

**LOAN AND SECURITY AGREEMENT
(Happy Canyon Shoppes)**

between

THE ENTITIES LISTED ON SCHEDULE A,

as Borrowers,

and

AFF H DENVER, LLC,

as Lender

July 27, 2018



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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") is entered into as of July __, 2018, by and between the entities listed on Schedule A attached to this Agreement ("Borrowers") and AFF II DENVER, LLC, a Delaware limited liability company (together with its successors and assigns, "Lender").

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

Section 1.1 Defined Terms. All capitalized terms used in this Agreement (and in all other Loan Documents, unless otherwise defined), shall have the meanings set forth for such terms in Schedule 1.1.

Section 1.2 Singular and Plural. Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 1.3 Phrases. Except as otherwise expressly indicated, whenever Lender's acceptance, approval, consent, determination or satisfaction is required with respect to any matter in any Loan Document, such acceptance, approval, consent, determination or satisfaction shall be in Lender's sole discretion, unless otherwise specifically provided. When used in any Loan Document, the word "including" shall mean "including, but not limited to" and the words "hereof", "herein", "hereunder" and similar words refer to such Loan Document as a whole and not to any particular provision thereof; and subsection, Section, Schedule and Exhibit references are to the particular Loan Document unless otherwise specified. The use of the phrases "an Event of Default exists", "no Event of Default has occurred and is continuing" or similar phrases in the Loan Documents shall not be deemed to grant Borrowers any right to cure an Event of Default, and each Event of Default shall continue unless and until the same is waived by Lender in writing in its sole discretion.

Section 1.4 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 1.5 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 1.6 Non-Business Days. Except as expressly set forth elsewhere in this Agreement, if any payment to be made or item to be delivered by Borrowers under any Loan Document shall come due on a day other than a Business Day, then such payment shall be made, or such item shall be delivered, on the immediately succeeding Business Day.

ARTICLE 2

LOAN TERMS

Section 2.1 Loan and Note.

- (1) **Loan.** The Loan of NINETEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$19,500,000.00) shall be funded in one advance (the "**Closing Advance**") on the Closing Date and repaid in accordance with this Agreement. On the Closing Date, Lender shall advance up to \$18,370,000.00 to Borrowers and shall deposit the remaining portion into the Development Reserve, as set forth in **Article 3**. The Loan is not a revolving credit loan, and Borrowers are not entitled to any re-advances of any portion of the Loan which they may (or are otherwise required to) prepay pursuant to the provisions of this Agreement.
- (2) **Purpose.** The advance of the Loan shall be used for the purposes set forth on the Sources and Uses attached hereto as **Schedule 2.1(2)**.
- (3) **Loan Note.** The Loan shall be evidenced by a promissory note of Borrowers, payable to Lender in the principal amount of \$19,500,000.00
- (4) **Loss, Theft, Destruction or Mutilation of Note.** In the event of the loss, theft or destruction of the Note, upon Borrowers' receipt of a indemnification agreement and lost note affidavit executed in favor of Borrowers by the holder of such Note, or in the event of the mutilation of the Note, upon the surrender of such mutilated Note by the holder thereof to Borrowers, Borrowers shall execute and deliver to such holder a new replacement Note in lieu of the lost, stolen, destroyed or mutilated Note. Such replacement Note shall not be deemed a novation of the Loan and shall not disturb the then-existing priority of the Security Instrument or any other of the Loan Documents.

Section 2.2 Interest Rate; Late Charge.

- (1) **Interest Rate.** Except as otherwise set forth in this Agreement, the Loan shall bear interest as follows: from the date advanced by Lender, other than funds in the Development Reserve, at a variable rate of interest equal to 9.0% per annum over the greater of (a) 2% or (b) LIBOR (the "**Variable Rate**"), and so long as funds remain in the Development Reserve, such funds shall bear interest at a fixed rate of interest equal to three percent (3%) (the "**Fixed Rate**") (each such rate, as applicable, the "**Contract Rate**"). From and after sums are disbursed from the Development Reserve, such sums shall bear interest at the Variable Rate.
- (2) **Actual/360.** Interest owing for each month shall be computed on the basis of a fraction, the denominator of which is three hundred sixty (360) and the numerator of which is the actual number of days elapsed from the first day of such month (or, for the month in which the Closing Date occurs, from the date of such advance).
- (3) **Late Fees.** If Borrowers fail to make any payment of interest or principal within five (5) days of (and including) the date on which the same is due (including any payment due on the Maturity Date), Borrowers shall pay to Lender a late charge on such past due amount, as liquidated damages and not as a penalty, equal to ten percent (10%) of such amount, but not in excess of the maximum amount of interest allowed by applicable law.

