, principal, loan fees, extension fees or other payments on the Loan, or any depreciation, or any imputed or capital costs or expenses.

1.49 **PACE Loan:** Shall mean (a) any "Property-Assessed Clean Energy loan" or (b) any other indebtedness, without regard to the name given to such indebtedness, which is (i) incurred for improvements to the Property for the purpose of increasing energy efficiency, increasing use of renewable energy sources, resource conservation, or a combination of the foregoing, and (ii) repaid through multi-year assessments against the Property.

1.50 **Permitted Encumbrance:** Shall mean (i) the lien and security interests created by this Agreement and the other Transaction Documents, (ii) all liens, encumbrances and other matters disclosed in the Loan Policy, (iii) liens, if any, for taxes imposed by any Governmental Authority not yet delinquent (but excluding any lien securing any PACE Loan or similar indebtedness with respect to Borrower and/or the Property) or being contested in good faith in accordance with the Transaction Documents, (iv) any lease of the Property (or any portion thereof) to a tenant entered into by Borrower in accordance with the terms and provisions of this Agreement (including any memorandum of lease related thereto), (v) easements for utilities and rights of way entered into by Borrower after Recordation in the ordinary course of business which do not have a material adverse effect on the use, operation or value of the Property, and (vi) encumbrances recorded against the Property following the date hereof with the prior written consent of Bank, which consent may be withheld by Bank in its sole discretion.

1.51 **Person(s):** Any individual or entity, whether a trustee, corporation, general partnership, limited partnership, limited liability company, joint stock company, trust, unincorporated organization, bank, business association, firm, joint venture, governmental agency or otherwise.

1.52 **Personal Property:** That personal property now or hereinafter described in the Trust Deed and which is collateral for the Loan.

1.53 **Primary Tenant:** Means the tenant under the Primary Lease, which shall be (a) Boston Scientific (or an Affiliate thereof), or (b) any other Person approved by Bank in its reasonable discretion.

1.54 **Primary Lease:** Means that certain lease contemplated to be entered into after the date hereof between Borrower and Primary Tenant, which lease shall (a) have a lease term of at least five (5) years, (b) contain a monthly rent equal to or greater than \$30.00 per rentable square foot, (c) have a rent abatement equal to or less than one and one-half (1.5) months per year of the lease term, (d) be for the space commonly referred to as of the date hereof as "Building F", and (e) otherwise be (i) on Borrower's Lease Form (which may include commercially reasonable, non-material modifications thereto requested by Primary Tenant), or (ii) subject to the prior written approval of Bank (such approval not to be unreasonably withheld or delayed so long as no Event of Default exists).

1.55 **Project:** The Property, the Improvements and the Personal Property.

1.56 **Project Expenses:** Shall have the meaning ascribed to such term in Section 8.24 hereof.

1.57 **Project Income:** Shall have the meaning ascribed to such term in Section 8.24 hereof.

1.58 **Property:** That certain real property legally described in the Trust Deed, as the same may be modified or amended from time to time, and all Improvements constructed and/or to be constructed thereon.

1.59 **Property Manager:** Shall mean CIM Management, Inc., a California corporation.

1.60 **Recordation:** The act of recording the Trust Deed in the official records of the county in which the Property is situated.

1.61 **Rental Income:** The rental income received by Borrower for the three-month period of time in question from the tenant leases of the Improvements which are then in effect (and as to which the tenants thereunder are in possession, and paying rent, and are not in default (beyond any applicable notice and/or cure period, if any)).

1.62 **Second Extended Maturity Date:** Shall have the meaning ascribed to such term in Section 2.3.

1.63 **Statement of Insurance Requirements:** Shall mean that certain Statement of Insurance Requirements dated as of even date herewith executed by Bank and acknowledged by Borrower, as the same may be modified or amended from time to time.

1.64 **Subordination of Property Management Agreement:** Shall mean that certain Property Manager's Consent and Subordination of Management Agreement dated as of even date herewith among Borrower, Bank and Property Manager.

1.65 **Tenant Allowance Costs:** Shall mean those costs incurred by Primary Tenant relating to the design and construction of the interior tenant improvements that will be permanently affixed to the Improvements and/or costs for moving, information technology, cabling and/or furniture, fixtures and equipment, which in all cases, are subject to reimbursement by Borrower in accordance with the Primary Lease.

1.66 **Title Insurer:** The issuer of the Loan Policy required by Section 8.2 of this Agreement, *i.e.*, Fidelity National Title Insurance Company.

1.67 **Transaction Documents:** The Loan Documents, the Environmental Indemnity, the Guaranty, and any other document evidencing, securing or relating to the Loan, as the same may be modified or amended from time to time.

1.68 **Treasury Note Rate:** The yields reported, as of 10:00 a.m. (New York time) on any Business Day (hereinafter defined), on the display designated as "Page 678" on the Telerate Data Service (or such other display as may replace Page 678 on the Telerate Data Service) for actively traded U.S. Treasury securities having a maturity equal to ten (10) years, or if such yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, the latest Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the applicable Business Day, in Federal Reserve statistical Release H. 15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to ten (10) years. Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice, and (b) interpolating linearly between reported yields. The term "**Business Day**" as used in this paragraph means a day on which banks are open for business in New York, New York.

1.69 **Trust Deed:** That certain Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents and Leases), executed by Borrower for the benefit of Bank dated as of even date herewith encumbering the Property and given to secure the Loan, as the same may be modified or amended from time to time.

1.70 **UCC-1 Financing Statement:** The UCC-1 Financing Statement describing the Personal Property to be filed with the Secretary of State for the state where the Borrower is organized.

2. LOAN.

2.1 Borrower has applied to Bank for the Loan for the purpose of financing the Project, payment of certain Tenant Allowance Costs, and for other costs related thereto.

2.2 Subject to and upon the terms and conditions of this Agreement and the other Transaction Documents, and relying on the representations and warranties made to Bank in this Agreement and the other Transaction Documents, Bank and Borrower agree that Bank shall make the Loan to Borrower and Borrower shall accept the Loan upon the terms, conditions, covenants, representations and warranties contained herein. All Loan funds disbursed hereunder shall be evidenced by the Note, bear interest at the Borrower's Interest Rate or the Default Rate, as the case may be, and shall be secured by the Trust Deed.

2.3 All principal owing on the Loan, and all accrued interest and other sums owing under the Transaction Documents not otherwise paid when due, shall be due and payable in full on the Initial Maturity Date. Borrower shall have the option to extend the Initial Maturity Date for two (2) successive twelve (12) month periods (each, an "**Extension Period**"), (a) to April 3, 2029 (the "**First Extended Maturity Date**"), and (b) if Borrower extends the Maturity Date to the First Extended Maturity Date, to April 3, 2030 (the "**Second Extended Maturity Date**"), upon written request by Borrower for such extension (each, an "**Extension Request**") made not less than thirty (30) days prior to (a) the Initial Maturity Date, with respect to the first such option, and (b) the First Extended Maturity Date, with respect to the second such option. Each Extension Request shall be granted, subject to and upon the following terms and conditions:

2.3.1 No Default or Event of Default under this Agreement or any of the Transaction Documents shall have occurred and be continuing as of the date of the Extension

Request or as of (a) the Initial Maturity Date, with respect to the first extension, or (b) the First Extended Maturity Date, with respect to the second extension;

2.3.2 Borrower shall have paid to Bank on or prior to the applicable Maturity Date an extension fee in the amount of one quarter of one percent (0.25%) of the total outstanding principal balance of the Loan plus any undisbursed Loan proceeds (if any) determined as of (a) the Initial Maturity Date, with respect to the first extension, and (b) the First Extended Maturity Date, with respect to the second extension;

2.3.3 As of (a) the Initial Maturity Date, with respect to the first extension, and (b) the First Extended Maturity Date, with respect to the second extension, the Project shall have achieved a Debt Service Coverage Ratio of at least 1.75:1.00; provided, however, in the event that the required Debt Service Coverage Ratio is not met, then Borrower may pay down the outstanding principal balance of the Loan (without premium or penalty, other than the interest rate breakage fees described in the Note) such that the required Debt Service Coverage Ratio is met;

2.3.4 As of (a) the Initial Maturity Date, with respect to the first extension, and (b) the First Extended Maturity Date, with respect to the second extension, and based upon a new Appraisal paid for by Borrower, the Loan-to-Value Ratio shall not exceed fifty percent (50%) based upon such new Appraisal; provided, however, in the event that the "as-is" value of the Project is not adequate to meet the required Loan-to-Value Ratio, then Borrower may pay down the outstanding principal balance of the Loan (without premium or penalty, other than the interest rate breakage fees described in the Note) such that the required Loan-to-Value Ratio is met; and

2.3.5 The Title Insurer shall have agreed to issue (a) a nothing further letter and/or (b) to the extent available, endorsements to the Loan Policy in form and substance promulgated by the Texas Department of Insurance, insuring the continued first-lien priority of the Trust Deed, in each case reasonably acceptable by Bank. The cost of all such endorsements shall be paid by Borrower.

2.3.6 If each of the foregoing conditions precedent are satisfied, and the Initial Maturity Date is extended as provided above to the First Extended Maturity Date or the Second Extended Maturity Date, as applicable, the term "Maturity Date," as used herein and in the other Transaction Documents, shall thereafter mean the First Extended Maturity Date or the Second Extended Maturity Date, as applicable. For purposes of clarification, during each of the first and second extended terms of the Loan described in this Section 2.3, all terms and conditions of the Transaction Documents (other than the original Maturity Date) shall continue to apply, except that Borrower shall have no further right to extend the term of the Loan beyond the last extension option described above.

2.3.7 All indebtedness and obligations owing hereunder and under the other Transaction Documents by Borrower shall be due and payable in full on the applicable Maturity Date. During each Extension Period, Borrower shall continue to make monthly principal and interest payments on the Loan in accordance with the terms and provisions of the Note.

2.4 Borrower irrevocably waives the right to direct the application of any and all payments received at any time by Bank, from or on behalf of Borrower and specifically waives all provisions under applicable law giving Borrower the right to designate the application of payments. All amounts received by Bank, for application to the Borrower's obligations under the

Transaction Documents shall be applied by Bank in the following order of priority: (a) to the payment of any fees then due and payable, (b) to the payments of all other amounts not otherwise referred to in this Section 2.4 then due and payable hereunder or under the other Loan Documents and the Environmental Indemnity (including any costs and expenses incurred by Bank as a result of a Default or an Event of Default), (c) to the payment of interest then due and payable on the Loan, and (d) to the payment of principal then due and payable on the Loan. Notwithstanding the foregoing, Borrower irrevocably agrees that, after the occurrence, and during the continuance, of an Event of Default, Bank shall have the continuing exclusive right to determine the order and method of the application of payments against the then due and payable obligations of Borrower in Bank's sole discretion and to revise such application prospectively or retroactively in Bank's sole discretion.

3. **LOAN PROCEEDS.** Upon Recordation, Bank is authorized to:

3.1 Make the Initial Disbursement in the manner and for the purpose provided by Section 6.2 directly to the parties to whom the respective payment is to be made.

3.2 Make additional disbursements in the manner and for the purposes provided in Sections 6.3 and 6.4 subject to the limits set forth in Section 6.5 hereof. Interest at the Borrower's Interest Rate or the Default Rate, as the case may be, shall accrue with respect to each disbursement on and after the date such disbursement is made, and shall be payable in accordance with the Note (provided that no interest shall accrue on any undisbursed Loan proceeds or, with respect to any amount of a disbursement that is repaid, from and after the date of such repayment).

4. **CONDITIONS PRECEDENT TO RECORDATION.** Prior to Recordation the following conditions shall have been satisfied (or waived in writing by Bank in its sole discretion and without obligation to do so):

4.1 **Bank shall have received and approved of:**

4.1.1 an executed original of this Agreement;

4.1.2 the executed Note;

4.1.3 the executed and notarized Trust Deed;

4.1.4 the executed and notarized Guaranty;

4.1.5 the executed Environmental Indemnity;

4.1.6 the UCC – 1 Financing Statement;

4.1.7 the executed Letter Agreement;

4.1.8 the executed Subordination of Property Management Agreement;

4.1.9 UCC search for Borrower and its general partner(s), if any;

4.1.10 the Financial Statements;

4.1.11 a completed Statement of Insurance Requirements, together with copies of original insurance policies or certificates thereof for the insurance required by Section 8.5 hereof;

4.1.12 such tenant estoppels and subordination, non-disturbance and attornment agreements as Bank may reasonably require;

4.1.13 a preliminary title report issued by Title Insurer showing the condition of title to the Property with the Property's legal description and a copy of all documents listed as exceptions in the title report;

4.1.14 evidence reasonably satisfactory to Bank that the Project complies with all applicable zoning ordinances;

4.1.15 a property condition assessment in form and substance satisfactory to Bank;

4.1.16 a "phase one" environmental assessment, in form and substance satisfactory to Bank ("**Environmental Assessment**") prepared by a qualified licensed environmental consultant acceptable to Bank. The Environmental Assessment shall, at a minimum, include a description of current and former uses of the Property and the results of an inspection of the Property and adjacent and neighboring property sufficient to form a basis for a reasoned opinion concerning the existence of, or potential for, Hazardous Substance contamination on or in the vicinity of the Property. In the event the Environmental Assessment indicates that the Property may be affected by Hazardous Substances, or is otherwise unsatisfactory to Bank, in Bank's sole discretion, Bank may require additional or further environmental testing, inspection and/or assessment of the Property;

4.1.17 an Appraisal performed by an Appraiser engaged by Bank and in form and substance satisfactory to Bank in its sole discretion, which Appraisal is dated within three (3) months of Recordation;

4.1.18 the Loan Policy described in Section 8.2 hereof, naming Bank as insured to the extent of the Loan amount, or confirmation from the Title Insurer that it has committed to issue the same;

4.1.19 the property management agreement for the Project, if any;

4.1.20 if Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to Borrower; and

4.1.21 the form of tenant lease to be attached as Exhibit C to this Agreement ("**Lease Form**").

4.2 If required by Bank as indicated by an "X" in the box opposite the required item, Bank shall have received:

- | | | |
|---|-------|---|
| X | 4.2.1 | the Guaranty executed by Guarantor in favor of Bank; |
| X | 4.2.2 | a current ALTA/NSPS Land Title Survey of the Property including dimensions, delineations and locations of all easements and Improvements thereon, satisfactory to the Title Insurer if required by it and to Bank; |
| | 4.2.3 | a performance bond naming Bank as co-obligee, and labor and material payment bond, in a penal sum equal to such amount as Bank may require, in form and content meeting the statutory requirements of the California Civil Code, if the Property is situated in California or the statutory requirements of the state in which the Property is situated if elsewhere; |

- X 4.2.4 an Opinion Letter from Borrower's counsel to the effect set forth in Sections 7.4, 7.10, and 7.17 hereof, and containing such other opinions as may be required by Bank;
- X 4.2.5 If Borrower, a managing member or a general partner of Borrower or any Guarantor is a corporation:
- (a) a certified copy of its Articles of Incorporation and by-laws and all amendments thereof, as filed with the Office of the Secretary of State;
 - (b) a Certificate of Status; and
 - (c) certified Resolution of Board of Directors of Borrower or Guarantor, as applicable, authorizing the consummation of the transactions contemplated hereby and providing for the execution of a written direction of payment if Loan proceeds are to be paid to a Person other than Borrower;
- X 4.2.6 If Borrower, a managing member or a general partner of Borrower or any Guarantor is a limited liability company:
- (a) a certified copy of its Articles of Organization/Certificate of Formation, as filed with the Office of the Secretary of State, and all amendments, restatements and corrections thereto;
 - (b) a copy of its Operating Agreement, and all amendments, restatements and corrections thereto;
 - (c) a Certificate of Status;
 - (d) in the case of a member-managed limited liability company, the consent of all of the members of the limited liability company authorizing the transactions contemplated hereby and the execution of the documents contemplated by this Agreement; and
 - (e) in the case of a manager-managed limited liability company, the consent of all of the managers of the limited liability company authorizing the transactions contemplated hereby and the execution of the documents contemplated by this Agreement.
 - (f) if the Property is located in a state other than the state of such limited liability company's formation, evidence that such entity has registered to do business in the state in which the Property is located.
- 4.2.7 If Borrower, a managing member or a general partner of Borrower or any Guarantor is a General Partnership or Joint Venture:
- (a) the Partnership or Joint Venture Agreement; and
 - (b) a certified copy of the Statement of Partnership Authority (GP-1), as filed with the Office of the Secretary of State.
- X 4.2.8 If Borrower, a managing member or a general partner of Borrower or any Guarantor is a limited partnership:
- (a) the Limited Partnership Agreement;
 - (b) a certified copy of the Certificate of Limited Partnership (LP-1), as filed with the Office of the Secretary of State;
 - (c) a Certificate of Good Standing; and
 - (d) the consent of all of the partners of the limited partnership authorizing the transactions contemplated hereby and the execution of the documents contemplated by this Agreement.

- X
- 4.2.9 If Borrower, a managing member or a general partner of Borrower or any Guarantor is a Trust, a copy of the Trust declaration and/or such other documents with respect to the Trust as Bank may require;
 - 4.2.10 A copy of the preliminary subdivision public report issued by the Department of Real Estate ("DRE") with respect to the Property;
 - 4.2.11 A copy of the final subdivision public report issued by the DRE with respect to the Property;
 - 4.2.12 A copy of the declaration of conditions, covenants and restrictions affecting the Property (if any);
 - 4.2.13 A certified copy of the articles of incorporation, as filed with the Office of the Secretary of State, and the by-laws of the owners' association referred to in the declaration of conditions, covenants and restrictions affecting the Property; and
 - 4.2.14 If the Property is situated outside the State of California, an opinion of local counsel of Bank's selection to the effect that (a) upon due authorization and execution by the parties thereto and upon such recording or filing thereof as may be specified in the opinion, the Note, the Trust Deed, this Agreement, the Guaranty, and the Environmental Indemnity will be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms; (b) the Trust Deed creates the lien it purports to create on the Project, and effectively assigns the leases purported to be assigned thereby, and stating the manner of recording or filing to be effected in order to establish, preserve and protect the Bank's interest therein, and whether there is any necessity for the re-recording of the Trust Deed or re-filing requirements, if any; (c) upon due recording or filing of the Trust Deed, it will, to the extent of all advances made hereunder, be prior to all subsequently filed constitutional or statutory liens for services rendered or materials furnished to the Property regardless of the time such services were rendered or materials furnished as the case may be; (d) in the event of the foreclosure or other method of enforcement of the remedies provided for in the Trust Deed, any leases of the Property will, at Bank's option, remain in full force and effect between the lessees thereunder and the Bank or any purchaser of the Property pursuant to such remedial action; (e) all rights of redemption of Borrower shall be extinguished upon the consummation of the foreclosure sale of the Trust Deed; (f) Bank, by making the Loan, (i) shall not be deemed to be doing business in that state or, if the making of the Loan constitutes doing business in that state, that Bank has been duly qualified to do business in that state, (ii) shall not become subject to the payment of any income, franchise, capital or other similar taxes or assessments with respect to its ownership of the Note or the receipt of principal or interest thereunder other than customary corporate income taxes on the interest received thereon, (iii) shall not be violating the usury laws of that state, and (g) as to such other matters incident to the transactions contemplated hereby, as Bank may require.