The foregoing late charge is intended to compensate Lender for the expenses incident to handling any such delinquent payment and for the losses incurred by Lender as a result of such delinquent payment. Borrowers agree that, considering all of the circumstances existing on the date this Agreement is executed, the late charge represents a reasonable estimate of the costs and losses Lender will incur by reason of late payment. Borrowers and Lender further agree that proof of actual losses would be costly, inconvenient, impracticable and extremely difficult to fix. Acceptance of the late charge shall not constitute a waiver of the default arising from the overdue installment, and shall not prevent Lender from exercising any other rights or remedies available to Lender.

(4) **Default Rate.** While any Event of Default exists, the Loan shall bear interest at the Default Rate.

Section 2.3 **Terms of Payment.** The Loan shall be payable as follows:

(1) **Interest.** Commencing on September 15, 2018, Borrowers shall pay interest in arrears on the fifteenth day of each month (each a "**Payment Date**") until all amounts due under the Loan Documents are paid in full; provided that while an Event of Default exists, interest shall be payable on demand. Borrowers agree that if Loan proceeds are wired into escrow for the Loan closing, interest begins accruing from the date Loan proceeds are wired into escrow, regardless of whether the Closing Date occurs on the same date or a later date.

(2) **No Principal Amortization.** The Loan shall be an interest only loan and Borrowers shall not be required to make any regularly scheduled principal amortization payments.

(3) **Maturity.** On the Maturity Date, Borrowers shall pay to Lender all outstanding principal, accrued and unpaid interest, and any other amounts due under the Loan Documents, including the unpaid portion of the Exit Fee and any Minimum Interest Amount.

(4) **Extension.** Subject to the provisions of this **Section 2.3(4)**, Borrowers, at their option, may extend the term of the Loan for one (1) additional six-month period. Borrowers' right to extend the term of the Loan is subject to the satisfaction of each of the following conditions as to each extension:

(a) Borrowers shall deliver to Lender a written request to extend the term of the Loan (the "**Extension Request**") at least sixty (60) days, but not more than one hundred twenty (120) days, before the then existing Maturity Date;

(b) No Event of Default has occurred and is continuing on the date on which Borrowers deliver the Extension Request to Lender, or on the date the extension period commences;

(c) All of the Work shall have been completed;

(d) Borrowers shall have paid to Lender, in immediately available funds, together with the Extension Request, an extension fee equal to \$292,500.00, which funds shall be held in escrow by Lender and returned to Borrowers if an extension is not granted or if Borrowers withdraw their Extension Request;

(e) Together with the Extension Request, Borrowers shall have made a payment of the Loan, in immediately available funds, in an amount equal to (1) ten percent (10%) of the original principal balance of the Loan, which shall be applied to the outstanding principal balance of the Loan and (2) the amount of the Exit Fee payable on such principal payment;

(f) Together with the Extension Request, Borrowers shall deposit in the Interest Reserve an amount which, when added to the amount remaining in the Interest Reserve, shall equal six (6) months of interest on the outstanding principal balance of the Loan (as of the date of the commencement of the extension period) as determined by Lender, which funds shall be held in escrow by Lender and returned to Borrowers if an extension is not granted or if Borrowers withdraws its Extension Request;

(g) Borrowers shall provide evidence to Lender that all Property Taxes then due and payable have been paid, and insurance premiums have been paid so as to provide all required coverages through term of the Loan as extended;

(h) Borrowers shall execute and deliver such other instruments, certificates, opinions of counsel and documentation as Lender shall reasonably request in order to preserve, confirm or secure the Liens and security granted to Lender by the Loan Documents, including any amendments, modifications or supplements to any of the Loan Documents, endorsements to Lender's title insurance policy and, if required by Lender, estoppels and other certificates; and

(i) Borrowers shall pay all reasonable out-of-pocket costs and expenses incurred by Lender in connection with such extension of the Loan, including Lender's attorneys' fees and disbursements.

(5) **Prepayment; Reduced Commitment.** Subject to **Subsections 7(b) and (c)** below, Borrowers may prepay the Loan, in whole or in part, at any time upon not less than fifteen (15) days' prior written notice to Lender. Borrowers may, in their sole discretion, by written notice to Lender, reduce the amount in the Development Reserve. Upon receipt of such notice, the amount designated by Borrowers shall no longer bear interest, shall be returned to Lender, deemed repaid (without the requirement of the payment of the Exit Fee), and shall no longer be available for disbursement.

(6) **Application of Payments.** So long as no Event of Default exists, except as otherwise expressly set forth herein, all payments received by Lender under the Loan Documents shall be applied in the following order: (a) to any fees and expenses due to Lender under the Loan Documents; (b) to any Default Rate interest or late charges; (c) to accrued and unpaid interest; (d) to amounts owed under any Reserves; and (e) to the principal sum and other amounts due under the Loan Documents. While any Event of Default exists, Lender may apply all payments to amounts then owing in any manner and in any order as determined by Lender.

Section 2.4 **Fees.** As partial consideration for Lender's agreement to make the Loan:

(1) **Origination Fee.** Borrowers have paid to Lender an origination fee of \$487,500.00 (the "**Origination Fee**").

(2) **Minimum Interest Payment.** Upon the earliest date to occur ("**Minimum Interest Date**") of (i) the payment in full of all unpaid principal and interest on the Note, (ii) the Maturity Date (as the same may be extended pursuant to **Section 2.3(4)** of this Agreement) and (iii) acceleration of the Loan, Borrowers shall pay to Lender, in immediately available funds, an amount ("**Minimum Interest Amount**") equal to the positive difference, if any, obtained by subtracting (x) the aggregate amount of Contract Rate interest (but excluding any Default Rate interest) actually received by Lender from Borrowers on or before the Minimum Interest Date, from (y) \$1,623,375.00.

(3) **Exit Fee.** Borrowers shall pay to Lender, in immediately available funds, an exit fee in the amount of two per cent (2.0 %) of the amount of the Loan being paid or prepaid at any time (the "**Exit Fee**"), which, to the extent not previously paid to Lender in accordance with this Agreement, shall be paid to Lender in full upon the earliest of (i) the payment in full of all unpaid principal and interest on the Note, (ii) the Maturity Date (as the same may be extended pursuant to **Section 2.3(4)** hereof) and (iii) acceleration of the Loan.

Section 2.5 **Security.**

(1) **Security Instrument.** The Loan and all amounts due under the Loan Documents, including the Exit Fee and the Minimum Interest Amount, if any, shall be secured by, among other things, the Security Instrument creating a first Lien on the Mortgaged Property.

(2) **General Assignment.** Borrowers hereby grants to Lender, as security for the payment and performance of Borrowers' obligations under the Loan, a first Lien on and security interest in the Collateral. Borrowers hereby authorizes Lender to prepare and file such financing statements, financing statement amendments and continuation statements as Lender may require to perfect or to continue the perfection of the foregoing security interests.

Section 2.6 **Payments; Etc.**

(1) **Payments by Borrowers.** Except to the extent otherwise provided herein, all payments to be made by Borrowers under any Loan Document shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Lender at an account designated by Lender by notice to Borrowers, not later than 1:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(2) **Extensions to Next Business Day.** If the due date of any payment under this Agreement or the Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day.

Section 2.7 **Clearing Account; Deposit of Rents; Withdrawals from Operating Account.**

(1) **Clearing Account.** The Borrowers confirm that they have established, and covenant that they shall maintain, pursuant to a Clearing Bank Agreement, an account at the Clearing Bank (the "**Clearing Account**"). The Clearing Account shall be in the name of the Borrowers for the benefit of Lender, provided that the Borrowers shall be the owners of all funds

on deposit in its account for federal and applicable state and local tax purposes, and the Clearing Account shall be assigned the tax identification number of the Borrowers. The Borrowers acknowledge and agree that, so long as any portion of the Liabilities remains outstanding, neither the Borrowers nor any other Person acting on behalf of, or claiming through, the Borrowers, shall have any right or authority to change the identity, name, location, account number, bank location or other feature or attribute of the Clearing Account without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion. At the election of Lender, exercised from time to time (i) after the occurrence and during the existence of an Event of Default, (ii) at any time Lender reasonably believes that the Clearing Bank is not adequately performing its duties under the Clearing Bank Agreement, the Borrowers will establish a new Clearing Account at an Eligible Bank (and such Eligible Bank shall enter into new Clearing Bank Agreement in form and substance satisfactory to Lender). The Borrowers hereby irrevocably appoint Lender as their attorney-in-fact (coupled with an interest) to execute a modification of the Clearing Bank Agreement approved by Lender or establish a new Clearing Account at an Eligible Bank upon Lender's exercise of its rights under the preceding sentence, upon the failure of the Borrowers to do so within ten (10) days following Lender's written demand. The initial Clearing Account is identified on Schedule 2.7 attached to this Agreement.

(a) The Clearing Account shall be under the sole and exclusive dominion and control of the Lender and neither the Borrowers nor any other party claiming on behalf of, or through, the Borrowers, shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit or deposited into the Clearing Account or have any other right or power with respect to the Clearing Account; provided, however, that the Borrowers shall have the right, if available through the Clearing Bank, to access information regarding balances, deposits into and withdrawals from the Clearing Account, so long as such information access right does not permit the Borrowers or any party other than Lender or Servicer to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in the Clearing Account.