5. CONDITIONS PRECEDENT TO DISBURSEMENT. Prior to any disbursement of the Loan proceeds (including the Initial Disbursement and any subsequent disbursements), the following conditions shall have been satisfied (or waived in writing by Bank in its sole discretion and without obligation to do so):

5.1 Title Insurer shall have issued or agreed to issue the Loan Policy, naming Bank as insured with a liability limit equal to the Loan amount.

5.2 Bank shall have received the executed Disbursement Schedule attached as Exhibit A hereto.

5.3 The UCC-1 Financing Statement shall have been delivered for filing with the Secretary of State for the state where the Borrower is organized.

5.4 Prior to (a) the Initial Disbursement, Title Insurer shall have irrevocably committed to (i) submit the Trust Deed for Recordation and (ii) provide Bank with "gap coverage" and otherwise issue the Loan Policy in the form approved by Bank as of the making of the Initial Disbursement despite any delays or failures in the recording of the Trust Deed, and (b) the first disbursement after the Initial Disbursement, Recordation shall have occurred.

5.5 No Default or Event of Default shall exist under this Agreement, the Note or any other Transaction Document.

5.6 The representations and warranties of Borrower made in Article 7 of this Agreement shall be true and correct in all material respects on and as of the date of the disbursement with the same effect as if made on such date (subject to Borrower's right to update (a) the representation and warranty set forth in Section 7.8.1 and (b) the Beneficial Ownership Certification referenced in Section 7.26 in accordance with Section 8.23, in each case, as a result of the passage of time and so long as any such update is not the result of, and does not otherwise constitute a, Default or Event of Default hereunder or any other Transaction Document).

5.7 [Reserved].

5.8 Bank shall have confirmed that all of the applicable conditions listed in Article 4 hereof shall have been satisfied.

6. **LOAN DISBURSEMENTS.** The proceeds of the Loan shall be used only for the financing of the Property and Tenant Allowance Costs, all as set forth on the Disbursement Schedule, and shall be disbursed to or for the account of Borrower as follows:

6.1 **Method of Disbursement:** Subject to fulfillment of all applicable conditions and the terms and procedures set forth in this Agreement and the Disbursement Schedule, (a) each disbursement (other than the Initial Disbursement) shall be made on the basis of a Draw Request submitted by Borrower to Bank, and (b) upon Bank's approval of the Draw Request, the proceeds of the disbursement shall be deposited into the commercial account identified to Bank by Borrower or in the case of the Initial Disbursement, into an escrow with Title Insurer, to be subsequently disbursed to Borrower in accordance with this Agreement, except that the proceeds of any disbursement being used to reimburse Borrower for the costs of acquiring the Project or to amounts owing to Bank on the Loan shall be made by book entry.

6.2 **Initial Disbursement of Loan Proceeds:** Following Recordation, and upon satisfaction of the conditions of Article 5 and Section 6.1 hereof, Bank shall disburse to the Persons indicated (including Bank) in accordance with Section I of the Disbursement Schedule the amounts shown thereon.

6.3 **Subsequent Disbursements.** Upon satisfaction of the conditions of this Article 6, Bank shall disburse such sums as are required for the Tenant Allowance Costs as set forth on the Disbursement Schedule. Such disbursements shall be made in accordance with the applicable provisions of the Disbursement Schedule. All funds disbursed hereunder to Borrower shall be

received by Borrower in trust and Borrower agrees that the same shall be used only for the payment of those items contemplated by the particular disbursement.

6.4 **Disbursements for Tenant Allowance Costs.** In addition to the conditions to disbursement set forth above, the following additional conditions shall be satisfied and procedures followed before any disbursement of the Loan funds is made for any Tenant Allowance Costs:

6.4.1 All the conditions precedent to funding set out in Section 5 above shall have been satisfied.

6.4.2 Bank shall have received a Draw Request from Borrower that includes Borrower's certification as to the applicable Tenant Allowance Costs to be reimbursed (and that such Tenant Allowance Costs have actually been incurred by Primary Tenant) and is accompanied by (a) such invoices, lien waivers, and backup information as Bank may reasonably request, and (b) all information required to be delivered by Primary Tenant to Borrower in connection therewith pursuant to the Primary Lease.

6.4.3 Bank shall have received (a) a nothing further letter, and/or (b) such endorsement(s) to Bank's Loan Policy as Bank may reasonably request (to the extent available), in each case with respect to the applicable disbursement and Tenant Allowance Costs.

6.4.4 Each request for an advance shall be made by funding Tenant Allowance Costs actually incurred by Primary Tenant and requested to be reimbursed by Borrower in accordance with the Primary Lease.

6.4.5 Borrower shall not use any portion of any advance of the Loan allocated to Tenant Allowance Costs for payment of any other cost except as specifically set forth in a Draw Request approved by Bank in writing.

6.4.6 For the avoidance of doubt, any Loan proceeds to be disbursed to Borrower hereunder after the Initial Disbursement may only be used by Borrower for Tenant Allowance Costs and not for any other costs or expenses incurred by Borrower pursuant to a lease at the Property (including the Primary Lease) including, without limitation, any costs or expenses incurred by Borrower for constructing any tenant improvements Borrower may be required to construct pursuant thereto.

6.5 **Disbursement Limits.**

6.5.1 Borrower will be entitled to receive disbursements of Loan funds in installments as Tenant Allowance Costs are actually incurred and requested by Primary Tenant to be reimbursed by Borrower in accordance with the Primary Lease in an amount equal to one hundred percent (100%) of such Tenant Allowance Costs, less the amount of all previous disbursements for such Tenant Allowance Costs, if any. For the avoidance of doubt, subject to satisfaction of the other conditions set forth herein for disbursement of Loan funds, Borrower has the right to request disbursement of Loan funds for Tenant Allowance Costs even after Borrower has already reimbursed the same to Primary Tenant pursuant to, and in accordance with, the terms of the Primary Lease.

6.5.2 Bank shall not be required to disburse an aggregate amount of the Loan proceeds for Tenant Allowance Costs which exceeds the lesser of (a) the amount of Tenant

Allowance Costs actually incurred by Primary Tenant and requested to be reimbursed by Borrower pursuant to the Primary Lease, and (b) \$3,500,000.00.

7. **REPRESENTATIONS AND WARRANTIES OF BORROWER.** Borrower represents and warrants, which representations and warranties shall survive any investigations, inspections or inquiries made by Bank or any of its representatives or the disbursement of Loan proceeds hereunder, that:

7.1 **If Corporation:** If a corporation, it is duly organized and validly existing, in good standing under the laws of the state of its incorporation, has stock outstanding which has been duly and validly issued, is qualified to do business, and is in good standing under the laws of the state in which the Property is situated, with full power and authority to consummate the transactions contemplated hereby.

7.2 **If Limited Liability Company:** If a limited liability company, it is duly organized and validly existing, in good standing under the laws of the state of its formation, and is in good standing under the laws of the state in which the Property is situated, with full power and authority to consummate the transactions contemplated hereby.

7.3 **If General Partnership:** If a general partnership, it is duly organized and validly existing, with full power and authority to consummate the transactions contemplated hereby.

7.4 **If Limited Partnership:** If a limited partnership, it is duly organized and validly existing, in good standing under the laws of the state of its formation, and is in good standing under the laws of the state in which the Property is situated, with full power and authority to consummate the transactions contemplated hereby, and each of Borrower's ownership interests has been issued in compliance with all applicable federal and state securities laws and regulations.

7.5 **If Trust:** If a trust, it is duly organized, validly existing and the trustees thereof are qualified to act as trustee, with full power and authority to consummate the transactions contemplated hereby.

7.6 **Taxes:** Borrower has filed all tax returns required to be filed (subject to any applicable right that Borrower has to extend its filing deadline under applicable law, but only if Borrower has satisfied any conditions to such extension or is granted such extension by the appropriate Governmental Authority) and paid all taxes shown thereon to be due, including interest and penalties, except for taxes being contested in good faith by appropriate proceedings the details of which have been disclosed to Bank in writing and for which Borrower has provided adequate reserves for payment.

7.7 **Financial Statements:** The Financial Statements heretofore delivered to Bank are true and correct in all monetary and material non-monetary respects, have been prepared in accordance with sound and prudent accounting principles, consistently applied, fairly present the respective financial conditions of the subjects thereof as of their respective dates; no materially adverse change has occurred in the financial conditions reflected therein since their respective dates and no additional borrowings have been made by Borrower or any Guarantor since the date thereof other than the borrowing contemplated hereby or approved by Bank.

7.8 **Litigation:**

7.8.1 There are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting it, the Project, or involving the validity or enforceability of the Trust Deed or the priority of the lien thereof, at law or in equity, or before or

by any Governmental Authority. To Borrower's knowledge, it is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority.

7.8.2 Except as set forth in any document delivered pursuant to Section 18(b)(iv) of the Guaranty, as of the later of the date hereof or the last day of the most recently completed calendar year for which Guarantor has delivered the documents required by Section 18(b) of the Guaranty, (i) there is no suit, action, proceeding, including any bankruptcy proceeding, or governmental investigation pending against, or to the knowledge of Borrower threatened in writing against, Guarantor (other than any suit, action or proceeding in which Guarantor is the plaintiff and in which no counterclaim or cross-claim against Guarantor has been filed), and (ii) there is no judgment, decree, injunction, rule, or order of any court, government, department, commission, agency, instrumentality or arbitrator outstanding against Guarantor, nor is Guarantor in violation of any applicable law, regulation, ordinance, order, injunction, decree or requirement of any governmental body or court, which in the case of either (i) or (ii), individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

7.9 Intentionally Deleted.

7.10 **No Breach:** The consummation of the transaction hereby contemplated and performance of this Agreement and the other Transaction Documents will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, bank loan or security agreement, corporate charter, bylaws or other instrument to which Borrower or any Guarantor is a party or by which it may be bound or affected.

7.11 **Utilities:** All utility services necessary for the operation of the Improvements are available at the Project, including water supply, storm and sanitary sewer facilities, gas, electric, and telephone facilities.

7.12 **Other Liens:** Borrower has not entered into a PACE Loan or made any other contract or arrangement of any kind, the performance of which by the other party thereto could give rise to a lien on the Property, other than Permitted Encumbrances.

7.13 **No Default:** There is no Default or Event of Default on the part of Borrower under this Agreement or any other Transaction Document.

7.14 **CC&R's, Zoning:** Borrower has examined, is familiar with, and the Improvements will (a) in all respects conform to and comply with all zoning ordinances, and (b) in all material respects conform to and comply with all covenants, conditions, restrictions, and reservations affecting the Project.

7.15 **Title to Personal Property:** Any Personal Property required by Bank as additional security for the Note is vested in Borrower free and clear of all liens, encumbrances and adverse claims and that the security interest of Bank in the Personal Property shall be a first lien thereon (other than liens for Equipment Financing expressly permitted pursuant to Section 7.16 below).

7.16 **Other Financing:** Borrower has not received other financing (including any PACE Loan or similar financing) for the Property and/or the Improvements (provided that this Section 7.16 shall in no way prohibit, and Borrower shall be permitted to enter into, equipment financing and/or equipment leases for Personal Property and not secured by the Land (as defined in the Trust Deed) or Improvements to be used in connection with the Project so long as the annual payments therefor do not exceed \$50,000.00 in the aggregate (collectively, "**Equipment Financing**")).

7.17 **Borrower's Powers; Enforceability:** Borrower has full power and authority to execute this Agreement, the Note, and the other Transaction Documents to which it is a party and to undertake and consummate the transactions contemplated hereby and thereby, and to pay, perform and observe its conditions, covenants, agreements and obligations herein and therein contained. Each of the Transaction Documents, when executed and delivered to Bank, will constitute a legal, binding and valid obligation, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar creditors rights laws, and by general principles of equity.

7.18 **Finder's Fees:** Borrower hereby warrants and represents that it has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission or other sum in connection with the execution of this Agreement, consummation of the transactions contemplated hereby and the making of the Loan by Bank to Borrower.

7.19 **Accuracy:** All documents, reports, instruments, papers, information and forms of evidence delivered to Bank by Borrower with respect to the Loan are accurate and correct in all material respects, are complete in all material respects insofar as completeness may be necessary to give Bank true and accurate knowledge of the subject matter thereof, and do not contain any misrepresentations or omissions. Bank may rely on such documents, reports, instruments, papers, information and forms of evidence without investigation or inquiry, and any payment made by Bank in reliance thereon shall be a complete release in its favor of all sums so paid.

7.20 **Compliance with Laws and Restrictions:** To Borrower's actual knowledge, Borrower is able to comply with all applicable Governmental Requirements, including but not limited to the requirements set forth in the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") with respect to any qualified retirement plan sponsored or maintained by Borrower, and covenants, restrictions, easements and other encumbrances affecting the Property. Neither the extension of credit made pursuant to this Agreement or the use of the proceeds thereof by Borrower will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, or The United and Strengthening America by providing appropriate Tools Required to Intercept and Obstruct Terrorism ("**USA Patriot Act**") Act of 2001, Public Law 10756, October 26, 2001 or Executive Order 13224 of September 23, 2001 issued by the President of the United States (66 Fed. Reg. 49049 (2001)).

7.21 **Title to the Property:** Subject to the title exceptions set forth in Schedule B of the Loan Policy and other Permitted Encumbrances, Borrower owns good and indefeasible title to the Property, and the Property is free from encumbrances superior to the liens and security interests created by the Loan Documents and Borrower has full right and authority to make the conveyance and grant the security interests pursuant to the Loan Documents. No security interest (except in favor of Bank or in connection with Equipment Financing expressly permitted under Section 7.16 above) exists with respect to any personal property, chattel or fixture used in, or in connection with the operation or maintenance of the Property.

7.22 **Hazardous Substances:** Except as expressly disclosed in the Environmental Report, (a) Borrower has not at any time disposed of, discharged, released or threatened the release of any Hazardous Substances in violation of any Hazardous Substances law, (b) to the best of Borrower's knowledge after commercially reasonable investigation, no condition exists that violates any Hazardous Substances law affecting the Property, (c) neither the Property nor any portion thereof is or has been utilized by Borrower as a site for the manufacture of any Hazardous Substances, and (d) to the extent that any Hazardous Substances are used, generated or stored by Borrower on the Property, or transported to or from the Property by Borrower, such

use, generation, storage and transportation are in compliance with all Hazardous Substances laws.

7.23 **Place of Business.** The principal place of business, chief executive office of Borrower, and the office where Borrower keeps its records, is located at the address or addresses specified on the signature page of this Agreement.

7.24 **ERISA.** Borrower does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and the assets of Borrower do not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA.

7.25 **Property as a Legal Parcel.** The Property constitutes one or more (i) separately and properly subdivided parcel(s) and (ii) separate tax parcel(s) that is (or are) complete on to itself (or themselves), in each case pursuant to all Governmental Requirements.

7.26 **Beneficial Ownership Certification.** The information included in the Beneficial Ownership Certification is true and correct in all respects.

8. **BORROWER'S COVENANTS.** Borrower covenants and agrees until the full and final payment of the Loan, unless Bank waives compliance in writing, that it will:

8.1 **Inspection:** Permit Bank, and/or its representatives (and Bank and/or its representative shall have the right upon reasonable prior written notice to Borrower, except if Bank determines that an emergency exists that necessitates Bank proceeding without prior written notice to Borrower) to enter upon the Property and inspect the Property and the Improvements to determine Borrower's compliance with the Transaction Documents, and will reasonably cooperate with Bank in making its inspections. Inspections by Bank shall be for the purpose of protecting the security of Bank and preserving Bank's rights under the Transaction Documents and neither Borrower nor any third party shall be entitled to rely on Bank's inspection for any purpose whatsoever. No site inspection shall be deemed to constitute a waiver of any default of Borrower.

8.2 **Title Insurance:** Deliver or cause to be delivered to Bank at Recordation or within a reasonable time thereafter the Loan Policy with a liability limit of not less than \$35,500,000.00, issued by Title Insurer, insuring Bank's interest under the Trust Deed as a valid first priority lien on the Property, together with such reinsurance or coinsurance agreements or endorsements as Bank may require. The Loan Policy shall contain only such exceptions from its coverage as shall have been approved in writing by Bank. After Recordation, Borrower shall, at its own cost and expense, maintain the Trust Deed as a first priority lien on the Property (subject to Permitted Encumbrances) and deliver or cause to be delivered to Bank from time to time such endorsements to the Loan Policy as Bank deems necessary to insure such priority of the Trust Deed (to the extent available). Borrower shall furnish to Title Insurer surveys and any other information required to enable it to issue the Loan Policy.

8.3 **Leases.** Except for Approved Leases (as defined below), all new leases and tenants of the Improvements shall be subject to Bank's written approval (which approval shall not be unreasonably withheld or delayed) prior to execution of any such lease. For purposes hereof, an "**Approved Lease**" shall mean a lease or rental agreement entered into by Borrower for space at the Project while no Event of Default exists (i) that demises 35,000 rentable square feet or less, if, and only if, such lease or rental agreement (a) is for a term of at least three (3) years, (b) provides for a minimum monthly rental rate of at least (x) \$28.00 per square foot for office space and (y) \$14.00 per square foot for warehouse space (or a blended average of the two if a leased space includes both office and warehouse space), (c) provides for maximum rent abatement equal to one and one-half (1.5) months abatement per year of lease term, and (d)

provides for a maximum tenant improvement allowance of \$80.00 per square foot, (ii) that does not permit the leased space to be used for a use that does not comply with Governmental Requirements, (iii) that does not contain any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of such Property, and (iv) that is on Borrower's form of tenant lease for space at the Project, in form and substance reasonably satisfactory to the Bank, including any commercially reasonable, non-material modifications requested by tenants or such other modifications as are approved by Bank (such approval not to be unreasonably withheld).

8.3.1 Except for Approved Leases, Borrower shall deliver all proposed leases to Bank for review and approval prior to execution (which approval shall not be unreasonably withheld or delayed). Proposed leases shall be delivered to Bank, or to such specific individual as may be designated in writing by Bank. In no event shall Bank be deemed to have approved or consented to any lease covering any portion of the Project including any lease that permits the use of the Project for any illegal activity and/or fails to comply with all applicable federal, state and/or local laws, requirements, regulations and/or ordinances.

8.3.2 Borrower shall use commercially reasonable and diligent efforts to maximize leasing revenue for the entire Project. Upon the request of Bank, Borrower shall provide Bank with a current rent roll supplying the name of the lessee and the net monthly rental for each space in the Project and such other information as Bank may reasonably request.

8.3.3 All proposed modifications, amendments, extensions and renewals of any lease of space at the Project shall be delivered to Bank for review and approval prior to execution (which approval shall not be unreasonably withheld or delayed), unless the applicable lease was an Approved Lease at execution, and would continue to be an Approved Lease following such modification, amendment, extension or renewal, and provided, however, that Bank's approval shall not be required in connection with the exercise of any modification, amendment, extension or renewal right that is expressly granted to a tenant under the terms of any (a) lease in effect as of the date hereof or (b) any existing Approved Lease (or other lease approved by Bank pursuant to the terms of this Agreement) (so long as such modification, amendment, extension or renewal constitutes an arms-length transaction with a third-party tenant and the rents payable under such Lease remain substantially market rents).