(b) The Borrowers agree to timely pay the customary fees and expenses of Clearing Bank in connection with the Clearing Account and any Lockbox, as such fees and expenses are established from time to time. In the event that Clearing Bank seeks reimbursement of any item deposited into a Clearing Account but returned or disallowed or reimbursement of any other monetary sum pursuant to the Clearing Bank Agreement, the Borrowers shall promptly and timely pay such sum. Failure of the Borrowers to pay any sum due and payable to the Clearing Bank in connection with the Clearing Account within five (5) days after written demand by Lender shall constitute an Event of Default under this Agreement.

(2) Lockbox. The following provisions shall apply:

(a) Concurrently with the execution of this Agreement, the Borrowers have established lock box address at the Clearing Bank (each, a "Lockbox").

(b) Concurrently with the execution of this Agreement and until the Loan is repaid in full, the Borrowers shall notify and advise each tenant under each lease (whether such lease is presently effective or executed after the date hereof) pursuant to an instruction letter in the form approved by Lender (a "Tenant Direction Letter") to send directly to the Lockbox (or to the Clearing Account via ACH transfer or wire transfer) all sums due and payable by such tenant under

its lease as and when due and payable. The Borrowers hereby grant to Lender a power of attorney (which power of attorney shall be coupled with an interest and irrevocable so long as any portion of the Liabilities remains outstanding) to sign and deliver to any tenant, upon failure of the Borrowers to do so within five (5) days following written demand from Lender, a Tenant Direction Letter. If notwithstanding the foregoing, the Borrowers should receive any payments on account of rent, the Borrowers shall deposit same with the Clearing Bank within one (1) Business Day after receipt.

(c) Without the prior written consent of Lender, so long as any portion of the Liabilities remain outstanding, the Borrowers shall not terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever or direct or cause any Tenant to pay any amount in any manner other than as provided in the related Direction Letter.

(d) So long as any portion of the Liabilities remain outstanding, the Borrowers shall not open or maintain any accounts into which rents are deposited other than the Clearing Account. The foregoing shall not prohibit the Borrowers from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to the Borrowers pursuant to the express terms of this Agreement.

(3) **Operating Account.** On each Business Day on which available funds are on deposit in the Clearing Account, the Clearing Bank shall transfer all such available funds to an operating account established, maintained (separately) by and under the exclusive dominion and control of the Borrowers (the "**Operating Account**"). Upon the occurrence of a Control Event, without limiting the foregoing provisions, all transfers from the Clearing Account to the Operating Account shall immediately cease and Lender shall have the right, at its sole option, to instruct the Clearing Bank, from time to time, to administer available sums on deposit in or deposited into the Clearing Account in the manner set forth in **Section 2.7** below or to transfer available sums on deposit in the Clearing Account, from time to time, to a Cash Management Account (as defined below). The initial Operating Account is identified on **Schedule 2.7** attached hereto. Provided that no Control Event has occurred and is continuing, the Operating Account shall be under the sole and exclusive dominion and control of the Borrowers, and the Borrowers shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit or deposited into the Operating Account and have any other right or power with respect to the Operating Account; provided, however, that Lender shall have the right to access information regarding balances, deposits into and withdrawals from the Operating Account.

(4) **Cash Management Account.**

(a) Upon the occurrence of a Control Event, Lender may establish an account (the "**Cash Management Account**") at an Eligible Bank (the "**Cash Management Bank**") selected by Lender in its sole discretion. The Cash Management Account shall be in the names of the Borrowers for the benefit of the Lender, provided that the Borrowers shall be the owner of all funds on deposit in such accounts for federal and applicable state and local tax purposes and the Cash Management Account shall be assigned the tax identification number of the Borrowers.

(b) The Cash Management Account shall be under the sole and exclusive dominion and control of the Lender, and neither the Borrowers nor any other party claiming on behalf of, or through, the Borrowers, shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in the Cash Management Account or have any other right or power with respect to the Cash Management Account.

(5) The Borrowers agree to timely pay the customary fees and expenses of Cash Management Bank in connection with the Cash Management Account, as such fees and expenses are established from time to time.

(6) **Default.** Notwithstanding any other provision of this Agreement or of the other Loan Documents, during the continuation of an Event of Default, Lender reserves the right, exercisable at its sole option, to (x) take such enforcement actions (including, but not limited to, acceleration and foreclosure of the Project) as it deems appropriate under the Loan Documents or otherwise under law or in equity and/or (y) after the occurrence of a Control Event, apply all sums on deposit in or deposited into the Clearing Account, the Operating Account, the Cash Management Account, the Reserves and any other sums deposited by Borrowers with Lender to the payment of the Liabilities, in such order, manner, amounts and times as Lender in its sole discretion determines, and such reserved rights shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents. Nothing in this ~~Section 2.7(6)~~ shall limit, reduce or otherwise affect Borrowers' obligations to make any and all payments due under this Agreement and under the other Loan Documents, whether or not rents are available to make such payments.

(7) **Security Interest.** The Borrowers acknowledge and agree that they have granted to Lender a first-priority security interest in the Clearing Account, the Operating Account and the Cash Management Account and the sums on deposit therein. The Borrowers acknowledge and agree that, without limitation of any other provisions of this Agreement, the Security Instrument or the other Loan Documents, upon the occurrence and during the continuation of a Control Event, Lender may use the Clearing Account, the Operating Account, the Cash Management Account and/or any sums on deposit in either of them for any or all of the following purposes: (i) repayment of the Loan, including, but not limited to, interest, principal and any prepayment premium or fee applicable to any such full or partial prepayment, (ii) reimbursement of Lender for all losses, fees, costs and expenses (including, without limitation, reasonable legal fees and disbursements) suffered or incurred by Lender as a result of an Event of Default, (iii) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or any of the other Loan Documents, (iv) payment of any item as required or permitted by this Agreement or any of the other Loan Documents or (v) any other purpose permitted by applicable law, provided, however, that any such application of funds shall not cure or be deemed to cure any Control Event. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender's rights and remedies as a secured party with respect to the Clearing Account, the Operating Account, the Cash Management Account and any sums on deposit in any of them and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Clearing Account, the Operating Account or Cash Management Account to effect a cure of any Event of Default, or to pay the Loan in any specific order of priority. The exercise of any or all of Lender's rights

and remedies under this Agreement with respect to the Clearing Account, the Operating Account, the Cash Management Account and/or the sums on deposit therein shall not in any way prejudice or affect Lender's right to initiate and complete a foreclosure under the Security Instrument.

(8) **Indemnification by Borrowers.** Lender shall be responsible for the performance only of such duties with respect to the Clearing Account, the Operating Account and Cash Management Account as are specifically set forth herein, and no duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Lender shall not be liable for any acts, omissions, errors in judgment or mistakes of fact or law, including, without limitation, with respect to proceeds on deposit in the Clearing Account, the Operating Account, or Cash Management Account. Borrowers shall indemnify and hold the Lender, its successors, assigns, shareholders, directors, officers, employees, and agents (including, without limitation, any Servicers) harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such parties in connection with the Clearing Account, the Operating Account, the Cash Management Account or the investment by Lender of amounts in the Cash Management Account, other than such as result from the gross negligence or willful misconduct of Lender or intentional nonperformance by Lender of its obligations under this Agreement.

Section 2.8 **Conditions of Closing.** Lender shall not be obligated to close the Loan or make the Closing Advance unless all of the conditions precedent set forth in this **Section 2.8** have been satisfied or waived by Lender, on or before the Closing Date (it being understood that the funding of the Closing Advance on the Closing Date shall be deemed to a satisfaction or waiver of the conditions set forth in this **Section 2.8**):

- (1) **Loan Documents.** The Loan Documents, in form and substance satisfactory to Lender, shall have been duly executed and delivered by the parties thereto and shall be in full force and effect, and Lender shall have received the originals or fully executed counterparts thereof.
- (2) **Payment of Fees and Expenses.** Borrowers shall have paid all fees and expenses required by this Agreement, to the extent due and payable, including, without limitation, reasonable attorneys' fees and expenses of Lender's outside counsel, environmental and engineering evaluation fees, and other due diligence costs incurred by Lender.
- (3) **Title Insurance Policy.** Borrowers shall have delivered to Lender a paid title insurance policy (or the corresponding marked-up title commitment subject to an irrevocable commitment on the part of the Title Company to deliver the title insurance policy upon recordation of the Security Instrument) in all respects satisfactory to Lender and Lender's outside counsel (together with true and complete copies of all exceptions to the title insurance policy), showing the Security Instrument as a valid first Lien on the Project in the amount of the Loan, together with all endorsements as required by Lender and subject only to the Permitted Encumbrances, along with co-insurance or reinsurance, if required by the Title Company, in such forms and amounts as may be required by Lender. Any reinsurance agreements shall provide for direct access with the other title insurance companies reasonably satisfactory to Lender.