8.3.4 Upon the request of Bank, Borrower shall use commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement and/or estoppel certificate with certain tenants of the Property (including Primary Tenant), in form and substance reasonably acceptable to Bank. Upon the request of Borrower or a tenant at the Property, Bank shall, at Borrower's cost and expense, deliver a subordination, non-disturbance and attornment agreement to such tenant on the Bank's then-current form thereof, subject to commercially reasonable modifications thereto as are reasonably acceptable to Bank and such tenant.

8.4 **Personal Property Installation:** Not install on the Project materials, personal property, equipment, or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person to remove or repossess any such material, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at time of installation, without Bank's written consent, except (a) for Equipment Financing as expressly permitted under Section 7.16 above, (b) for typical office equipment in the leasing office (if any), and (c) personal property owned by tenants.

8.5 **Insurance:** Prior to Recordation, procure and deliver to Bank and thereafter maintain a policy or policies of insurance in form and content and by an insurer or insurers satisfactory to Bank, including a clause giving Bank a minimum of thirty (30) days' notice if such insurance is cancelled, as follows: (a) hazard insurance in an amount not less than the full insurable value of the Improvements on a replacement cost basis, with the normal conditions

including fire, extended coverage, vandalism, malicious mischief, and a lender's loss payable endorsement naming Bank as loss payee; (b) commercial general liability insurance on an "occurrence" basis, indicating coverage satisfactory to Bank, and naming Bank as an additional insured; (c) any additional or different coverage as may be specified in the Statement of Insurance Requirements, and (d) any and all additional insurance that Bank in its reasonable judgment may from time to time require (including, without limitation, earthquake and/or flood coverage), against insurable hazards which at the time are commonly insured against in the case of property similarly situated. **TEXAS FINANCE CODE § 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO: (i) KEEP THE COLLATERAL INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED IN THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME BANK AS THE PERSON TO BE PAID UNDER THE HAZARD INSURANCE POLICY IN THE EVENT OF LOSS; (B) BORROWER MUST, IF REQUIRED BY BANK, DELIVER TO BANK REASONABLE EVIDENCE OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (A) OR (B) ABOVE, BANK MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE.**

8.6 **Maintain Records:** Keep and maintain full and accurate books, accounts and records of its operations according to generally accepted accounting principles and practices for its type of business. All records relating to the income, expenses, management, operation, maintenance, repair, construction (including, without limitation, copies of all contracts, subcontracts, lien releases and invoices), alteration of or addition to the Property shall be kept at the principal business office of Borrower for not less than the term of the Loan. Borrower shall permit Bank and its representatives or agents to audit and/or examine, from time to time and upon reasonable written notice, all books and accounts and records pertaining to the Property and to make extracts therefrom and copies thereof. Borrower shall make all such books and records specified in the notice available at the time specified in the notice and at the place where the records are kept, or at the election of Bank, at Bank's office. If an Event of Default exists, Bank may perform any of the acts authorized by this Section 8.6 at the sole cost of Borrower. Borrower shall promptly reimburse Bank for its costs incurred in performing the foregoing and such costs shall be secured by the Trust Deed.

8.7 **Financial Information:**

8.7.1 Borrower shall cause Guarantor to furnish to Bank the financial information and certifications required pursuant to the terms of the Guaranty.

8.7.2 Borrower shall furnish to Bank, within one hundred twenty (120) days after the end of each calendar year, or more frequently if requested by Bank (but not more than once in any twelve (12) month period unless an Event of Default exists), a full and complete Financial Statement of Borrower, including an internally prepared balance sheet and income statement.

8.7.3 Borrower shall furnish to Bank (a) a detailed rent roll for the Project, and (b) an operating statement showing in reasonable detail all income and expenses for the Project for the previous calendar quarter, in each case within sixty (60) days after the end of such calendar quarter.

8.7.4 Borrower shall cause Guarantor to maintain the financial covenants set forth in Section 18(a) of the Guaranty.

8.7.5 Borrower shall also furnish to Bank such other financial information concerning Borrower that Bank shall reasonably request.

8.8 **Maintenance of Property:** Maintain in good working order and condition, consistent with industry practice and standards (taking into consideration normal wear and tear), all of its Property and not permit any physical waste thereof, and, in the ordinary course of business, make all needful and proper repairs, replacements, additions and improvements thereto as are necessary for the conduct of its business.

8.9 **Taxes:** Pay and discharge all lawful claims, including taxes, assessments, and governmental charges or levies imposed upon it or its income or profits or upon any properties belonging to it prior to the date upon which penalties attach thereto; provided that Borrower shall not be required to pay any such tax, assessment, charge or levy, the payment of which is being contested in good faith and by proper proceedings. For the avoidance of doubt, in no event shall any PACE Loan or their related liens be considered real property taxes or assessments for purposes of this Agreement.

8.10 **Notification of Default:** Promptly upon becoming aware thereof, notify Bank in writing of the occurrence of any Event of Default under this Agreement, the Note, the Trust Deed, the Environmental Indemnity or any other Transaction Document or of any facts then in existence which would become an Event of Default hereunder or thereunder upon the giving of notice or the lapse of time or both.

8.11 **Payment of Costs:** Pay all costs and expenses required to satisfy the conditions of this Agreement. Without limiting the generality of the foregoing, Borrower will pay:

8.11.1 all taxes and recording expenses, including stamp taxes, if any;

8.11.2 the fees and commissions lawfully due to brokers in connection with this transaction and hold Bank harmless from all such claims; and

8.11.3 the fees of Bank's counsel in connection with the negotiation and preparation of this Agreement and the other Transaction Documents.

8.12 **No Conveyance or Encumbrance:** Not to sell, convey, transfer, dispose of or further encumber (other than Permitted Encumbrances) the Property or the Improvements or any part thereof or any interest therein, be a party to any PACE Loans or their related liens, or enter into a lease covering all or any portion thereof or an undivided interest therein (other than an Approved Lease or other leases approved by Bank pursuant to the terms of the Loan Documents), either voluntarily, involuntarily or otherwise, or enter into an agreement to do so (other than a purchase and sale agreement executed by Borrower for the entire Project, which purchase and sale agreement must provide for the payment in full of all amounts owing under the Loan and the Transaction Documents through the purchase and sale escrow closing, and which purchase and sale agreement shall not be modified to reduce the purchase price below the amount necessary to pay all amounts owing under the Loan and the Transaction Documents without Bank's prior written consent) without the prior written consent of Bank. All easements, declarations of covenants, conditions and restrictions, and private or public dedications affecting the Property (other than those constituting Permitted Encumbrances) shall be submitted to Bank for its approval and such approval shall be obtained prior to the execution or granting of any thereof by Borrower, accompanied by a drawing or survey showing the precise location of each thereof.

8.13 **Management of the Property.** The management of the Property shall be by either: (a) Property Manager(s), or another entity affiliated with Borrower approved by Bank for

so long as Property Manager(s) or said affiliated entity is managing the Property in a first class manner; or (b) a professional third-party property management company reasonably approved by Bank. Such management by Property Manager, an affiliated entity or a professional property management company shall be pursuant to one or more written agreements approved by Bank (collectively, "**Management Agreement**"), it being agreed that the Amended and Restated Property Management and Services Agreement dated January 1, 2015 between Borrower and Property Manager in effect as of the date hereof has been approved by Bank. In no event shall any manager be removed or replaced or the terms of any such Management Agreement modified or amended without the prior written consent of Bank, which consent shall not be unreasonably withheld or delayed (so long as no Event of Default exists). After the occurrence and during the continuance of an Event of Default or a default under any such Management Agreement then in effect, which default is not cured within any applicable grace or cure period, Bank shall have the right to terminate, or to direct Borrower to terminate, such Management Agreement upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent approved by Bank (such approval not to be unreasonably withheld so long as no Event of Default exists). It shall be a condition of Bank's consent to any such new Management Agreement, whether with an Affiliate of Borrower or otherwise, that such manager enter into an assignment and subordination agreement with Bank whereby the manager acknowledges and agrees to the aforesaid rights of Bank and to such other matters as Bank may reasonably require.

8.14 **Compliance with Governmental Requirements.** Comply promptly with all Governmental Requirements. Within ten (10) Business Days after Borrower's receipt of any governmental permits, approvals or disapprovals, Borrower shall deliver copies of all such matters to Bank.

8.15 **Merger.** Not divide itself or merge or consolidate with or into any Person.

8.16 **Acquisitions.** Not directly or indirectly acquire part or all of a voting interest in any corporation or other business entity.

8.17 **Sale or Transfer of Assets.** Except as otherwise allowable under the Trust Deed or this Agreement, not transfer, convey, sell or assign any part of the Project, or enter into any PACE Loans and their related liens.

8.18 **Furnishing Notices.** Borrower shall promptly furnish Bank with copies, or, upon becoming aware thereof, promptly notify Bank in writing, of the following:

8.18.1 any litigation affecting Borrower or any Guarantor, or if Borrower is a partnership, any general partner of Borrower, where the amount claimed is in excess of the Litigation Amount with respect to Borrower or any general partner of Borrower, or is in excess of \$10,000,000 with respect to any Guarantor;

8.18.2 any communication, whether written or oral, that Borrower may receive from any Governmental Authority giving notice of any claim or assertion that the Improvements fail in any respect to comply with any Governmental Requirements, or of any dispute which may exist between Borrower and any Governmental Authority that may adversely affect Borrower, the Property or the Project;

8.18.3 any material adverse change in the physical condition of the Property;

8.18.4 any filings (with true copies thereof) with any Governmental Authority regarding or pursuant to any law related to Hazardous Substances;

8.18.5 upon obtaining written notice thereof, any proceeding or inquiry by any Governmental Authority with respect to the presence of any Hazardous Substances on the Property or the migration thereof from or to other property;

8.18.6 upon obtaining written notice thereof, all claims made or threatened in writing by any third party against Borrower or the Property relating to any loss or injury resulting from any Hazardous Substances;

8.18.7 Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property or any part thereof that would cause the Property to be subject to any restriction on the ownership, occupancy, transferability or use of the Property under any Hazardous Substances laws; or

8.18.8 any proposed or contemplated change in the organization or management of Borrower or in the nature of its business.

8.19 **Organization and Management:** Without the prior written consent of Bank, Borrower shall not permit or suffer any change in management, organizational or other material changes in its structure or operations and if Borrower is a limited liability company, in the structure or operations of its managing member, and if Borrower is a limited partnership, in the structure or operations of its general partner, in each case, except to the extent not otherwise prohibited by Paragraph (28) of the Trust Deed. For the avoidance of doubt, Borrower shall not permit any Change of Control (as defined in the Trust Deed) to occur without Bank's prior written consent thereto.

8.20 **ERISA.** Throughout the term of the Loan, (a) Borrower shall not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and (b) the assets of Borrower shall not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA.

8.21 **Single Purpose Entity Provisions.** Borrower's sole business purpose shall be to own and operate the Project (and purposes incidental thereto). Borrower (a) shall conduct business only in its own name and under any trade name for the Improvements, (b) shall not engage in any business or have any assets unrelated to the Project, (c) shall not have any indebtedness (including entering into any PACE Loan or similar transaction) other than as permitted by this Agreement, (d) shall have its own separate books, records, and accounts (with no commingling of assets), (e) shall hold itself out as being an entity separate and apart from any other person or entity, (f) shall observe limited partnership formalities independent of any other entity, and (g) shall not change its name, identity, or organizational structure, unless Borrower shall have obtained the prior written consent of Bank to such change, and shall have taken all actions necessary or requested by Bank to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents.

8.22 **HVCRE.**

8.22.1 Except as expressly permitted pursuant to Section 8.22.2 below, Borrower shall not make any distribution of assets to any holder of a partnership interest or other ownership interest in Borrower, whether or not such a distribution is permitted under the terms of Borrower's limited partnership agreement, including without limitation repayment of any loans made to Borrower by any holder of a partnership interest or other ownership interest in Borrower, return of capital contributions, distributions upon termination, liquidation or dissolution of Borrower or any development, property management, accounting or other fees payable to any holder of a partnership interest or other ownership interest in Borrower that would

constitute a return of capital contributed to Borrower by a holder of a partnership interest or other ownership interest in Borrower.

8.22.2 Notwithstanding the foregoing Section 8.22.1, but subject to Section 8.22.3 and Section 8.24 below, Borrower may make distributions of Project Income to any holder of an ownership interest in Borrower, so long as (i) all Project Expenses then due and owing have been paid, and (ii) no Event of Default exists.

8.22.3 Notwithstanding anything to the contrary contained in this Section 8.22 or in any other provision of any Transaction Document, Borrower shall not at any time make a distribution of assets that would cause the Loan to constitute a high volatility commercial real estate ("**HVCRE**") exposure as that term is defined pursuant to Part 217 of Chapter II of title 12 of the Code of Federal Regulations as modified by the revisions to Section 217.2 effective April 1, 2020. If, at any time, for any reason, the Loan constitutes an HVCRE exposure pursuant to Part 217 of Chapter II of title 12 of the Code of Federal Regulations as so modified, and the result of the foregoing is to increase the cost to Bank of making or maintaining the Loan or to reduce the return received by Bank in connection with the Loan to a level below that which Bank (or its controlling corporation) could have achieved but for such circumstances (taking into consideration its policies with respect to capital adequacy) by an amount deemed by Bank to be material (collectively, "**HVCRE Related Costs**"), then, Bank shall notify Borrower, and thereafter the Borrower shall pay to Bank, as the case may be, within ten (10) Business Days of written demand therefor from Bank, additional amounts sufficient to compensate Bank (or its controlling corporation) for any such HVCRE Related Costs and that shall cause Bank to receive the same return Bank would have received had the Loan not constituted an HVCRE exposure.

8.23 **Beneficial Ownership Certification.** Borrower covenants to promptly notify Bank of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of such Borrower's beneficial owners identified therein.

8.24 **Payment of Project Expenses and Interest from Project Income.** For purposes of this Agreement, the term (a) "**Project Income**" shall mean all rents and other payments (including expense reimbursements, but not security deposits of tenants until, and then only to the extent, they are applied) payable to Borrower by tenants of the Improvements and/or other revenues received by Borrower from the Project, and (b) "**Project Expenses**" shall mean the costs and expenses payable by Borrower in connection with the ownership, operation, construction and maintenance of the Project, including, without limitation, real property taxes and assessments, insurance premiums, utility costs, and construction, maintenance, repair and operating costs and expenses, and all amounts then required to be paid under the Loan Documents (including interest). Before using or applying Project Income for any other purpose, Borrower shall first apply Project Income to pay Project Expenses that are then due and payable to the extent Project Income is sufficient therefor.

9. **EVENTS OF DEFAULT.** At the option of Bank, the following shall constitute "**Events of Default**" hereunder (including, if Borrower consists of more than one Person, the occurrence of any of such events with respect to any one or more of said Persons):

9.1 Any default in the payment of principal due according to the terms hereof or of the Note and the continuance thereof for a period of five (5) Business Days (except for the required payment of all amounts owing under the Loan and the Transaction Documents on the Maturity Date, for which no grace or cure period shall apply).

9.2 Any default in the payment of interest on advances made by Bank, or in the payment of fees or other amounts payable to Bank hereunder, under the Note or under any of the other Transaction Documents and the continuance thereof for a period of five (5) Business Days.

9.3 Any default in the performance of any covenant or agreement set forth herein, in the Trust Deed, the Note or any other Transaction Document (other than a default described in Sections 9.1 or Section 9.2 above or Sections 9.4 through 9.15, below), subject to any applicable notice or cure period. With respect to any default in the performance of any covenant or agreement described in this Section 9.3, if no notice or cure period is specified, such default shall not constitute an Event of Default under this Section 9.3 unless such default is not cured within thirty (30) days after Borrower's receipt of written notice from Bank of such default; provided that, if cure cannot reasonably be effected within such 30-day period, such default shall not be an Event of Default hereunder so long as Borrower promptly (in any event, within ten (10) Business Days after receipt of such notice) commences cure, and thereafter diligently (in any event, within sixty (60) days after receipt of such notice) prosecutes such cure to completion; and provided further, however, that notwithstanding the 30-day cure period described above in this Section 9.3, if a different notice or cure period is specified under this Agreement or such other Transaction Document as to any such default, the specific provision shall control, and Borrower shall have no more nor any less time to cure the default than is allowed under the specific provision as to such default.

9.4 Borrower voluntarily suspends the transaction of business or there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within thirty (30) days.

9.5 Borrower becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of creditors.

9.6 Borrower files or there is filed against Borrower a petition to have Borrower adjudicated a bankrupt or a petition of reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Borrower, the same is dismissed within thirty (30) days.

9.7 Borrower applies for or consents to the appointment of a receiver, trustee or conservator for any portion of Borrower's property or such appointment is made without Borrower's or any Guarantor's consent and is not vacated within thirty (30) days.

9.8 Any representation by Borrower to Bank concerning Borrower's financial condition or credit standing or any representation or warranty contained herein proves to be false or misleading when made or deemed made; provided, however, that if Borrower was not aware of the false or misleading nature of such representation or warranty when such representation or warranty was made, then the making of such untrue representation or warranty shall not constitute an Event of Default if (a) the condition that gave rise to such false representation or warranty is susceptible of being cured, and (b) such condition is cured so that such condition conforms to the original representation or warranty and such representation or warranty is no longer untrue in any material respect within thirty (30) days after Borrower's receipt of written notification from Bank.

9.9 A default occurs under Section 8.22 hereof.

9.10 Any pension plan maintained by Borrower or any Guarantor is finally determined by the Pension Benefit Guaranty Corporation, or any successor thereof established under ERISA, to have an "accumulated funding deficiency" as that term is defined in Section 302 of ERISA in excess of an amount equal to 5% of the consolidated total assets of Borrower or any Guarantor, as the case may be, as of the most recently ended fiscal quarter.

9.11 The imposition, voluntary or involuntary, of any lien or encumbrance (other than Permitted Encumbrances) upon the Property without Bank's written consent or unless an

adequate counter bond is provided and such lien is accordingly released within fifteen (15) Business Days of the imposition of such lien; provided, that, for the avoidance of doubt and without limiting the foregoing, Borrower shall have the right, at Borrower's expense and in Borrower's name, to contest in good faith any such lien or encumbrance against the Property by appropriate legal or administrative proceedings which are not prejudicial to Bank's rights hereunder, if (a) Borrower shall have demonstrated to Bank's reasonable satisfaction that such proceedings shall conclusively operate to prevent enforcement prior to final determination of any such proceedings, and (b) Borrower shall have timely furnished such adequate counter bond and such lien is accordingly released within such fifteen (15) Business Day period. In the event that, by any such contest, the Property or any portion thereof or any of the Trust Estate (as defined in the Trust Deed) is subject to imminent loss or forfeiture, such lien or encumbrance, as applicable, shall be immediately paid by Borrower.

9.12 The occurrence of any event enumerated in Sections 9.4, 9.5, 9.6, 9.7, or 9.8 hereof with respect to any Guarantor, or any individual Guarantor dies or becomes incapacitated.