- (4) **Other Insurance.** Borrowers shall have delivered to Lender policies of all insurance (or certificates evidencing such insurance) meeting Lender's insurance requirements.
- (5) **Environmental Reports.** Lender shall have obtained and reviewed environmental assessment reports of one or more qualified environmental engineering or similar inspection firms approved by Lender in form, scope and substance satisfactory to Lender, which report or reports shall indicate a condition of the Project in all respects satisfactory to Lender for their intended use and upon which reports Lender is expressly entitled to rely.
- (6) **Survey.** Borrowers shall have delivered to Lender a survey for the Project prepared in accordance with Lender's survey requirements, certified by land surveyors registered as such in the State, which survey shall be in form and substance satisfactory to Lender.
- (7) **Government Approvals and Legal Requirements.** Borrowers shall have delivered to Lender evidence that they have obtained all Government Approvals necessary for the operation of the Project.
- (8) **Organizational Documents.** Borrowers shall have delivered to Lender certified copies of the Organizational Documents of Borrowers, those constituent entity members of Borrowers requested by Lender, and any entity Guarantor, and the same shall be acceptable to Lender in all respects.
- (9) **Legal Opinions.** Lender shall have received opinions in form, substance and scope satisfactory to Lender and Lender's outside counsel from counsel to Borrowers and Guarantor as to such matters as Lender may reasonably require.
- (10) **Searches Regarding Collateral.** Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrowers' expense, upon request by Lender during the continuance of an Event of Default) that a search of the public records disclosed no judgment, UCC or tax liens affecting Borrowers or Guarantor, the Project or the Collateral, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the Collateral.
- (11) **Financial Statements.** Borrowers shall have delivered to Lender all financial statements, with respect to Borrowers, Guarantor and/or the Project, required under this Agreement or any of the other Loan Documents.
- (12) **Representations and Warranties.** The representations and warranties made by Borrowers and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrowers or Guarantor in connection therewith shall have been true and correct in all material respects on the date on which made and shall continue to be true and correct in all material respects on the Closing Date.
- (13) **Deliveries and Documents.** All required deliveries in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be satisfactory to Lender and Lender's outside counsel in form and substance, and Lender shall have received all such deliveries and such counterpart originals or certified copies

of such documents and such other certificates, opinions or documents as Lender and Lender's outside counsel may reasonably require to consummate the transactions contemplated hereby.

(14) **Other Documents.** Borrowers shall have delivered to Lender such other documents and certificates as Lender or Lender's outside counsel may reasonably require.

ARTICLE 3

RESERVES

Section 3.1 **Reserves.** The following reserves shall be required in connection with the Loan:

(1) **Interest Reserve.** On the Closing Date, Borrowers shall deliver to Lender, to be held by Lender in a reserve, an amount equal to \$375,000.00 ("**Interest Reserve**"). Other deposits by Borrowers into the Interest Reserve shall be made to the extent required by this Agreement. So long as no Event of Default exists, Lender shall apply funds from the Interest Reserve (but never reducing the amount in the Interest Reserve below \$37,500.00) to the payment of any portion of the interest due and payable on the Loan in any month in which Net Cash Flow is insufficient to pay such amount in full. For avoidance of doubt, Borrowers shall be obligated to pay interest on the Loan, when due, whether or not Net Cash Flow and/or the amount on deposit in the Interest Reserve is available or sufficient to pay such interest. If at any time Lender reasonably determines that the amount on deposit in the Interest Reserve will not be sufficient to pay interest at the Contract Rate through the Maturity Date, Lender shall notify Borrowers of such determination, and Borrowers shall deposit with Lender the amount of such insufficiency within five (5) Business Days after its receipt of such notice.

(2) **Development Reserve.** On the Closing Date, Lender shall deposit Loan proceeds in an amount equal to \$1,130,000.00 into a reserve to be held by Lender (the "**Development Reserve**"), and so long as no Event of Default has occurred and is continuing, Lender will advance funds from the Development Reserve for the payment of costs and expenses incurred by Borrowers in performing the Work (as more fully set forth in **Section 6.19**) and other costs and expenses set forth in the Development Budget.

Section 3.2 **General Provisions Regarding Reserves.** All funds deposited in the Interest Reserve or any other reserve established hereby (together with any other reserves or escrows required by Lender under the Loan Documents, each a "**Reserve**" and collectively, the "**Reserves**") shall be held by Lender, without interest, and may be commingled with Lender's general funds. To secure the Loan, Borrowers hereby grant to Lender a first-priority security interest in all funds deposited in the Reserves. While an Event of Default exists, Lender shall have no obligation to disburse any funds from the Reserves and while an Event of Default exists, Lender shall be entitled, without notice to Borrowers, to apply any funds in the Reserves to satisfy Borrowers' obligations under the Loan Documents in such order and manner as Lender shall determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender.

Section 3.3 **Development Reserve Advances.**

(1) **Making the Advances.**

(a) At such time as Borrowers desire to obtain any advance of funds from the Development Reserve (each, an "**Advance**"), Borrowers shall complete, execute and deliver to Lender a Requisition. Lender shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Advance.

(b) Borrowers shall have provided to Lender a search reflecting that a search of the public records disclosed no judgment, UCC, mechanics' or tax liens affecting the Borrowers or the Project for which the requisition has been submitted.

(c) Each Requisition shall be submitted to Lender at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month. Each Requisition shall be signed on behalf of Borrowers and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; and (c) that each obligation described therein is a cost under the budget of costs approved by Lender and attached hereto as **Schedule 3.3** (as amended from time to time, subject to the prior approval of Lender, the "**Development Budget**"), has been properly incurred and has not been the basis for any previous disbursement. Lender shall endeavor to deposit the proceeds of each Advance into the applicable Borrowers' operating account or other account designated by such Borrowers within two (2) Business Days after the approval of the Requisition.