9.13 Any Guarantor shall fail to perform, observe or comply with any financial covenant or other covenant or obligation set forth in the Guaranty or in the Environmental Indemnity, and such failure continues beyond any applicable grace or cure period.

9.14 The Guaranty or the Environmental Indemnity at any time and for any reason cease to be in full force and effect, or any Guarantor contests or denies the validity or enforceability of the Guaranty or the Environmental Indemnity, or gives notice to Bank to such effect, or otherwise attempts to revoke or repudiate the Guaranty or the Environmental Indemnity as to any existing or future obligations.

9.15 The occurrence of a default under Section 8.15 and/or Section 8.19 hereof.

9.16 Notwithstanding anything to the contrary contained in the Transaction Documents, Borrower may cure an Event of Default under Sections 9.10, 9.12, 9.13 or 9.14 hereof solely relating to a Guarantor by (i) causing to be delivered to Bank an additional Guaranty executed by an Additional Guarantor in favor of Bank (the "**Additional Guaranty**") and an additional Environmental Indemnity executed by Borrower and such Additional Guarantor (the "**Additional Environmental Indemnity**"), which Additional Guaranty and Additional Environmental Indemnity shall be substantially identical to the Guaranty and the Environmental Indemnity, respectively, and shall incorporate such non-substantive changes as appropriate in light of the identity of the Additional Guarantor (provided, however, that no existing Guarantor shall be released from its respective obligations under the Guaranty or the Environmental Indemnity as a result of any such cure of an Event of Default), and (ii) by executing (and causing existing Guarantor and the Additional Guarantor to execute) any amendments or modifications to the Transaction Documents required by Bank in connection with the execution of the Additional Guaranty by Additional Guarantor and the Additional Environmental Indemnity by Borrower and Additional Guarantor as contemplated in this paragraph.

10. **REMEDIES**. If any Event of Default set forth in Article 9 occurs, then Bank, in addition to its other rights hereunder, may at its option, without prior demand or notice:

10.1 Terminate the obligation of Bank to make disbursements hereunder, or Bank may waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to Bank, to make further disbursements.

10.2 Declare the Note immediately due and payable. If such acceleration occurs, Bank may apply the undisbursed Loan proceeds to the obligations of Borrower under the Transaction Documents, in any order and proportion as Bank, in its sole discretion, may elect.

10.3 Notwithstanding the exercise of either one or both of the remedies described in Sections 10.1 and 10.2 hereof, Bank may make any disbursements after the happening of any one or more Events of Default without thereby waiving its right to demand payment of the Note and without liability to make any other or further disbursements.

10.4 Proceed as authorized by law to satisfy the indebtedness of Borrower to Bank and in that regard, Bank shall be entitled to all of the rights, privileges and benefits contained in the Trust Deed and the other Transaction Documents.

10.5 Either directly or through an agent or court-appointed receiver, take possession of the Property.

11. POWER OF ATTORNEY. If any Event of Default as defined in Article 9 hereof exists, Borrower hereby constitutes and appoints Bank its true and lawful attorney in fact with the power and authority, including full power of substitution, to act, in Bank's sole discretion, but without the obligation to act, as follows:

11.1 To take possession of the Project.

11.2 To use any funds which may remain undisbursed under the Loan for the purpose of operating the Improvements and for other costs related thereto.

11.3 To employ watchmen to protect the Property and Improvements from injury.

11.4 To pay, settle or compromise all existing bills and claims against any funds which may remain undisbursed under the Loan or as may be necessary or desirable, as Bank in its sole discretion deems proper, for protection or clearance of title to the Property and Personal Property or for the protection of Bank's interest with respect thereto.

11.5 To prosecute and defend all actions and proceedings in connection with the operation of the Improvements.

11.6 As Bank in its reasonable discretion deems proper, to execute, acknowledge, and deliver all instruments and documents in the name of Borrower which may be necessary or desirable to do and to do any and every act with respect to the operation of the Improvements which Borrower might do on its own behalf.

11.7 To notify all tenants then occupying all or any portion of the Project of the occurrence of the Event of Default and to instruct such tenants to pay all rent and other amounts as and when due under their respective tenant leases directly to Bank.

This power of attorney is a power coupled with an interest and cannot be revoked and any costs or expenses incurred by Bank in connection with any acts by Bank under or pursuant to this Section 11 shall be at the cost and expense of Borrower, repayable on demand by Borrower to

Bank with interest thereon at the Default Rate, with any such advances made or costs or expenses incurred by Bank to be secured by the Trust Deed.

12. **SECURITY INTEREST.** Borrower does hereby give and grant to Bank a security interest in all funds and deposits of Borrower on deposit at Bank or any branch of Bank, as additional security for the obligations of Borrower contained in the Note, the Trust Deed and the other Loan Documents.

13. **RELEASE AND INDEMNITY.** Borrower agrees to release and indemnify, defend and hold Bank harmless from and against all liabilities, claims, actions, damages, costs and expenses (including all reasonable legal fees and expenses of Bank's counsel) arising out of or resulting from: any failure to satisfy any of the Governmental Requirements; Bank's performance of any act permitted under the Transaction Documents (excluding Bank's gross negligence or willful misconduct); breach of any representation or warranty made or given by Borrower to Bank; breach of any obligation of Borrower contained in any of the Transaction Documents; or any claim or cause of action of any kind by any party that Bank is liable for any act or omission committed or made by Borrower or any other Person in connection with the ownership, sale, operation or development of the Property, whether on account of any theory of derivative liability, comparative negligence or otherwise. THE FOREGOING INDEMNITY SHALL BE APPLICABLE AND SHALL COVER ANY LOSSES, COSTS, DAMAGES, LIABILITIES AND EXPENSES SUFFERED OR INCURRED BY BORROWER AS A RESULT OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BANK OR ANY OF ITS AGENTS OR EMPLOYEES OR ANY STRICT LIABILITY; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT BE APPLICABLE, AND BORROWER SHALL NOT BE LIABLE FOR ANY SUCH LOSSES, COSTS, DAMAGES, LIABILITIES OR EXPENSES, TO THE EXTENT (BUT ONLY TO THE EXTENT) THE SAME ARISE OR RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BANK OR ANY OF ITS AGENTS OR EMPLOYEES. Upon demand by Bank, Borrower shall defend any action or proceeding brought against Bank arising out of or alleging any claim or cause of action covered by this indemnity, all at Borrower's own cost and by counsel to be approved by Bank in the exercise of its reasonable judgment. In the alternative, Bank may elect to conduct its own defense at the expense of Borrower. The provisions of this Section 13 shall survive the termination of this Agreement, the repayment of the Loan, and the release of the Property or any portion of it from the Trust Deed.

14. **RESERVED.**

15. **RESERVED.**

16. **GENERAL CONDITIONS.**

16.1 **Amendments and Waivers:** No amendment or waiver of any provision of this Agreement or any other Transaction Document, and no consent with respect to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by Bank, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given.

16.2 **No Waiver:** No delay or omission of Bank in exercising any right or power arising from any default by Borrower shall be construed as a waiver of such default or as an acquiescence therein, nor shall any single or partial exercise thereof preclude any further exercise thereof. Bank may, at its option, waive any of the conditions herein and any such waiver shall not be deemed a waiver of Bank's rights hereunder but shall be deemed to have been made pursuant to this Agreement and not in modification thereof. No waiver of any Event of Default

shall be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent Event of Default.

16.3 **No Third Party Benefits:** This Agreement is made for the sole benefit of Borrower and Bank, their successors and assigns and no other Person or Persons shall have any rights or remedies under or by reason of this Agreement nor shall Bank owe any duty whatsoever to any claimant to exercise any right or power of Bank hereunder or arising from any default by Borrower.

16.4 **Notice:** All notices or demands of any kind which either party may be required or desire to serve upon the other under the terms of this Agreement shall be in writing and shall be given by personal delivery, national overnight courier, or by certified or registered United States mail, postage prepaid. Notices addressed to Bank shall be sent to Bank at: 611 Anton Boulevard, 4th Floor, Costa Mesa, California 92626, Attn: Lisa Debenon, and notices addressed to Borrower shall be sent to the address set forth below its signature. Notices shall be effective upon receipt or when proper delivery is refused. In case of service by mail, notices shall be deemed complete at the expiration of the second day after the date of mailing. If Borrower consists of more than one Person, service of any notice or demand of any kind by Bank upon any one of such Persons in the manner hereinabove provided shall be complete service upon all. Either party may change its address for purposes of notice by giving notice of such change of address to the other party in accordance with the provisions of this paragraph.

16.5

16.6

16.7 *[Remainder of Page Left Intentionally Blank]*

16.8 **Entire Agreement:** IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES REGARDING THE MATTERS MENTIONED IN OR INCIDENTAL TO THIS AGREEMENT, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. The Transaction Documents supersede all oral negotiations and prior writings concerning the subject matter of the Transaction Documents, including any inconsistent terms of Bank's loan commitment to Borrower, if any; provided, however, that all obligations of Borrower under the loan commitment (including, without limitation, the obligation to pay any fees to Bank and any costs and expenses relating to the Loan) shall survive the execution and delivery of this Agreement and the other Transaction Documents, and any failure by Borrower to perform any such obligation shall constitute an Event of Default hereunder. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any of the Transaction Documents, the terms, conditions and provisions of this Agreement shall prevail. By executing this Agreement and initialing below, Borrower expressly represents and warrants that it did not rely on any representation, assurance or agreement, oral or written, not expressly set forth in this Agreement or any of the other Transaction Documents in reaching its decision to enter into this Agreement or any of the other Transaction Documents and that no promises or other representations have been made to Borrower which conflict with the written terms of the Transaction Documents. Borrower represents to Bank that (i) it has read and understands the terms and conditions contained in this Agreement and the other Transaction Documents executed in connection with this Agreement, (ii) its legal counsel has carefully reviewed all of the Transaction Documents and it has received legal advice from counsel of its choice regarding the meaning and legal significance of this Agreement and all other Transaction Documents, (iii) it is satisfied with its legal counsel and the advice received from it, and (iv) it has relied only on its review of the Transaction Documents and its own legal counsel's advice and representations (and it has not relied on any advice or representations from Bank or any of Bank's officers, employees, agents or attorneys). This Agreement may not be modified, amended or terminated except by a written agreement signed by each of the parties hereto.

17. _____

18. Borrower's Initials

19.

20. *[Remainder of Page Left Intentionally Blank]*

20.1 **Documentation:** In addition to the instruments and documents mentioned or referred to herein, Borrower will, at its own cost and expense, supply Bank with such other instruments, documents, information and data as may, in Bank's opinion, be reasonably necessary for the purposes hereof, all of which shall be in form and content acceptable to Bank.

20.2 **Borrower Information:** Borrower agrees that Bank may provide any financial or other information, data or material in Bank's possession relating to Borrower, the Loan, this Agreement, the Property or the Improvements, to Bank's parent, Affiliate, subsidiary, participants or service providers, without further notice to Borrower.

20.3 **Not Assignable:** Neither this Agreement nor any right of Borrower to receive any sums, proceeds or disbursements hereunder, or under the Note may be assigned, pledged, hypothecated, anticipated or otherwise encumbered by Borrower without the prior written consent of Bank. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of Bank, its successors and assigns and bind Borrower, its heirs, executors, administrators, successors and assigns.

20.4 **Time is of the Essence:** Time is hereby declared to be of the essence of this Agreement and of every part hereof.

20.5 **Supplement to Other Documents:** The provisions of this Agreement are not intended to supersede the provisions of the Trust Deed or any other Transaction Document but shall be construed as supplemental thereto; provided, however, in the event of any conflict or inconsistency between the provisions of this Agreement and any of the other Transaction Documents, the terms of this Agreement shall prevail and control.

20.6 **Joint and Several Obligations:** If Borrower consists of more than one Person, the obligations of Borrower shall be the joint and several obligations of all such Persons, and any married person who executes this Agreement agrees that recourse may be had against his or her separate property for satisfaction of his or her obligations hereunder. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa.

20.7 **Governing Law:** THE PARTIES HEREBY AGREE THAT THIS AGREEMENT AND ALL OTHER DOCUMENTS, INSTRUMENTS AND AGREEMENTS RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PROVISIONS .

20.8 **Governmental Regulations:** If payment of the indebtedness secured by the Trust Deed is to be insured or guaranteed by any governmental agency, Borrower shall comply with all rules, regulations, requirements and statutes relating thereto or provided in any commitment issued by any such agency to insure or guarantee payment of such indebtedness.

20.9 **Collection Costs:** Borrower shall pay promptly to Bank without demand, with interest thereon from date of expenditure at the Default Rate, reasonable attorneys' fees and all costs and other expenses paid or incurred by Bank in enforcing or exercising its rights or remedies created by, connected with or provided in this Agreement, and all appraisal review and environmental review costs incurred by Bank relating to the Project, and payment of all such costs and expenses shall be secured by the Trust Deed.

20.10 **Survival:** The representations, warranties and covenants herein shall survive the disbursement of the Loan and shall remain in force and effect until the Loan is paid in full.

20.11 Waiver of Jury Trial: BANK AND BORROWER EACH ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR OUT OF THE LENDING RELATIONSHIP ESTABLISHED HEREBY WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, BORROWER AND BANK EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT RELATING HERETO OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER OR THE LENDING RELATIONSHIP ESTABLISHED HEREBY AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

20.12 Financing Statements: Borrower hereby authorizes Bank to file such financing statements, including the UCC-1 Financing Statement, with the appropriate Governmental Authority which Bank determines is necessary to perfect its security interest in the Personal Property.

20.13 Interpretation of Terms: When used in the Transaction Documents, (i) the term "including" shall mean "including, but not limited to," without limiting the generality of such term or clause to which it has referenced, and (ii) the term "or" is not exclusive.

20.14 Venue and Jurisdiction. BORROWER AND BANK EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL COURT OR STATE COURT SITTING IN DALLAS, TEXAS (AND ANY APPELLATE COURT THEREOF) IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, (II) AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT, (III) WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT OR PROCEEDING IN ANY SUCH COURT, AND (IV) CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY COURT IN OR OF THE STATE OF TEXAS BY THE DELIVERY OF COPIES OF SUCH PROCESS TO BORROWER AT ITS ADDRESS SPECIFIED ON ITS SIGNATURE PAGE HERETO, TO BANK AT ITS ADDRESS SPECIFIED IN ITS SIGNATURE PAGE HERETO, OR BY CERTIFIED MAIL DIRECTED TO SUCH ADDRESSES (OR, IN ANY CASE, ANY OTHER ADDRESSES DESIGNATED BY BORROWER OR BANK IN A NOTICE TO EACH OTHER). NOTHING IN THIS PARAGRAPH SHALL LIMIT OR OTHERWISE AFFECT THE RIGHT OF BANK TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY SUCH ACTION OR PROCEEDING AGAINST BORROWER OR ANY OF ITS PROPERTY IN ANY COURT OF ANY OTHER JURISDICTION.

20.15 Maximum Interest. It is the intent of Borrower and Bank at all times to comply strictly with the applicable Texas law (or applicable United States federal law to the extent that it permits Bank to contract for, charge, take, reserve, or receive a greater amount of interest than under applicable Texas law) governing the maximum non-usurious rate or non-usurious amount of interest payable on the Note or the Related Indebtedness. If the applicable Texas law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Transaction Documents, or any other communication or writing by or between Borrower and Bank related to the Loan indebtedness or to the transaction or transactions that are the subject matter of the Transaction Documents; (ii) contracted for, charged, taken, reserved, or received by reason of Bank's exercise of the option to accelerate the maturity of the Note and/or the Related Indebtedness; or (iii) Borrower has paid or Bank has

received by reason of any voluntary prepayment by Borrower of the Note and/or the Related Indebtedness, then it is Borrower's and Bank's intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Rate that have been collected by Bank shall be credited on the principal balance of the Note and/or the Related Indebtedness (or, if the Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and that the provisions of the Transaction Documents immediately be deemed reformed to reduce the amounts thereafter collectible under the Transaction Documents, without the necessity of the execution of any new document, to comply with the applicable law, but to permit the recovery of the fullest amount otherwise called for; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Bank shall, with reasonable promptness after Bank discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower and/or credit such excess interest against any Related Indebtedness then owing by Borrower to Bank. As a condition precedent to any claim seeking usury penalties against Bank, Borrower agrees that it shall provide written notice to Bank, advising Bank in reasonable detail of the nature and amount of the violation, and Bank shall have sixty (60) days after receipt of such notices in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Borrower to Bank. All sums contracted for, charged, taken, reserved, or received by Bank for the use, forbearance, or detention of any indebtedness evidenced by the Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Related Indebtedness (including all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Related Indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as any Loan indebtedness is outstanding. The provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) shall not apply to the Note and/or the Related Indebtedness. Notwithstanding anything to the contrary contained in the Transaction Documents, it is not the intention of Bank to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration. To the extent that Bank is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Rate payable on the Note and/or any other portion of the Loan indebtedness, Bank shall utilize the weekly ceiling from time to time in effect as provided in such Chapter 303. To the extent United States federal law permits Bank to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Bank shall rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Bank may, at its option and from time to time, utilize any other method of establishing the Maximum Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. As used herein, the term "**Related Indebtedness**" means all indebtedness paid or payable by Borrower to Bank pursuant to the Transaction Documents, except Loan indebtedness that is paid or is payable by Borrower to Bank under the Note.

21. **SEVERABILITY.** Invalidity of any one or more of the provisions of this Agreement, the Trust Deed or the other Transaction Documents by judgment or court order shall in no way affect any of the other provisions thereof which shall remain in force and effect.

22. **SPECIAL PROVISIONS.** The special provisions, if any, are set forth in Exhibit B attached hereto and made a part hereof and are, by this reference, incorporated herein.

23. **COUNTERPARTS.** This Agreement may be executed in counterparts which together shall constitute but one and the same original.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BANK:

COMERICA BANK

By: /s/ Stephen Leskovsky
Name: Stephen Leskovsky
Its: Vice President

Address:

Comerica Bank
611 Anton Boulevard, 4th Floor
Costa Mesa, CA 92626
Attn: Loan Administrator

[Signatures continue on following page]

BORROWER:

CIM URBAN REIT PROPERTIES IX, L.P.,
a Delaware limited partnership

By: CIM URBAN REIT GP II, LLC,
a Delaware limited liability company,
its general partner

By: /s/ David Thompson Name: David Thompson
Title: Vice President and Chief Financial Officer

Address:

CIM URBAN REIT PROPERTIES IX, L.P.,
c/o CIM Group
4700 Wilshire Blvd.
Los Angeles, California 90010
Attn: General Counsel

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Harris B. Freidus, Esq.

EXHIBIT A

DISBURSEMENT SCHEDULE

THE LOAN PROCEEDS IN THE AMOUNT OF \$35,500,000.00 SHALL BE DISBURSED AS FOLLOWS:

I. INITIAL DISBURSEMENT.

A. To Borrower, the amount of \$31,653,613.30.

B. Bank is hereby authorized and directed to disburse the balance of the Initial Disbursement directly to Bank, for appraisal fees, legal fees, UCC filing and search fees, flood determination fees, and other costs incurred in connection with the Loan in the approximate sum of \$346,386.70 (as described below):

Deductions:

Loan Fee	\$266,250.00
Legal Fees	\$ 69,223.00
Appraisal Review	\$1,750.00
Environmental Review	\$858.00
Environmental Peer Review	\$3,500.00
Flood Determination	\$26.00
Tax Service Fee	\$3,354.00
Good Standing Certs	\$662.20
UCC Search Fee	\$763.50

II. SUBSEQUENT DISBURSEMENTS.

The remainder of the Loan proceeds in the aggregate sum not to exceed \$3,500,000.00 shall be disbursed from time to time for Tenant Allowance Costs in conformity with this Agreement, and in particular the requirements of Articles 5 and 6 thereof.