(d) Lender shall withhold from each Advance retainage equal to ten percent (10%) of all amounts funded under any contract for the provision of labor, materials, equipment and fixtures until the Work is complete, at which time such retainage shall be advanced as part of the final Advance with respect to such contract.

(e) At its option, Lender may make any or all Advances: (a) for costs incurred under any contract directly to any consultant, design professional or service provider, or (b) to any other Person to whom Lender in good faith determines payment is due.

(2) **No Default.** Lender shall have no obligation to make any Advance if at the time of such Advance there exists an Event of Default or a condition that, with the giving of notice, the passage of time or both would constitute an Event of Default.

(3) **Sufficiency of Reserve.** Lender shall not be obligated to make any Advance if, in its sole judgment, the amounts remaining for disbursement from the Development Reserve, either in the aggregate or for individual line items shown on the Development Budget, are not sufficient to pay all costs remaining to be incurred in order to complete the Work (including, without limitation, interest expenses payable under the Loan and all other soft costs), unless Borrowers shall have deposited with Lender in cash, or deposited into an account in which Lender has a security interest, or otherwise expended such sums as shall be necessary, in Lender's sole discretion, to offset any such insufficiency.

ARTICLE 4

INSURANCE AND CONDEMNATION

Section 4.1 **Insurance.** Borrowers shall maintain insurance as follows:

(1) **Types and Amounts of Insurance.** Until the Loan and all amounts due under the Loan Documents are paid in full, Borrowers shall maintain such insurance coverages as Lender, in its reasonable discretion, may require from time to time. All such policies shall be in such form and shall contain provisions as are acceptable to Lender. On or before the Closing Date, such insurance shall be obtained and prepaid through at least the scheduled Maturity Date. Notwithstanding anything to the contrary contained in this Agreement, Borrowers acknowledge and agree that Lender's acceptance of any insurance provided by Borrowers pursuant to this Agreement does not constitute, and shall not be deemed by Borrowers to be, an affirmation by Lender of the validity or viability of any such policy maintained, or to be maintained, by Borrowers.

(2) **No Separate Insurance.** Borrowers shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Lender in all respects.

(3) **Failure to Maintain Insurance.** If Borrowers fail to maintain insurance in compliance with Lender's insurance requirements, Lender may, in its sole discretion, obtain such insurance and pay the premium therefor and Borrowers shall, on demand, reimburse Lender for all expenses incurred in connection therewith. This insurance may, but need not, also protect Borrowers' interest. If there is a loss or liability, the coverage Lender purchases may not pay any claim Borrowers make or any claim made against Borrowers. Lender will cancel this coverage at such time as Borrowers provide Lender with evidence satisfactory to Lender that Borrower have obtained the required policy or policies that satisfy Lender's insurance requirements. The effective date of coverage may be the date Borrowers' prior coverage lapsed or the date Borrowers failed to provide proof of coverage. The coverage Lender purchases may be more expensive than insurance Borrowers can obtain on its own.

(4) **Assignment.** Borrowers shall assign the policies or proofs of insurance to Lender, in such manner and form that Lender and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. Borrowers shall deliver to Lender copies of all required policies and all renewals thereof (which renewals shall be delivered at least ten (10) Business Days prior to the expiration of the existing policies), in each case certified to Lender by the insurance company or authorized agent as being true copies, together with the endorsements required hereunder and together with proof of payment of premiums. If Borrowers elect to obtain any insurance which is not required under this Agreement, all related insurance policies shall be endorsed in compliance with Lender's insurance requirements, and such additional insurance shall be renewed during the term of the Loan unless Lender provides its prior written authorization. From time to time upon Lender's request, Borrowers shall identify to Lender all insurance maintained by Borrowers with respect to the Project. All Loss Proceeds shall be delivered directly to Lender, and shall be applied in accordance with **Section 4.2.** The Loss Proceeds coming into the possession of Lender shall not be deemed trust funds, and Lender shall be entitled to apply such proceeds as provided in this Agreement.

(5) **Adjustments.** Borrowers shall give immediate written notice of any loss to the insurance carrier and for any loss in excess of \$30,000.00 to Lender. Borrowers hereby irrevocably authorize and empower Lender, as attorney-in-fact for Borrowers, coupled with an interest, to notify any of Borrowers' insurance carriers to add Lender as a loss payee, mortgagee insured or additional insured, as the case may be, to any policy maintained by Borrowers (regardless of whether such policy is required under this Agreement), to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive Loss Proceeds (and endorse, on Borrowers' behalf, all checks, drafts and other negotiable demand instruments payable to Borrowers, or to Borrowers and Lender jointly), and to deduct therefrom Lender's expenses incurred in the collection of such Loss Proceeds. Nothing contained in this **Section 4.1(5)**, however, shall require Lender to incur any expense or take any action hereunder.