III. AUTHORIZED SIGNERS.

Borrower authorizes any one of the following named individuals, acting alone, to sign all Draw Requests and other documents in connection with the administration of the Loan. Borrower represents and warrants to Bank that the following signatures are specimen signatures of the persons named below:

/s/ David Thompson

David Thompson

/s/ Jordan Dembo

Jordan Dembo

THIS DISBURSEMENT SCHEDULE IS EXECUTED BY BORROWER AND BANK AS OF THE DATE FIRST SET FORTH IN THE ABOVE TERM LOAN AGREEMENT.

BORROWER:

CIM URBAN REIT PROPERTIES IX, L.P.,
a Delaware limited partnership

By: CIM URBAN REIT GP II, LLC,
a Delaware limited liability company,
its general partner

By: /s/ David Thompson

Name: David Thompson

Title: Vice President and Chief Financial Officer

[Signatures continue on following page]

BANK:

COMERICA BANK

By: /s/ Stephen Leskovsky
Name: Stephen Leskovsky
Its: Vice President

SMRH:4928-7588-8939.7

EXHIBIT A –S-2

Term Loan Agreement
(CIM - Penn Field)

EXHIBIT B

SPECIAL PROVISIONS

NONE

Exhibit B

SMRH:4928-7588-8939.7

Term Loan Agreement
(CIM - Penn Field)

EXHIBIT C

LEASE FORM

SEE ATTACHED

SMRH:4928-7588-8939.7

Exhibit C

Term Loan Agreement
(CIM - Penn Field)

Guaranty

THIS GUARANTY dated as of April 3, 2025, is made by the undersigned CREATIVE MEDIA & COMMUNITY TRUST CORPORATION, a Maryland corporation ("**Guarantor**") to COMERICA BANK ("**Bank**"), and to Bank's successors and assigns.

RECITALS:

A. CIM URBAN REIT PROPERTIES IX, L.P., a Delaware limited partnership ("**Borrower**") and Bank have entered into that certain Term Loan Agreement dated of even date herewith (as amended, supplemented, amended and restated or otherwise modified from time to time the "**Loan Agreement**"), pursuant to which Bank has agreed, subject to the satisfaction of certain terms and conditions, to make a loan in the maximum aggregate principal amount of \$35,500,000.00 (the "**Loan**") to Borrower, as provided therein. The Loan is evidenced by that certain Advancing to Loan Amount Note of even date herewith executed by Borrower and payable to Bank in the maximum principal amount of \$35,500,000.00 (the "**Note**"). Capitalized terms used but not defined in this Guaranty shall have the same meanings that are given to such terms in the Loan Agreement.

B. As a condition to entering into and performing its obligations under the Loan Agreement, Bank has required that Guarantor provide to Bank this Guaranty.

C. Guarantor desires to see the success of Borrower. Furthermore, Guarantor shall receive direct and/or indirect benefits from the Loan made pursuant to the Loan Agreement to Borrower.

D. The Loan will directly or indirectly benefit Borrower and Guarantor.

NOW, THEREFORE, to induce Bank to enter into and perform its obligations under the Loan Agreement, Guarantor has executed and delivered this Guaranty (as amended and otherwise modified from time to time, this "**Guaranty**") in accordance with the following terms and conditions:

1. **DEFINITIONS:** Capitalized terms used but not defined in this Guaranty shall have the same meanings that are given to such terms in the Loan Agreement.

(a) "**Borrower Affiliate**" shall mean any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with Borrower. A Person shall be deemed to control another Person for the purposes of this definition if such Person possesses, directly or indirectly, the power (i) to vote 50% or more of the ownership interests of such other Person having ordinary voting power for the election of directors or managers of such other Person or (ii) to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

(b) **"Enforcement Event"** shall mean the occurrence of one or more of the following events without Bank's prior written consent:

(i) Borrower, Guarantor, any Principal (as defined below), or any Borrower Affiliate (the **"Borrowing Group"**), or any or all of them shall take any action in bad faith with the intent to hinder, contest or in any way interfere, directly or indirectly, with any foreclosure of the Trust Deed or with any other enforcement of Bank's rights, powers or remedies under any of the Transaction Documents (whether by making any motion, seeking any extension, asserting any defense, claim, counterclaim or right of offset, seeking any injunction or other restraint, commencing any action, seeking to consolidate any such foreclosure or other enforcement with any other action, or otherwise taking an action in bad faith) after the occurrence and during the continuance of an Event of Default (other than the good faith challenge by a member of the Borrowing Group to the existence of the Event of Default which gave rise to Bank's enforcement of such rights, powers or remedies);

(ii) (A) The Project or any part thereof shall become an asset in a voluntary bankruptcy or insolvency proceeding or a voluntary bankruptcy or insolvency proceeding shall be commenced by Borrower or Guarantor, or (B) an involuntary bankruptcy or insolvency proceeding (1) is commenced against Borrower (by Guarantor or any Principal or by a third party with the collusion of any such Person) or against Guarantor (by Borrower or any Principal or by a third party with the collusion of any such Person), or (2) is commenced, and in which Guarantor, any Principal or any member of the Borrowing Group objects to a motion by Bank for relief from any stay or injunction from the foreclosure of the Trust Deed or any other remedial action which is permitted under the Note, the Loan Agreement, the Trust Deed or any of the other Transaction Documents; or

(iii) Borrower shall make an assignment for the benefit of creditors, or a receiver shall be appointed for any property of Borrower in any action initiated by Borrower, Guarantor, any Principal, or any member of the Borrowing Group.

(c) **"Excluded Swap Obligation"** shall mean any obligation of Borrower to Bank with respect to a "swap," as defined in Section 1a(47) of the Commodity Exchange Act ("**CEA**"), if and to the extent that Guarantor's guaranteeing of such swap obligation, or Guarantor's granting of a security interest or lien to secure such swap obligation, is or becomes illegal under the CEA, or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof), by virtue of Guarantor's failure for any reason to constitute an "eligible contract participant," as defined in Section 1a(18) of the CEA and the regulations thereunder, at the time such guarantee or such security interest grant becomes effective with respect to such swap obligation. If any such swap obligation arises under a master agreement governing more than one swap, the foregoing exclusion shall apply only to those swap obligations that are attributable to swaps in respect of which Guarantor's guaranteeing of, or Guarantor's granting of a security interest or lien to secure, such swaps is or becomes illegal.

(d) **"Indebtedness"** shall mean any and all indebtedness, obligations or liabilities of Borrower to Bank relating to the Transaction Documents, howsoever arising, evidenced or incurred, whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or unliquidated, joint or several, and whether or not known to Guarantor at the time of this Guaranty or at the time any future indebtedness is incurred, including, without limitation, (i) any and all direct indebtedness of Borrower to Bank, including indebtedness evidenced by any and all promissory notes executed by Borrower in connection with the Loan (including, without limitation, the Note); (ii) any and all obligations or liabilities of Borrower to Bank arising from applications or agreements for the issuance of letters of credit; (iii) late charges, loan fees or charges and overdraft indebtedness; (iv) any agreement to indemnify Bank for environmental liability or to clean up hazardous waste; (v) any and all indebtedness, obligations or liabilities

under the Transaction Documents for which Borrower would otherwise be liable to Bank were it not for the invalidity, irregularity or unenforceability of them by reason of any bankruptcy, insolvency or other law or order of any kind, or for any other reason, including, without limit, liability for interest and attorneys' fees on, or in connection with, any of the Indebtedness from and after the filing by or against Borrower of a bankruptcy petition, whether an involuntary or voluntary bankruptcy case, including, without limitation, all attorneys' fees and costs incurred in connection with motions for relief from stay, cash collateral motions, nondischargeability motions, preference liability motions, fraudulent or voidable conveyance liability motions, fraudulent or voidable transfer liability motions and all other motions brought by Borrower, Guarantor, Bank or third parties in any way relating to Bank's rights with respect to such Borrower, Guarantor, or third party and/or affecting any collateral securing any obligation owed to Bank by Borrower, Guarantor, or any third party, probate proceedings, on appeal or otherwise; (vi) any and all present and future indebtedness, settlement obligations, termination fees and costs, and all other sums and obligations under any Hedging Agreement now and hereafter owing to Bank (or its affiliate) by Borrower (or any affiliate of Borrower) under or in connection with any and all present and future Hedging Agreements entered into in connection with the Loan ("**Swap Obligations**"); (vii) any and all amendments, modifications, renewals and/or extensions of any of the above, including, without limit, amendments, modifications, renewals and/or extensions which are evidenced by new or additional instruments, documents or agreements; and (viii) all costs of collecting Indebtedness, including, without limit, attorneys' fees and costs. Notwithstanding anything to the contrary in this Guaranty, the term "Indebtedness" shall not include any Excluded Swap Obligation.

(e) "**Permitted Liens**" shall mean the liens, charges and encumbrances on title to the Property as shown on the Loan Policy and as approved by Bank, or that otherwise constitute "Permitted Encumbrances" (as defined in the Loan Agreement).

(f) "**Principal**" shall mean the following individuals and/or entities of Borrower: (i) if Borrower is a limited partnership, each general partner of the partnership and any limited partner with a majority interest in the partnership; (ii) if Borrower is a general partnership, each general partner of the partnership; (iii) if Borrower is a limited liability company, each managing member and any member with a majority interest in the company; and (iv) if Borrower is a corporation, any shareholder holding a controlling interest in the corporation.

2. **CARVE OUT GUARANTY:** Guarantor hereby unconditionally, absolutely and irrevocably guarantees to Bank and its successors and assigns payment (and not merely the collectability) of and agrees to pay, protect, defend and save harmless Bank for, from and against, and hereby indemnifies Bank for, from and against any and all liabilities, obligations, losses, damages (but excluding consequential, special and punitive damages except to the extent paid or payable to a third party), costs and expenses (including, without limitation, reasonable attorneys' fees), causes of action, suits, claims, demands, and judgments of any nature or description whatsoever, which may at any time be imposed upon, incurred by or awarded against Bank, INCLUDING SUCH CLAIMS RESULTING FROM BANK'S OWN NEGLIGENCE, as a result of:

(a) Fraud by Borrower or Guarantor in connection with the ownership, leasing or operation of the Project, the making or disbursement of the Loan, or the execution of any certificates or documents provided in connection therewith;

(b) Intentional material misrepresentation or intentional material breach of warranty by Guarantor in any of the representations and warranties set forth in the Transaction Documents or included in any deliverables required under the Transaction Documents in connection with the ownership or operation of the Project, the making or disbursement of the Loan, or the execution of any certificates or documents provided in connection therewith;

(c) Intentional material misrepresentation or intentional material breach of warranty by Borrower in any of the representations and warranties set forth in the Transaction Documents or included in any deliverables required under the Transaction Documents, in connection with the ownership, leasing or operation of the Project, the making or disbursement of the Loan, or the execution of any certificates or documents provided in connection therewith;

(d) The making of any distributions to the members, partners or shareholders of Borrower (or to any beneficiary or trustee if Borrower is a trust) of any rents and revenues, security deposits, or other income arising with respect to any property covered by the Trust Deed or other Transaction Documents in violation of the terms of the Transaction Documents;

(e) The misapplication by Borrower or Guarantor of any insurance proceeds or condemnation awards attributable to any property covered by the Trust Deed or the other Transaction Documents, in violation of the terms of the Transaction Documents;

(f) The misapplication by Borrower or Guarantor of any cash flow or other revenue derived from or in respect of the Project, or any rental, sales or other income derived directly or indirectly from the Project in violation of any provision of the Loan Agreement or the other Transaction Documents;

(g) Failure by Borrower or Guarantor to pay any charges for labor, materials or services furnished in connection with any construction at the Project, or any other charges, that can give rise to a lien on the Project that is senior to the lien of the Trust Deed (provided that the foregoing does not limit Borrower's right to contest any such lien in accordance with Section 9.11 of the Loan Agreement);

(h) Failure by Borrower to pay any taxes or assessments, unless (1) the Project Income during the preceding twelve (12) months (prior to payment of any Project Expenses) was insufficient to pay such taxes or assessments, or (2) (A) Borrower is required, pursuant to the terms of the Transaction Documents, to pay into an escrow with Bank amounts necessary to pay such taxes or assessments, (B) all such required escrow payments have been made by Borrower in accordance with the terms of the Transaction Documents, and (C) Bank is required under the Transaction Documents to make such escrow funds available to pay such taxes and/or assessments but fails to do so;

(i) Intentional physical waste caused by Borrower or Guarantor with respect to the Project;

(j) Any transfer of or creation of a lien (other than Permitted Liens) on (i) all or any part of the Project or other collateral for the Loan (except for mechanic's or materialmen's liens, unless the applicable lienholder asserts that such lien has priority over the Trust Deed) or (ii) any direct or indirect ownership interest in Borrower, in any case in violation of the terms of the Transaction Documents; *provided* that Guarantor's obligations under this Section 2(j) shall not apply to (A) any transfer of all or any part of the Project or other collateral for the Loan, or the creation of a lien on all or any part of the Project or other collateral for the Loan, that (I) arises solely from events, conditions, acts or omissions first existing after the date (the "**Cut-Off Date**") that is the earlier of (x) the date that Bank acquired title to the Project by foreclosure sale or acceptance of a deed-in-lieu thereof, or (y) the date that a receiver takes possession of the Project on the motion of or at the request of Bank (but only for so long as it holds possession), and (II) does not directly or indirectly arise from (x) any event, condition, act or omission existing or occurring prior to the Cut-Off Date, or (y) any acts taken by Borrower or any of its Affiliates, or any of their respective agents or contractors, prior to, on or after the Cut-Off Date or (B) Borrower's execution of an Approved Lease in strict accordance with the terms and provisions of Section 8.3 of the Loan Agreement;

(k) Breach by Borrower of any covenant in the Transaction Documents relating to Borrower's status as a single-purpose entity that results in substantive consolidation of Borrower's assets with those of another person in a bankruptcy or insolvency proceeding (except if such breach is solely due to Borrower's failure to require or obtain a contribution of additional capital to Borrower);

(l) Failure by Borrower to maintain insurance in accordance with the Loan Agreement, the Statement of Insurance Requirements of even date herewith or the Trust Deed (unless such failure is a result of Bank's wrongful failure to make available funds escrowed by Borrower with Bank in accordance with the Transaction Documents to pay such premiums (provided that the funds deposited in such escrow are sufficient to pay such premiums)); or

(m) The encroachment of any of the Improvements (as defined in the Loan Agreement) onto that certain Public Utility Easement as shown by the Plat approved for acceptance on June 1, 1972 and recorded in the Official Records of Travis County, Texas in Volume 59, Page(s) 94 ("**Existing Utility Easement**"); provided, however, that this Section 2(m) shall become null and void and of no further effect from and after the date Bank receives reasonably satisfactory evidence that the portion of the Existing Utility Easement onto which any of the Improvements encroach has been vacated as a matter of record (including by delivery to Bank of such endorsements to the Loan Policy as it shall require (to the extent available) containing no exception or qualification related to the encroachment of any of the Improvements onto the Existing Utility Easement), all at Borrower's cost and in form and substance reasonably satisfactory to Bank.

3. Notwithstanding the foregoing, the obligations of Guarantor under this Section 2 shall not be applicable to any losses, claims, damages, costs or expenses arising solely as a result of the gross negligence, willful misconduct or fraud of the party seeking payment from Guarantor under this Section 2.

4. [Intentionally Deleted]

5. **CARRY GUARANTY:** Notwithstanding anything to the contrary contained herein, Guarantor hereby unconditionally and absolutely guarantees to Bank the payment of all interest accruing under the Note and the other Transaction Documents and all operating expenses of the Project (including, without limitation all costs of insurance, real estate taxes and other expenses of the Project), together with any and all interest accruing on such operating expenses under any agreement or applicable law giving rise to such operating expenses, and all collection costs, out-of-pocket attorneys' fees and all other sums other than principal owing on the Loan and under the Transaction Documents (collectively, "**Carrying Costs**"); provided, that the term "Carrying Costs" shall not include any such amounts to the extent incurred solely on and after (and not in any way relating to the time period prior to) the date (the "**Determination Date**") upon which is the earliest to occur of (w) the indefeasible payment in full of all amounts owing to Bank under the Transaction Documents, (x) sixty (60) days after the date on which Bank receives from Borrower the DIL Transfer Documents (defined below) for the Project, and possession of the Project has been made available to Bank or its nominee, free of occupancy and claims to occupancy by Borrower and Guarantor and their heirs, devisees, representatives, successors and assigns, (y) title to the Project has been transferred to Bank or Bank's nominee by deed in lieu of foreclosure from Borrower, and possession of the Project has been delivered to Bank or its nominee, free of occupancy and claims to occupancy by Borrower and Guarantor and their heirs, devisees, representatives, successors and assigns, or (z) title to the Project has been transferred pursuant to a judicial or non-judicial foreclosure of the Trust Deed, and possession of the Project has been delivered to the transferee free of occupancy and claims to occupancy by Borrower and Guarantor and their heirs, devisees, representatives, successors and assigns. As

used herein, "**DIL Transfer Documents**" shall mean one or more grant deeds, bills of sale and assignment instruments in form and substance reasonably satisfactory to Bank, together with such other documents or materials which in the reasonable judgment of Bank are necessary to deliver effectively such title and possession of the Project and such collateral and to satisfy the other requirements of this clause, including, without limitation, title searches, non-foreign person affidavits, tax forms, and assignments of leases and other agreements, an estoppel affidavit addressed to the title company authorizing it to record the applicable DIL Transfer Documents and other documents and files relating to the Project. For avoidance of doubt, the term "Carrying Costs" shall nevertheless continue to include all interest accruing under the Note and the other Transaction Documents and all operating expenses of the Project (including, without limitation all costs of insurance, real estate taxes and other expenses of the Project), together with any and all interest accruing on such operating expenses under any agreement or applicable law giving rise to such operating expenses, and all collection costs, out-of-pocket attorneys' fees and all other sums other than principal owing on the Loan and under the Transaction Documents, in each case accruing prior to the Determination Date.

6. **SPRINGING RECOURSE GUARANTY:** Guarantor for value received, unconditionally and absolutely guarantee(s) to Bank payment when due, whether by stated maturity, demand, acceleration or otherwise, of all existing and future Indebtedness of Borrower (or any successor in interest of Borrower, including without limit any debtor-in-possession or trustee in bankruptcy which succeeds to the interest of this party or person) to Bank; provided, however, that until the occurrence of an Enforcement Event, Bank will not make demand on Guarantor nor shall Guarantor have any liability for the due and punctual payment of the Indebtedness or any portion thereof (it being understood, however, that this proviso shall not affect Guarantor's liability under Section 2 and Section 4).

7. **LIMITATION:** The total obligation of Guarantor under this Guaranty shall include, IN ADDITION TO any amounts guaranteed under Sections 2, 4, and 5 hereof, all costs and expenses of any kind incurred by Bank in collection efforts against Guarantor or otherwise incurred by Bank in any way relating to the obligations guaranteed by Guarantor hereunder or this Guaranty, including without limitation reasonable attorneys' fees. Any reference in this Guaranty to attorneys' fees shall be deemed a reference to reasonable fees, charges, costs and expenses of outside counsel and their paralegals, and whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorneys' fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise. All costs and expenses incurred by Bank in connection with the enforcement of its remedies under this Guaranty or collection of amounts owing under this Guaranty shall be payable immediately by Guarantor when incurred by Bank, without demand, and until paid shall bear interest at the highest per annum rate applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by law. With respect to the limitation, if any, stated in this Guaranty on the amount of principal guaranteed under this Guaranty, Guarantor agree(s) that (a) this limitation shall not be a limitation on the amount of Borrower's Indebtedness to Bank; (b) any payments by Guarantor shall not reduce the maximum liability of Guarantor under this Guaranty unless written notice to that effect is actually received by Bank at, or prior to, the time of the payment; and (c) the liability of Guarantor to Bank shall at all times be deemed to be the aggregate liability of Guarantor under this Guaranty and any other guaranties previously or subsequently given to Bank by Guarantor and not expressly revoked, modified or invalidated in writing. Any reference to this Guaranty being limited in any respect shall NOT be deemed to limit the total obligation of Guarantor under any prior or subsequent guaranty given by Guarantor to Bank.

8. **NATURE OF GUARANTY:** This is a continuing guaranty of payment and not of collection and remains effective whether the Indebtedness is from time to time reduced and later increased or entirely extinguished and later reincurred. This Guaranty shall remain

effective with respect to successive transactions which shall either continue the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, until this Guaranty is terminated in the manner and to the extent provided herein.

Guarantor acknowledge(s) and agree(s) that the liabilities created by this Guaranty are direct and are not conditioned upon pursuit by Bank of any remedy Bank may have against Borrower or any other person or any security. No invalidity, irregularity or unenforceability of any part or all of the Indebtedness or any documents evidencing the same, by reason of any bankruptcy, insolvency or other law or order of any kind or for any other reason, and no defense or setoff available at any time to Borrower, shall impair, affect or be a defense or setoff to the obligations of Guarantor under this Guaranty.

Guarantor deliver(s) this Guaranty based solely on Guarantor's independent investigation of (or decision not to investigate) the financial condition of Borrower and is (are) not relying on any information furnished by Bank. Guarantor assume(s) full responsibility for obtaining any further information concerning Borrower's financial condition, the status of the Indebtedness or any other matter which Guarantor may deem necessary or appropriate now or later. Guarantor waive(s) any duty on the part of Bank, and agree(s) that it is not relying upon nor expecting Bank to disclose to Guarantor any fact now or later known by Bank, whether relating to the operations or condition of Borrower, the existence, liabilities or financial condition of any co-guarantor of the Indebtedness, the occurrence of any default with respect to the Indebtedness, or otherwise, notwithstanding any effect these facts may have upon Guarantor's risk under this Guaranty or Guarantor's rights against Borrower. Guarantor knowingly accept(s) the full range of risk encompassed in this Guaranty, which risk includes without limit the possibility that Borrower may incur Indebtedness to Bank after the financial condition of Borrower, or its ability to pay its debts as they mature, has deteriorated.

Guarantor represent(s) and warrant(s) that: (a) Bank has made no representation to Guarantor as to the creditworthiness of Borrower; and (b) Guarantor has (have) established adequate means of obtaining from Borrower on a continuing basis financial and other information pertaining to Borrower's financial condition. Guarantor agree(s) to keep adequately informed of any facts, events or circumstances which might in any way affect the risks of Guarantor under this Guaranty.

9. **APPLICATION OF PAYMENTS:** Guarantor authorize(s) Bank, either before or after termination of this Guaranty, without notice to or demand on Guarantor and without affecting Guarantor's liability under this Guaranty, from time to time to: (a) apply any security and direct the order or manner of sale of it, including, without limit, a nonjudicial sale permitted by the terms of the controlling security agreement, mortgage or deed of trust, as Bank in its discretion may determine; (b) release or substitute any one or more of the endorsers or any other guarantors of the Indebtedness; and (c) apply payments received by Bank from Borrower to any indebtedness of Borrower to Bank, in such order as Bank shall determine in its sole discretion, whether or not this indebtedness is covered by this Guaranty, and Guarantor waive(s) any provision of law regarding application of payments which specifies otherwise.

10. **SECURITY/SUBORDINATION:** Guarantor subordinate(s) any claim of any nature that Guarantor now or later has (have) against Borrower to and in favor of all

Indebtedness and agree(s) not to accept payment or satisfaction of any claim that Guarantor now or later may have against Borrower without the prior written consent of Bank. Should any payment, distribution, security, or proceeds (other than a payment or distribution expressly permitted pursuant to the terms and provisions of the Loan Agreement), be received by Guarantor upon or with respect to any claim that Guarantor now or may later have against Borrower, Guarantor shall immediately deliver the same to Bank in the form received (except for endorsement or assignment by Guarantor where required by Bank) for application on the Indebtedness, whether matured or unmatured, and until delivered the same shall be held in trust by Guarantor as the property of Bank. Guarantor further assign(s) to Bank as collateral for the obligations of Guarantor under this Guaranty all claims of any nature that Guarantor now or later has (have) against Borrower (other than any claim under a deed of trust or mortgage covering real property) with full right on the part of Bank, in its own name or in the name of Guarantor, to collect and enforce these claims.

11. The obligations of Guarantor under this Guaranty are unsecured.

Guarantor agree(s) that no security now or later held by Bank for the payment of any Indebtedness, whether from Borrower, any guarantor, or otherwise, and whether in the nature of a security interest, pledge, lien, assignment, setoff, suretyship, guaranty, indemnity, insurance or otherwise, shall affect in any manner the unconditional obligation of Guarantor under this Guaranty, and Bank, in its sole discretion, without notice to Guarantor, may release, exchange, enforce and otherwise deal with any security without affecting in any manner the unconditional obligation of Guarantor under this Guaranty. Guarantor acknowledges(s) and agree(s) that Bank has no obligation to acquire or perfect any lien on or security interest in any asset(s), whether realty or personalty, to secure payment of the Indebtedness, and Guarantor is (are) not relying upon any asset(s) in which Bank has or may have a lien or security interest for payment of the Indebtedness. In addition to Guarantor's obligations under this Guaranty, Guarantor is undertaking and agreeing to obligations under other guaranties, indemnities and agreements executed by Guarantor with respect to the Loan, none of which will be limited by the limitation on Guarantor's liability under this Guaranty.

Guarantor acknowledge(s) that the effectiveness of this Guaranty is not conditioned on any or all of the Indebtedness being guaranteed by anyone else.

12. **OTHER GUARANTORS:** If any Indebtedness is guaranteed by two or more guarantors, the obligations of each Guarantor under this Guaranty shall be several and also joint, each with all and also each with any one or more of the others, and may be enforced at the option of Bank against each severally, any two or more jointly, or some severally and some jointly. Bank, in its sole discretion, may release any one or more of the guarantors for any consideration which it deems adequate, and may fail or elect not to prove a claim against the estate of any bankrupt, insolvent, incompetent or deceased guarantor; and after that, without notice to any other guarantor, Bank may extend or renew any or all Indebtedness and may permit Borrower to incur additional Indebtedness, without affecting in any manner the unconditional obligation of the remaining guarantor(s). Guarantor acknowledges that the effectiveness of this Guaranty is not conditioned on any or all of the Indebtedness being guaranteed by anyone else. This action by Bank shall not, however, be deemed to affect any right to contribution which may exist among the guarantors.

13. **TERMINATION:** Guarantor's liability under (and as limited by) this Guaranty shall continue until all sums due under the Loan and the Transaction Documents have been

indefeasibly paid in full in cash and until all obligations of Guarantor hereunder and under the other Transaction Documents to which it is a party have been fully satisfied, and shall not be reduced by virtue of any payment by Borrower of any amount due under the Loan or under any of the Transaction Documents or by Bank's recourse to any collateral or security.

14. **REINSTATEMENT:** Notwithstanding any prior revocation, termination, surrender or discharge of this Guaranty (or, if applicable, of any lien, pledge or security interest securing this Guaranty) in whole or part, the effectiveness of this Guaranty, and, if applicable, of all liens, pledges and security interests securing this Guaranty, shall automatically continue or be reinstated, as the case may be, in the event that any payment received or credit given by Bank in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent or voidable conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, including, without limitation, laws pertaining to bankruptcy or insolvency, in which case this Guaranty, and all liens, pledges and security interests securing this Guaranty (if any), shall be enforceable against Guarantor as if the returned, disgorged or rescinded payment or credit had not been received or given by Bank, and whether or not Bank relied upon such payment or credit or changed its position as a consequence of it. In the event of continuation or reinstatement of this Guaranty and any liens, pledges and security interests securing it, Guarantor agree(s) upon written demand by Bank to execute and deliver to Bank those documents which Bank reasonably determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Guarantor to do so shall not affect in any way the reinstatement or continuation. If Guarantor do(es) not execute and deliver to Bank upon written demand such documents, Bank and each Bank officer is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of Guarantor (with full power of substitution) to execute and deliver such documents in the name and on behalf of Guarantor.

15. **WAIVERS:** Guarantor waive(s) any right to require Bank to: (a) proceed against any person, including, without limit, Borrower; (b) proceed against or exhaust any security held from Borrower or any other Person; (c) pursue any other remedy in Bank's power; (d) make any presentments or demands for performance, or give any notice of nonperformance, protest, notice of protest, notice of default (except any notices expressly required by the Transaction Documents), demand, notice of intent to accelerate or demand payment of any Indebtedness, dishonor or notice of dishonor, in connection with all or any part of the Indebtedness or any obligations or evidences of Indebtedness held by Bank as security, in connection with any other obligations or evidences of indebtedness which constitute in whole or in part Indebtedness, or in connection with the creation of new or additional Indebtedness; (e) give any notice of acceptance of this Guaranty and presentment; (f) give any and all other notices to which Guarantor might otherwise be entitled (except any notices expressly required by the Transaction Documents), or (g) give notice of the terms, time and place of any public or private sale of personal property security held from Borrower or any other Person, or otherwise comply with the provisions of the applicable Uniform Commercial Code, as the same may be amended, revised or replaced from time to time. Guarantor further (i) waives diligence in collecting any Indebtedness by Bank and (ii) agree(s) that Bank may, once or any number of times, modify the terms of any Indebtedness, compromise, extend, increase, accelerate, renew or forbear to enforce payment of any or all Indebtedness, or permit Borrower to incur additional Indebtedness, all without notice to Guarantor and without affecting in any manner the unconditional obligation of Guarantor under this Guaranty. Without limiting the foregoing, Guarantor hereby unconditionally and irrevocably waives all rights of a guarantor under applicable law including without limitation, to the extent applicable, Rule 31 of the Texas Rules of Civil Procedure, Chapter 34 of the Texas Business and Commerce Code, Section 17.001 of the Texas Civil Practice and Remedies Code and Chapter 43 of the Texas Civil Practice and Remedies Code, as the same may be amended from time to time. Further, the undersigned Guarantor expressly waives all rights, remedies, claims and defenses

based upon or related to Sections 51.003, 51.004 and 51.005 of the Texas Property Code, to the extent the same pertain or may pertain to any enforcement of this Guaranty.

16. Guarantor waive(s) any defense based upon or arising by reason of (a) any disability or other defense of Borrower or any other Person; (b) the cessation or limitation from any cause whatsoever, other than final and irrevocable payment in full, of the Indebtedness; (c) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of Borrower which is a corporation, partnership or other type of entity, or any defect in the formation of Borrower; (d) the application by Borrower of the proceeds of any Indebtedness for purposes other than the purposes represented by Borrower to Bank or intended or understood by Bank or Guarantor; (e) any act or omission by Bank which directly or indirectly results in or aids the discharge of Borrower or any Indebtedness by operation of law or otherwise; (f) any modification of the Indebtedness, in any form whatsoever including without limit any modification made after effective termination, and including without limit, the renewal, extension, acceleration or other change in time for payment of the Indebtedness, or other change in the terms of any Indebtedness, including without limit increase or decrease of the interest rate; or (g) any statute of limitations as a defense to repayment of all or any portion of the Note and interest thereon, to the fullest extent allowed by law (including, but not limited to, waiver of any and all rights to file a counterclaim or cross claim arising out of the same transaction or occurrence that is the basis of an action if such counterclaim or cross claim would, as a separate action, be barred by limitation as of the date Borrower's answer is required, as set forth in Section 16.069 of the Texas Civil Practice and Remedies Code), and all compensation of cross demands. Guarantor understands that, absent this waiver, Bank's election of remedies, including but not limited to its decision to proceed to nonjudicial foreclosure on any real property securing the Indebtedness, could preclude Bank from obtaining a deficiency judgment against Borrower and Guarantor pursuant to applicable law and could also destroy any subrogation rights which Guarantor has against Borrower.

17. Guarantor unconditionally and irrevocably waive(s) each and every defense and setoff of any nature which, under principles of guaranty or otherwise, would operate to impair or diminish in any way the obligation of Guarantor under this Guaranty, and acknowledge(s) that each such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from the Guarantor now or later securing this Guaranty and/or the Indebtedness, and acknowledge(s) that as of the date of this Guaranty no such defense or setoff exists. Guarantor acknowledge(s) that the effectiveness of this Guaranty is subject to no conditions of any kind.

18. Guarantor warrant(s) and agree(s) that each of the waivers set forth above are made with the Guarantor's full knowledge of their significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of these waivers are determined to be contrary to any applicable law or public policy, these waivers shall be effective only to the extent permitted by law.

19. **WAIVER OF SUBROGATION:** Until the Indebtedness is irrevocably paid and discharged in full, Guarantor waive(s) any and all rights to be subrogated to the position of Bank or to have the benefit of any lien, security interest or other guaranty now or later held by Bank

for the Indebtedness or to enforce any remedy which Bank now or later has against Borrower or any other person. Until the Indebtedness is irrevocably paid and discharged in full, Guarantor shall have no right of reimbursement, indemnity, contribution or other right of recourse to or with respect to Borrower or any other person. Guarantor agree(s) to indemnify and hold harmless Bank from and against any and all claims, actions, damages, costs and expenses, including without limit reasonable attorneys' fees, incurred by Bank in connection with Guarantor's exercise of any right of subrogation, contribution, indemnification or recourse with respect to this Guaranty, INCLUDING ALL SUCH CLAIMS, ACTIONS, DAMAGES, COSTS AND EXPENSES RESULTING FROM BANK'S OWN NEGLIGENCE. Bank has no duty to enforce or protect any rights which Guarantor may have against Borrower or any other person and Guarantor assume(s) full responsibility for enforcing and protecting these rights.

It is the intention of the parties that Guarantor shall not be (or be deemed to be) a "creditor" (as defined in Section 101 of the Federal Bankruptcy Code, as it may be amended) of Borrower (or any other guarantor) by reason of the existence of this Guaranty in the event that Borrower becomes a debtor in any proceeding under the Federal Bankruptcy Code. Guarantor warrant(s) and agree(s) that none of Bank's rights, remedies or interests shall be directly or indirectly impaired because of any of Guarantor's status as an "insider" or "affiliate" of Borrower, and Guarantor shall take any action, and shall execute any document, which Bank may request in order to effectuate this warranty to Bank.

20. **SALE/ASSIGNMENT:** Guarantor acknowledge(s) that Bank has the right (subject to the terms and provisions of the Transaction Documents, including without limitation Section 8.4 of the Note) to sell, assign, transfer, negotiate, or grant participations in all or any part of the Indebtedness and any related obligations, including without limit this Guaranty. In connection with that right, Bank may, subject to the terms of the Loan Agreement, disclose any documents and information which Bank now has or later acquires relating to Guarantor, this Guaranty or Borrower in connection with such sale, assignment, transfer, negotiation, or grant, whether furnished by Borrower, Guarantor or otherwise. Guarantor further agree(s) that, subject to the terms of the Loan Agreement, Bank may disclose these documents and information to Borrower. Guarantor agree(s) that Bank may provide information relating to this Guaranty or to Guarantor to Bank's parent, affiliates, subsidiaries and service providers without further notice to Guarantor.

21.

22. *[Remainder of Page Left Intentionally Blank]*

23. **GENERAL:** This Guaranty constitutes the entire agreement of Guarantor and Bank with respect to the subject matter of this Guaranty. No waiver, consent, modification or change of the terms of this Guaranty shall bind any of Guarantor or Bank unless in writing and signed by the waiving party or an authorized officer of the waiving party, and then this waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. This Guaranty shall inure to the benefit of Bank and its successors and assigns. This Guaranty shall be binding on Guarantor and Guarantor's heirs, legal representatives, successors and assigns including, without limit, any debtor in possession or trustee in bankruptcy for any of Guarantor. Guarantor has (have) knowingly and voluntarily entered into this Guaranty in good faith for the purpose of inducing Bank to extend credit or make other financial accommodations to Borrower, and Guarantor acknowledge(s) that the terms of this Guaranty are reasonable. If any provision of this Guaranty is unenforceable in whole or in part for any reason, the remaining provisions shall continue to be effective. THE PARTIES HEREBY AGREE THAT THIS GUARANTY AND ALL OTHER DOCUMENTS, INSTRUMENTS AND AGREEMENTS RELATED TO THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PROVISIONS.

THIS GUARANTY, TOGETHER WITH THE OTHER TRANSACTION DOCUMENTS, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN OR ORAL AGREEMENTS BETWEEN THE PARTIES. THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE), TOGETHER WITH THE OTHER TRANSACTION DOCUMENTS, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN OR ORAL AGREEMENTS BETWEEN THE PARTIES. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO.

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Guarantor, by executing this Guaranty and initialing below, expressly represents and warrants that it did not rely on any representation, assurance or agreement, oral or written, not expressly set forth in this Guaranty in reaching its decision to enter into this Guaranty and that no promises or other representations have been made to such Guarantor which conflict with the written terms of this Guaranty. Guarantor represents to Bank that (a) it has read and understands the terms and conditions contained in this Guaranty and the other Transaction Documents executed in connection with this Guaranty, (b) its legal counsel has carefully reviewed all of the Transaction Documents (including, without limitation, this Guaranty) and it has received legal advice from counsel of its choice regarding the meaning and legal significance of this Guaranty and all other Transaction Documents, (c) it is satisfied with its legal counsel and the advice received from such legal counsel, and (d) it has relied only on its review of this Guaranty and the other Transaction Documents and its own legal counsel's advice and representations (and it has not relied on any advice or representations from Bank, or any of its officers, employees, agents or attorneys). This Guaranty may not be modified, amended or terminated except by a written agreement signed by Guarantor and Bank. No course of prior dealing among the parties, no usage of trade, and no parol or extrinsic evidence of any nature may be used to supplement, modify or vary any of the terms hereof. There are no conditions to the full effectiveness of this Guaranty.

Guarantor's Initials

[Remainder of Page Left Intentionally Blank]

24. **HEADINGS:** Headings in this Guaranty are included for the convenience of reference only and shall not constitute a part of this Guaranty for any purpose.

25. **ADDITIONAL PROVISIONS:**

(a) **Guarantor Financial Covenants:** Collectively, Guarantor shall maintain the following financial covenants, all as calculated in accordance with reasonable and proper real estate industry accounting methods consistently applied and reasonably acceptable to Bank (provided that the method used in the Financial Statements provided by Guarantor to Bank in connection with the closing of the Loan is acceptable to Bank):

(i) An aggregate Tangible Net Worth of not less than Thirty-Five Million and No/100 Dollars (\$35,000,000.00). "**Tangible Net Worth**" shall mean, as of any date of determination, the total market value of all assets of Guarantor (excluding any value for goodwill, trademarks, patents, copyrights and other similar intangible items, and excluding the value of Guarantor's ownership interest in Borrower and the Project), minus total liabilities of Guarantor, determined on a consolidated basis in accordance with a method consistently applied and reasonably acceptable to Bank (provided that the method used in the Financial Statements provided by Guarantor to Bank in connection with the closing of the Loan is acceptable to Bank for this Tangible Net Worth test). The foregoing Tangible Net Worth test shall be measured as of the end of each calendar year; and

(ii) Aggregate unencumbered Liquid Assets having a value (as such value is reasonably determined by Bank) equal to at least Three Million and No/100 Dollars (\$3,000,000.00), determined on a consolidated basis in accordance with a method consistently applied and reasonably acceptable to Bank (provided that the method used in the Financial Statements provided by Guarantor to Bank in connection with the closing of the Loan is acceptable to Bank for this Liquid Assets test). For purposes of this Section, "**Liquid Assets**" shall mean the sum of (a) unrestricted cash, (b) unrestricted marketable securities, (c) FDIC insured accounts, (d) United States government securities, and (e) without duplication, as of any date, the undrawn amount of funds available to be borrowed by Guarantor under a line of credit then in effect that permits the proceeds thereof to pay debts of Guarantor and provided by either a financial institution providing such line of credit to Guarantor as of the date of this Guaranty, or any other commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia having combined capital and surplus of not less than \$1,000,000,000.00, which commercial bank has a rating of at least either "AA" or such comparable rating from S&P or Moody's, respectively, or any other financial institution approved by Bank in its sole discretion (any of which shall be deemed herein as an "**Acceptable Credit Facility**"), and with respect to which (i) no default or other event or circumstance described in the documents that govern such Acceptable Credit Facility exists that would cause Guarantor not to be able to borrow such funds on not more than fifteen (15) days' notice, (ii) the applicable lender thereunder is unconditionally and irrevocably committed to fund within fifteen (15) days' after request therefor from Guarantor, and (iii) none of the assets of Guarantor (or any of its subsidiaries) securing the Acceptable Credit Facility is subject to a lien or encumbrance (other than that securing the Acceptable Credit Facility), but excluding any assets held in a "401K" account, individual retirement account (IRA), pension or other type of retirement account or annuity, Rule 144 securities, securities pledged to secure any debt whether or not the debt is currently outstanding, securities not fully transferable until conditions are met, and assets held in joint accounts with any party who is not a guarantor under this Guaranty. The foregoing Liquid Assets test shall be measured as of the end of each calendar year. If Bank determines, in its reasonable discretion, that Guarantor's unrestricted cash is at any time less than \$3,000,000.00, Guarantor shall deliver to Bank such schedules, certificates, reports and other information respecting all or any of the undersigned's Liquid Assets as Bank may reasonably request. Any such schedule, certificate, report or other document shall be certified to be true and complete by the undersigned and shall be in such form and detail as Bank may reasonably

specify. Any schedule, certificate, report or other document identifying any Liquid Asset shall be accompanied (if Bank so requests) by evidence of Guarantor's ownership of the Liquid Asset, evidence that the Liquid Asset is unencumbered and evidence of the Liquid Asset's current value.

(b) Financial Information. Guarantor shall furnish to Bank the following financial information:

(i) [Reserved];

(ii) within one hundred twenty (120) days of each December 31, annual CPA audited financial statements of Guarantor for and as of the end of each such calendar year, containing the balance sheet of Guarantor as of the close of each such calendar year, statements of income and retained earnings and statements of cash flows of Guarantor for each such calendar year, and such other comments and financial details as are usually included in similar reports or as may be requested by Bank;

(iii) concurrently with the delivery of the financial statements described in Section 18(b)(ii) above, a certification substantially in the form attached hereto as Exhibit A affirming that Guarantor has complied with each of the financial covenants set forth in Section 18(a) above, and account statements from financial institutions which evidence such compliance;

(iv) Concurrently with the delivery of the financial statements described in Section 18(b)(ii) and (iii), Guarantor shall furnish to Bank, in form and detail acceptable to Bank, a list of all suits, actions, proceedings or governmental investigations not previously disclosed to Bank that are either pending against Guarantor or, to the knowledge of Guarantor, threatened in writing against Guarantor, as of the last day of the calendar year to which such financial statements relate which, if determined adversely, would reasonably be expected to have a Material Adverse Effect; and

(v) such other financial information concerning Guarantor that Bank shall reasonably request.

(c) Litigation. Except as set forth in any document delivered pursuant to Section 18(b)(iv) hereof, as of the later of the date hereof or the last day of the most recently completed calendar year for which Guarantor has delivered the documents required by Section 18(b) hereof, (i) there is no suit, action, proceeding, including any bankruptcy proceeding, or governmental investigation pending against, or to the knowledge of Guarantor threatened in writing against, Guarantor (other than any suit, action or proceeding in which Guarantor is the plaintiff and in which no counterclaim or cross-claim against Guarantor has been filed), and (ii) there is no judgment, decree, injunction, rule, or order of any court, government, department, commission, agency, instrumentality or arbitrator outstanding against Guarantor, nor is Guarantor in violation of any applicable law, regulation, ordinance, order, injunction, decree or requirement of any governmental body or court, which in the case of either (i) or (ii), individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

26. JURY TRIAL WAIVER: GUARANTOR AND BANK (BY ITS ACCEPTANCE OF THIS GUARANTY) ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, GUARANTOR AND BANK (BY ITS ACCEPTANCE OF THIS GUARANTY), AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS GUARANTY OR THE INDEBTEDNESS.

27. **VENUE:** GUARANTOR AND BANK (BY ACCEPTING THIS GUARANTY) EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL COURT OR STATE COURT SITTING IN DALLAS, TEXAS (AND ANY APPELLATE COURT THEREOF) IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER TRANSACTION DOCUMENT, (II) AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT, (III) WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT OR PROCEEDING IN ANY SUCH COURT, AND (IV) CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY COURT IN OR OF THE STATE OF TEXAS BY THE DELIVERY OF COPIES OF SUCH PROCESS TO GUARANTOR AT ITS ADDRESS SPECIFIED ON ITS SIGNATURE PAGE HERETO, TO BANK AT ITS ADDRESS SPECIFIED IN ITS SIGNATURE PAGE TO THE LOAN AGREEMENT, OR BY CERTIFIED MAIL DIRECTED TO SUCH ADDRESSES (OR, IN ANY CASE, ANY OTHER ADDRESSES DESIGNATED BY GUARANTOR OR BANK IN A NOTICE TO EACH OTHER). NOTHING IN THIS PARAGRAPH SHALL LIMIT OR OTHERWISE AFFECT THE RIGHT OF BANK TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY SUCH ACTION OR PROCEEDING AGAINST GUARANTOR OR ANY OF ITS PROPERTY IN ANY COURT OF ANY OTHER JURISDICTION.

28. **OBLIGATIONS REMAINING OUTSTANDING AFTER PAYMENTS AND LIQUIDATION OF COLLATERAL SHALL BE THAT GUARANTEED HEREBY.** Guarantor agrees that any indebtedness or obligations which remain owing under the Transaction Documents after the application of payments received from Borrower and the application of proceeds received from the foreclosure of the Trust Deed (or after application of the credit bid of Bank at the foreclosure sale) and other liquidation of the collateral for the Loan, shall be deemed to be part of the obligations guaranteed hereby (subject to the limitation on such guaranteed obligations as set forth in this Guaranty); and Guarantor may not claim or contend so long as any such indebtedness or obligations guaranteed hereby remain outstanding that any payments received by Bank from Borrower or otherwise, or proceeds received by Bank on the liquidation of the collateral for the Loan, shall have reduced or discharged Guarantor's liability or obligations hereunder. Guarantor acknowledges and agrees that Borrower may already have agreed with Bank, or may hereafter agree, that in any such event the designation of the portion of the indebtedness and obligations to be satisfied shall, to the extent not expressly made by the terms of the Transaction Documents, be made by Bank rather than by Borrower. Nothing contained in this Section shall be deemed to (a) limit or otherwise impair any of the waivers or agreements of Guarantor contained in the preceding Sections of this Guaranty, (b) require Bank to proceed against Borrower or any collateral for the Loan before proceeding against Guarantor (any such requirement having been specifically waived), or (c) limit or otherwise impair any rights Bank would have in the absence of this Section.

29. This Guaranty is in addition to all other guaranties and/or completion agreements of Guarantor and any other guarantors of Borrower's obligations to Bank under the Transaction Documents. Any such other additional guaranties and/or completion agreements are not intended to and shall not release Guarantor in any manner from its continuing obligations and liabilities under this Guaranty or to otherwise limit in any manner such continuing obligations and liabilities.

[Signatures appear on following page]

IN WITNESS WHEREOF, Guarantor has signed this Guaranty as of the date first written above.

GUARANTOR:

CREATIVE MEDIA & COMMUNITY TRUST CORPORATION, a
Maryland corporation

By: /s/ David Thompson

Name: David Thompson

Title: Chief Executive Officer

GUARANTOR'S ADDRESS

Creative Media & Community Trust Corporation
5956 Sherry Lane, Suite 700
Dallas, TX 75225
Attention: Chief Financial Officer/ CMCT

With copies to:

c/o CIM Group
4700 Wilshire Blvd.
Los Angeles, California 90010
Attention: General Counsel

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Harris Friedus

Exhibit "A"

(Form of Compliance Certificate)

COMPLIANCE CERTIFICATE

This Compliance Certificate (this "**Certificate**") is delivered with reference to that certain Guaranty dated as of April 3, 2025 (as amended, extended, renewed, supplemented or otherwise modified from time to time, the "**Guaranty**"), executed CREATIVE MEDIA & COMMUNITY TRUST CORPORATION, a Maryland corporation ("**Guarantor**") for the benefit of COMERICA BANK ("**Bank**"). Capitalized terms used but not defined in this Certificate shall have the same meanings that are given to such terms in the Guaranty. Section references in this Certificate relate to the Guaranty unless stated otherwise.

This Certificate is delivered in accordance with the Guarantor Financial Covenants section of the Guaranty, and has been duly executed.

This Certificate will serve to certify that as of _____, 20__, Guarantor is in compliance with the Guarantor Financial Covenants section of the Guaranty with respect to the following:

- (i) all financial information delivered or caused to be delivered to Bank hereunder is, in all material respects, complete, accurate and fairly represents the financial condition of Guarantor,
- (ii) the representations and warranties of Guarantor contained in the Guaranty and the Transaction Documents are true and correct in all material respects on and as of the date of this Certificate, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date),
- (iii) as of the date of this Certificate, Guarantor is in compliance with the applicable financial covenants contained in the Guarantor Financial Covenants section of the Guaranty (and has demonstrated such compliance in reasonable detail herein), and
- (iv) on the date of delivery of this Certificate, there does not exist any condition or event that constitutes a default under this Guaranty (or, in the case of clauses (i), (ii), or (iii) above, to the extent of any non-compliance, this Certificate describes such non-compliance as to which Guarantor may have knowledge and what action Guarantor has taken, is taking, or proposes to take with respect thereto).

We have enclosed the following:

[List enclosures, schedules, exhibits]

Very truly yours,

GUARANTOR:

CREATIVE MEDIA & COMMUNITY TRUST
CORPORATION, a Maryland corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "**Indemnity**") is entered into as of April 3, 2025 by CIM URBAN REIT PROPERTIES IX, L.P., a Delaware limited partnership ("**Borrower**"), and CREATIVE MEDIA & COMMUNITY TRUST CORPORATION, a Maryland corporation ("**Guarantor**"; Guarantor and Borrower are collectively referred to herein as "**Indemnitor**"), to and for the benefit of COMERICA BANK ("**Bank**"), and its successors, assigns and participants, and the respective directors, officers, agents, attorneys and employees of each of the foregoing (collectively, "**Indemnified Parties**").

WITNESSETH:

A. Bank has agreed to make a loan to Borrower in the maximum principal amount of up to Thirty-Five Million Five Hundred Thousand and No/100 Dollars (\$35,500,000.00) for the purposes set forth in Section 2.1 of the Loan Agreement (as defined in the Trust Deed) (the "**Loan**"). The Loan is evidenced by that certain Advancing to Loan Amount Note of even date herewith in the amount of the Loan, executed by Borrower, as maker and payable to Bank, as holder (the "**Note**").

B. The repayment of the Note is secured by, inter alia, a Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents and Leases) of even date herewith executed by Borrower, as trustor, in favor of Gary S. Farmer, as trustee, and naming Bank, as beneficiary (the "**Trust Deed**"). The Trust Deed encumbers that certain real property more particularly described in Exhibit A attached hereto (the "**Property**"). The Property and the improvements constructed thereon or to be constructed thereon are referred to herein as the "**Project**." The Note, the Trust Deed and any other document or agreement which now or hereafter evidences and/or secures the Loan are collectively referred to herein as the "**Loan Documents**." Capitalized terms used above and elsewhere in this Indemnity without definition have the meanings given to them in the Loan Agreement.

C. As a result of the exercise of Bank's rights and remedies in connection with the Loan, Bank may hereafter become the owner of the Project pursuant to a foreclosure sale or deed in lieu thereof or may otherwise incur or suffer certain liabilities, costs and expenses in connection with the Project relating to Hazardous Substances (defined in Section 1(e) below). Bank has therefore made it a condition of making the Loan that this Indemnity be executed and delivered by Indemnitor in order to protect Bank from any such liabilities, costs and expenses and all other Environmental Losses (defined in Section 1(d) below).

D. The obligations hereunder are unsecured obligations of Indemnitor and are not secured obligations under the Trust Deed.

NOW, THEREFORE, in consideration of the foregoing and of Bank making the Loan, and other valuable consideration, the receipt of which is hereby acknowledged, Indemnitor hereby agrees as follows:

1. As used in this Indemnity, the following terms shall have the following meanings:

(a) "**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as heretofore or hereafter amended from time to time.

(b) "**De Minimis Uses**" means the use or storage of the following, so long as, in each case, the same are maintained in *de minimis*, reasonable and necessary quantities and are at all times used and/or stored in accordance with all Environmental Laws: (a) ordinary and customary maintenance supplies, cleaning products and necessary petroleum products, in each case customarily used in the alteration, use, operation and maintenance of comparable commercial buildings, (b) personal grooming items and other items sold in pre-packaged containers for consumer use, and (c) ordinary, customary and necessary petroleum and other similar products as required for the use and operation of motor vehicles.

(c) "**Environmental Laws**" means any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), permits, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Release including, without limitation, CERCLA, and any corresponding state laws or ordinances including but not limited to the Texas Natural Resources Code, Texas Water Code § 26.001 et seq. and the Texas Health & Safety Code § 361.001 et seq. and § 382.001 et seq.

(d) "**Environmental Losses**" means Losses (defined in Section 1(f) below) suffered or incurred by an Indemnified Party arising out of or as a result of: (i) the occurrence of any Release; (ii) any violation of any applicable Environmental Laws relating to the Property or the Project or to the ownership, use, occupancy or operation thereof; (iii) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Release or (iv) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against an Indemnified Party which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (i), (ii), or (iii), or any allegation of any such matters.

(e) "**Hazardous Substance**" or "**Hazardous Substances**" means (i) any chemical compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties, such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity"; (ii) asbestos; and (iii) any petroleum, natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(f) "**Losses**" means any and all losses, diminution in the value of Bank's security (but excluding any diminutions in value to the extent arising solely from general market conditions rather than matters that are subject of the Indemnity), liabilities, damages (excluding consequential, special and punitive damages, except to the extent paid or payable to a third party), demands, claims, actions, judgments, causes of action, assessments, fines, penalties, and costs and expenses (including, without limitation, clean-up costs, the reasonable fees and disbursements of outside legal counsel, engineering consultants and accountants). Losses also include all costs incurred by Bank in connection with (i) determining whether the Project is in compliance with all applicable Environmental Laws, (ii) taking any reasonable precautions to protect against any Environmental Losses, (iii) any removal, remediation of any kind and disposal of any Hazardous Substances (other than De Minimis Uses), and (iv) any repair of any

damage to the Project or any other property resulting from such precautions, removal, remediation or disposal of any Hazardous Substances. The rights of any person or entity constituting Bank shall not be limited by any investigation undertaken by or on behalf of Bank in connection with the Project.

(g) **"Release"** means any actual use, storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, under, into or on the Property or the Project or any surrounding property.

2. Indemnitor hereby agrees to indemnify, defend, and hold harmless Indemnified Parties, from and against any and all Environmental Losses. WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO COSTS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY. Notwithstanding anything in this Indemnity to the contrary, the indemnification obligations of Indemnitor under this Section 2 shall not be applicable to (a) Environmental Losses arising solely as a result of the gross negligence, willful misconduct or fraud of the party seeking to be indemnified hereunder, or (b) Environmental Losses (i) arising solely from events or conditions first existing after Bank or its Affiliate acquired title to the Project by foreclosure sale or acceptance of a deed-in-lieu thereof, and (ii) that do not directly or indirectly arise from or relate to (A) any Release, non-compliance with any Environmental Laws, or remediation existing or occurring prior to the date Bank or its Affiliate acquired title to the Project, or (B) any acts taken by Borrower or any of its Affiliates, or any of their respective agents or contractors, prior to, on or after such date.

3. Indemnitor agrees that Bank may provide any financial or other information, data or material in Bank's possession relating to Indemnitor, the Loan, this Indemnity, the Project, to Bank's parent, affiliate, subsidiary, participants or service providers, without further notice to Indemnitor.

4. This Indemnity is given solely to protect Bank against Environmental Losses, and not as additional security for, or as a means of repayment of, the Loan. The obligations of Indemnitor under this Indemnity are independent of, and shall not be measured or affected by (a) any amounts at any time owing under the Loan or secured by the Trust Deed; (b) the sufficiency or insufficiency of any collateral (including, without limitation, the Project) given to Bank to secure repayment of the Loan; (c) the consideration given by Bank or any other Indemnified Party in order to acquire the Property or the Project, or any portion thereof; (d) the modification, expiration or termination of the Loan Agreement, the Note or any other document or instrument relating thereto; (e) the discharge or repayment in full of the Loan; (f) any election by any Indemnified Party to purchase all or any portion of the Property at a foreclosure sale by crediting all or any portion of the obligations secured by the Trust Deed against the purchase price therefor; (g) any release or reconveyance of the Trust Deed or of any other security for the Loan; or (h) any termination, cancellation or modification of the Note, the Trust Deed or any other instrument relating to the Loan. Notwithstanding the provisions of any document or instrument, none of the obligations of the Indemnitor hereunder shall be in any way secured by the lien of the Trust Deed.

5. Indemnitor covenants and agrees that neither it nor any occupant of the Project shall use, introduce or maintain Hazardous Substances on the Project, unless done in strict compliance with all Environmental Laws.

6. Indemnitor shall, at its sole cost and expense, maintain the Project in compliance with all Environmental Laws and shall not cause or permit a Release in violation of any such

Environmental Laws. Within five (5) Business Days after any Indemnitor acquires knowledge of the same, Indemnitor shall provide Bank with written notice of any of the following:

- a. any Release of Hazardous Substances occurring on or near the Project (other than De Minimis Uses),
 - b. any claims, actions or court or governmental proceedings under any Environmental Laws relating to the Project,
 - c. the introduction, maintenance or discovery by Indemnitor of any Hazardous Substances on or near the Project (other than De Minimis Uses), and
7. d. discovery of any occurrence or condition on any real property in the vicinity of the Project which could cause the Project to be subject to any restrictions on the ownership, use or transferability of the Project under any Environmental Laws.

8. (a) Indemnitor shall conduct and complete in a timely manner all investigations, environmental audits, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances on or affecting the Project in accordance with all Environmental Laws to the satisfaction of Bank, and in accordance with the orders and directives of all federal, state and local governmental authorities, whether caused by any Indemnitor or a third party.

9. (b) Indemnitor shall notify Bank in writing prior to taking all such actions, and shall continuously keep Bank reasonably informed of their status. Consultants and contractors proposed to be retained by Indemnitor shall be subject to Bank's prior consent, which shall not unreasonably be withheld, conditioned or delayed. Indemnitor, promptly upon Bank's request, shall provide Bank with copies of the results of all such actions and all related correspondence, reports and other documents and information. Any remedial, removal or other action by any Indemnitor shall not be deemed a cure or waiver of any breach of this Indemnity due to a Release.

10. (c) Upon prior written notice to Borrower, Bank may enter and inspect the Project on Business Days during reasonable business hours, subject to the rights of tenants, for the purpose of evaluating Indemnitor's use or storage of Hazardous Substances and to confirm that Indemnitor is in compliance with Environmental Laws. If notice is given by any person or entity to Borrower, Indemnitor or Bank of any actual or potential violation of Environmental Laws pertaining to the Project or if there is a Release of any Hazardous Substance on or near the Project (other than De Minimis Uses), then at any time following ten (10) Business Days' written notice to any Indemnitor (except in an emergency or where not practical under applicable law, in which case notice is waived), and without limitation of Bank's other rights under this Indemnity or elsewhere, Bank shall have the right, but not the obligation, either through its employees or its consultants, on Business Days during reasonable business hours, and subject to the rights of tenants, to enter on the Project and to take those actions as it deems appropriate to investigate or test for, remediate, remove, resolve, minimize the impact of or advise governmental agencies of the possible existence of any Hazardous Substances. Any such actions conducted by Bank shall be solely for the benefit of and to protect the interests of Bank and shall not be relied upon by Indemnitor or any third party for any purpose. By conducting

any such actions, Bank does not assume control over the environmental affairs or operations of Indemnitor nor assume any liability of Indemnitor or any third party. Indemnitor's obligations under this paragraph (c) shall not be diminished or otherwise affected as a result of any notice or disclosure to, or any other knowledge of, any Indemnified Party of any Release or threatened Release, nor shall an Indemnified Party be deemed to have permitted or consented to any Release or any breach of Indemnitor's other obligations under this paragraph because any such party had notice or knowledge hereof.

11. Bank shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Losses and to have its reasonable attorneys' fees in connection therewith paid by Indemnitor. During the continuance of an Event of Default, Bank shall have the right, upon thirty (30) days' prior written notice to Indemnitor, to settle or compromise in good faith any Environmental Losses against Bank. In case any such claim shall be against Bank, Indemnitor agrees that Bank may employ independent counsel of Bank's own selection to appear and defend Bank. All of the actual and reasonable costs and expenses of such defense shall be paid by Indemnitor.

12. The obligations of Indemnitor pursuant to this Indemnity are unsecured obligations of Indemnitor and shall continue to be enforceable to the fullest extent permitted by applicable law. Indemnitor's obligations hereunder shall survive the sale or other transfer of the Project. The rights of the Indemnified Parties under this Indemnity shall be in addition to any other rights and remedies of the Indemnified Parties against Indemnitor under any other document or instrument now or hereafter executed by any Indemnitor, or at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any such rights. Indemnitor expressly and specifically agrees that a separate action or actions may be brought and prosecuted against any Indemnitor whether or not action is brought against Borrower or any other Indemnitor and whether or not Borrower is joined in any action against such Indemnitor on this Indemnity. Bank would not make the Loan without this Indemnity and Indemnitor acknowledges and understands that this Indemnity is a material inducement for Bank's agreement to make the Loan.

13. Indemnitor waives any right or claim of right to cause a marshaling of the assets of Indemnitor or to cause Bank to proceed against any of the security for the Loan before proceeding under this Indemnity against Indemnitor. To the extent allowed by applicable law, each Indemnitor expressly waives and relinquishes all rights, remedies or defenses accorded by applicable law to indemnitors or guarantors, including, but not limited to, Section 17.001 and Chapter 43 of the Texas Civil Practice and Remedies Code and Texas Rule of Civil Procedure 31, or comparable provisions of the laws of any other jurisdiction, and all other suretyship defenses it would otherwise have under the laws of Texas or any other jurisdiction.

14. All obligations of Indemnitor hereunder shall be payable within twenty-one (21) Business Days following receipt of written demand from Bank with an explanation of the amounts demanded, and any such amount which is not paid within such twenty-one (21) Business Day period shall bear interest from the expiration of such twenty-one (21) Business Day period at the default rate set forth in the Note.

15. Indemnitor shall pay to Bank all costs and expenses (including, without limitation, the reasonable fees and disbursements of Indemnified Parties' outside counsel) incurred by an Indemnified Party in connection with this Indemnity or the enforcement hereof.

16. This Indemnity shall be binding upon each Indemnitor, their respective representatives, administrators, executors, successors and assigns and shall inure to the benefit of

and shall be enforceable by Bank, the other Indemnified Parties and their successors, endorsees and assigns, and to any transferee of the Property to whom Bank specifically assigns this Indemnity. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

17. If this Indemnity is executed by more than one Person, the liability of the undersigned hereunder shall be joint and several. Each Indemnitor agrees that it shall have no right of contribution (including, without limitation, any right of contribution under CERCLA) or subrogation against any other Indemnitor hereunder unless and until all obligations of Indemnitors under the Transaction Documents have been satisfied. Each Indemnitor further agrees that, to the extent the waiver of its rights of subrogation and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation or contribution of such Indemnitor shall be junior and subordinate to the rights of Bank against each Indemnitor hereunder.

18. Governing Law, Venue and Jurisdiction.

(a) THE PARTIES HEREBY AGREE THAT THIS INDEMNITY AND ALL OTHER DOCUMENTS, INSTRUMENTS AND AGREEMENTS RELATED TO THIS INDEMNITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PROVISIONS.

(b) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL COURT OR STATE COURT SITTING IN DALLAS, TEXAS (AND ANY APPELLATE COURT THEREOF) IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDEMNITY OR ANY OTHER TRANSACTION DOCUMENT, (II) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT, (III) WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT OR PROCEEDING IN ANY SUCH COURT, AND (IV) CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY COURT IN OR OF THE STATE OF TEXAS BY THE DELIVERY OF COPIES OF SUCH PROCESS (X) TO INDEMNITOR AT ITS ADDRESS SPECIFIED ON ITS SIGNATURE PAGE HERETO, (Y) TO BANK AT ITS ADDRESS SPECIFIED ON ITS SIGNATURE PAGE TO THE LOAN AGREEMENT OR (Z) BY CERTIFIED MAIL DIRECTED TO SUCH ADDRESSES (OR, IN ANY CASE, ANY OTHER ADDRESSES DESIGNATED BY THE PARTIES IN A NOTICE TO EACH OTHER). NOTHING IN THIS PARAGRAPH SHALL LIMIT OR OTHERWISE AFFECT THE RIGHT OF BANK TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY SUCH ACTION OR PROCEEDING AGAINST AN INDEMNITOR OR ANY OF ITS PROPERTY IN ANY COURT OF ANY OTHER JURISDICTION.

19. Every provision of this Indemnity is intended to be severable. If any provision of this Indemnity or the application of any provision hereof to any third party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the balance of the terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

20. No failure or delay on the part of Bank to exercise any power, right or privilege under this Indemnity shall impair any such power, right or privilege, or be construed to be a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of such

power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No provision of this Indemnity may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

21. This Indemnity may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement, with the same effect as if all parties had signed the same signature page.

22. INDEMNITOR AND BANK (BY ITS ACCEPTANCE OF THIS INDEMNITY) ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, INDEMNITOR AND BANK (BY ITS ACCEPTANCE OF THIS INDEMNITY), AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS INDEMNITY OR THE LOAN.

23. Each of the parties which collectively comprise Indemnitor waives (a) any defense based upon any legal disability, insolvency, bankruptcy, dissolution, liquidation, or other defense of, or the cessation or limitation of the liability of, any other such party from any cause; (b) any defense based upon the lack of authority or power of the officers, directors, partners, members, managers, governors or agents acting or purporting to act on behalf of any other such party or any partner therein or any defect in the formation thereof; (c) any defense based upon the application by Borrower of proceeds of the Loan for purposes other than the purposes represented by Borrower to Bank or intended or understood by Bank or any such party; (d) any rights and defenses arising out of an election of remedies by Bank, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Loan or any obligations hereunder, has destroyed or otherwise impaired the subrogation or reimbursement rights of any Indemnitor against Borrower or any other party by operation of applicable law; (e) any defense based upon Bank's failure to disclose to any such party any information concerning the financial condition or any other circumstances bearing on Borrower's ability to pay all sums payable under the Note or any of the other Loan Documents; (f) any defense based upon any statute or rule of law which provides that the obligation of an indemnitor must be neither larger in amount nor in any other respects more burdensome than that of a principal; (g) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (h) any defense based upon any waiver by Bank of its rights, powers or remedies under the Transaction Documents or any delay by Bank in exercising the same; (i) any defense based on changes in the ownership of any such party; (j) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (k) any right of subrogation, any right to enforce any remedy which Bank may have against Borrower and any right to participate in, or benefit from, any security for the Note or the other Transaction Documents now or hereafter held by Bank; (l) presentment, demand, protest and notice of any kind; and (m) any act, provision or thing which might, but for this provision of this Indemnity, be deemed a legal or equitable discharge of an indemnitor. Indemnitor agrees that the payment of all sums payable under the Note or any of the other Transaction Documents or any part thereof or other act which tolls any statute of limitations applicable to the Note or the other Transaction Documents shall similarly operate to toll the statute of limitations applicable to Indemnitor's liability hereunder.

24. **THIS INDEMNITY AND THE OTHER "LOAN AGREEMENTS" (AS SUCH TERM IS DEFINED IN SECTION 26.02(a)(2) OF THE TEXAS BUSINESS AND**

COMMERCE CODE, AS AMENDED), TOGETHER WITH THE OTHER TRANSACTION DOCUMENTS, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Indemnity is executed as of the date first set forth above.

INDEMNITOR'S ADDRESS FOR NOTICES:

CIM URBAN REIT PROPERTIES IX, L.P.

c/o CIM Group

4700 Wilshire Blvd.

Los Angeles, California 90010

Attn: General Counsel

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison, LLP

1285 Avenue of the Americas

New York, New York 10019

Attention: Harris B. Freidus, Esq.

INDEMNITOR:

CIM URBAN REIT PROPERTIES IX, L.P.,

a Delaware limited partnership

By: CIM URBAN REIT GP II, LLC,

a Delaware limited liability company,

its general partner

By: /s/ David Thompson

Name: David Thompson

Title: Vice President and Chief Financial Officer

[Signatures continue on next page.]

Creative Media & Community Trust Corporation
5956 Sherry Lane, Suite 700
Dallas, TX 75225
Attention: Chief Financial Officer/ CMCT

CREATIVE MEDIA & COMMUNITY TRUST CORPORATION, a
Maryland corporation

By: /s/ David Thompson
Name: David Thompson
Title: Chief Executive Officer

EXHIBIT A

LEGAL DESCRIPTION

TRACT 1:

A 12.48 ACRE (543,678 SQUARE FEET) TRACT OF LAND OUT OF THE ISAAC DECKER LEAGUE, TRAVIS COUNTY, TEXAS, SAME BEING DESCRIBED IN DOCUMENT NO. 2000013841 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A SPINDLE FOUND IN THE SOUTHERLY RIGHT-OF-WAY LINE OF BRAESWOOD ROAD (60' R.O.W.) COMMON WITH THE WESTERLY RIGHT-OF-WAY LINE OF WILLOW SPRINGS ROAD (R.O.W. VARIES) FOR THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE S 33°15'40" W, WITH THE WESTERLY RIGHT-OF-WAY LINE OF SAID WILLOW SPRINGS ROAD (R.O.W. VARIES) A DISTANCE OF 619.11 FEET TO A ½" IRON ROD FOUND IN THE WESTERLY RIGHT-OF-WAY LINE OF SAID WILLOW SPRINGS ROAD (R.O.W. VARIES) COMMON WITH THE NORTHERLY RIGHT-OF-WAY LINE OF ALPINE ROAD (80' R.O.W.) FOR THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE N 55°50'02" W, WITH THE NORTHERLY RIGHT-OF-WAY LINE OF SAID ALPINE ROAD (80' R.O.W.) A DISTANCE OF 600.55 FEET TO AN "X" SET IN CONCRETE FOR A POINT-OF-CURVATURE IN THE NORTHERLY RIGHT-OF-WAY LINE OF SAID ALPINE ROAD (80' R.O.W.) AND SOUTHERLY LINE OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE WITH THE NORTHERLY RIGHT-OF-WAY LINE OF SAID ALPINE ROAD (80' R.O.W.) AND ALONG A CURVE TO THE RIGHT HAVING A CHORD BEARING OF N 51°53'16" W, A DISTANCE OF 294.01 FEET, AN ARC DISTANCE OF 294.23 FEET AND A RADIUS OF 2198.60 FEET TO A MAGNAIL FOUND FOR A POINT-OF-TANGENCY IN THE NORTHERLY RIGHT-OF-WAY LINE OF SAID ALPINE ROAD (80' R.O.W.) AND BEING IN SOUTHERLY LINE OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE N 48°02'07" W, WITH THE NORTHERLY RIGHT-OF-WAY OF SAID ALPINE ROAD (80' R.O.W.) A DISTANCE OF 45.11 FEET TO A ½" IRON PIPE FOUND IN THE NORTHERLY RIGHT-OF-WAY LINE OF SAID ALPINE ROAD (80' R.O.W.) AND BEING THE SOUTHEASTERLY CORNER OF LOT 22, WOODWARD INDUSTRIAL DISTRICT AS RECORDED IN BOOK 5 PAGE 156 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS AND BEING THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE N 30°09'30" E, WITH THE EASTERLY LINES OF LOT 22 AND LOT 23 OF SAID WOODWARD INDUSTRIAL DISTRICT A DISTANCE OF 308.36 FEET TO A ½" IRON ROD FOUND FOR THE SOUTHEASTERLY CORNER OF LOT 23-A, LINEAR SUBDIVISION AS RECORDED IN BOOK 69, PAGE 98 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS SAME BEING AN ANGLE POINT IN THE WESTERLY LINE OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE N 30°14'20" E, WITH THE EASTERLY LINE OF SAID LOT 23-A A DISTANCE OF 98.19 FEET TO A CALCULATED POINT IN THE SOUTHERLY LINE OF PHASE 1, BRUSH ADDITION AS RECORDED IN BOOK 59, PAGE 94 OF THE PLAT RECORDS OF TRAVIS COUNTY PLAT RECORD, SAME BEING THE SOUTHEASTERLY CORNER OF LOT 24 OF SAID PHASE 1, BRUSH ADDITION COMMON WITH THE SOUTHWESTERLY CORNER OF LOT 30 OF SAID PHASE 1, BRUSH ADDITION FOR THE MOST WESTERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE S 63°43'50" E, ALONG THE SOUTHERLY LINE OF SAID PHASE 1, BRUSH ADDITION COMMON WITH THE SOUTHERLY LINES OF LOT 30 AND LOT 31 OF SAID WOODWARD INDUSTRIAL DISTRICT A DISTANCE OF 321.96 FEET TO A CALCULATED POINT FOR THE SOUTHEASTERLY CORNER OF SAID LOT 31 COMMON WITH THE SOUTHEASTERLY CORNER OF SAID PHASE 1, BRUSH ADDITION, SAME BEING AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE N 34°03'19" E, WITH THE EASTERLY LINE OF SAID PHASE 1, BRUSH ADDITION, SAME BEING THE EASTERLY LINE OF SAID LOT 31, A DISTANCE OF 162.02 FEET TO A ¾" IRON PIPE FOUND IN THE SOUTHERLY RIGHT-OF-WAY LINE OF BRAESWOOD ROAD (60' R.O.W.) FOR THE MOST NORTHERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE S 55°46'50" E, WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRAESWOOD ROAD (60' R.O.W.) A DISTANCE OF 470.82 FEET TO A ½" IRON ROD FOUND FOR A POINT-OF-CURVATURE IN THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRAESWOOD ROAD (60' R.O.W.) AND BEING IN THE NORTHERLY LINE OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRAESWOOD ROAD (60' R.O.W.) AND ALONG A CURVE TO THE RIGHT HAVING A CHORD BEARING OF S 49°55'04" E, A DISTANCE OF 64.50 FEET, AN ARC DISTANCE OF 64.52 FEET AND A RADIUS OF 756.26 FEET TO A ½" IRON ROD FOUND FOR A POINT-OF-REVERSE-CURVATURE IN THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRAESWOOD ROAD (60' R.O.W.) AND BEING IN THE NORTHERLY LINE OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRAESWOOD ROAD (60' R.O.W.) AND ALONG A CURVE TO THE LEFT HAVING A CHORD BEARING OF S 48°32'53" E, A DISTANCE OF 94.17 FEET, AN ARC DISTANCE OF 94.42 FEET AND A RADIUS OF 378.12 FEET TO A SPINDLE FOUND FOR A POINT-OF-TANGENCY IN THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRAESWOOD ROAD (60' R.O.W.) AND BEING IN THE NORTHERLY LINE OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE S 55°12'18" E, WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRAESWOOD ROAD (60' R.O.W.) A DISTANCE OF 10.08 FEET TO THE POINT OF BEGINNING CONTAINING 12.48 ACRE (543,678 SQUARE FEET) OF LAND MORE OR LESS.

TRACT 2:

PHASE I, BRUSH ADDITION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 59, PAGE(S) 94 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

TRACT 3:

LOT 23A, LINEAR SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 69, PAGE(S) 98 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.