Section 4.2 **Application of Loss Proceeds.** Loss Proceeds shall be applied to the payment of amounts outstanding under the Loan Documents, unless Lender, in its sole discretion, agrees to make such Loss Proceeds available to Borrowers for restoration. Borrowers, upon request by Lender, shall execute all instruments requested to confirm the assignment of the Loss Proceeds to Lender, free and clear of all liens, charges or encumbrances.

Section 4.3 **Rights in Policies.** In the event of a foreclosure of the Security Instrument or other transfer of title to the Project in extinguishment in whole or in part of the Debt, all right, title and interest of Borrowers in and to the policies then in force concerning the Project and all proceeds payable under such policies shall vest exclusively in Lender or the purchaser in foreclosure or other transferee in the event of such other transfer of title.

Section 4.4 **Condemnation Awards.** Borrowers shall immediately notify Lender of the institution of any proceeding for the condemnation or other taking of a Project or any portion thereof ("**Taking**") Lender may participate in any proceeding for a Taking and Borrowers will deliver to Lender all instruments necessary or required by Lender to permit such participation. Without Lender's prior consent, Borrowers (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the Taking or purchase in lieu of such Taking are hereby assigned to and shall be paid to Lender. Borrowers authorize Lender to collect and receive such awards and compensation (and, if any such award or compensation is paid by check, draft or other negotiable demand instrument made payable to Borrowers or to Borrowers and Lender jointly, to endorse the same on Borrowers' behalf), to give proper receipts and acquittances therefor, and in Lender's sole discretion to apply the same toward the payment of the Loan, notwithstanding that the Loan may not then be due and payable, or to the restoration of the Collateral. Borrowers, upon request by Lender, shall execute all instruments requested to confirm the assignment of the awards and compensation to Lender, free and clear of all liens, charges or encumbrances.

ARTICLE 5

GENERAL REPRESENTATIONS AND WARRANTIES

Borrowers represents and warrants to Lender that:

Section 5.1 **Organization and Power.** Each Borrower Party (other than an individual Guarantor) is duly formed or organized, validly existing and in good standing under the laws of the state of its formation or existence, and each Borrower Party (other than an individual Borrower Party) is in

compliance with all legal requirements applicable to doing business in the State. No Borrower Party is a "foreign person" within the meaning of Section 1445(f)(3) of the Code. Each of the Borrowers has only one state of incorporation, formation or organization, which is Delaware. The ownership structure of Borrowers and their constituent entities reflected on in Schedule 5.1 is true and correct as of the Closing Date.

Section 5.2 Validity of Loan Documents. The execution, delivery and performance by Borrowers and each Borrower Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not been obtained; and (2) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Borrowers and each Borrower Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 5.3 Financial Condition; Litigation; Other Secured Transactions:

(1) Financial Statements. The most recent financial statements delivered to Lender by Borrowers and each Borrower Party (a) are true and correct in all material respects, with no significant change since the date of preparation, and (b) fairly present the financial condition of Borrowers and each Borrower Party as of the date thereof and the results of Borrowers' and each Borrower Party's operations for the period covered thereby. Except as disclosed in such financial statements or as set forth on Schedule 5.3(1), there are no liabilities (fixed or contingent) affecting the Collateral, Borrowers or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to Borrowers' Knowledge, threatened, against the Collateral, Borrowers or any Borrower Party which if adversely determined is reasonably likely to have a Material Adverse Effect on such party, the Collateral or the Loan.

(2) Debtor Status. None of the Borrowers is, nor has been, bound (whether as a result of a merger or otherwise) as a debtor under a pledge or security agreement which has not been terminated prior to the Closing Date.

Section 5.4 Taxes and Assessments. The Collateral is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrowers' Knowledge, proposed, special or other assessments for public improvements or otherwise affecting any Project, nor are there any contemplated improvements to any Project that may result in such special or other assessments.

Section 5.5 Other Agreements; Defaults. Neither Borrowers nor Guarantor is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which is likely to adversely affect the Project or the business, operations, or condition (financial or otherwise) of Borrowers or Guarantor. Neither Borrowers nor Guarantor is in violation of any agreement which violation if adversely determined, would reasonably likely have a Material Adverse Effect on any Project, Borrowers or Guarantor or Borrowers' or Guarantor's business, properties, or assets, operations or condition, financial or otherwise. Borrowers have provided Lender with a true, accurate and complete copy of each Major Project Document.

Section 5.6 **Compliance with Law; Condition.**

- (1) **Licenses, Permits, etc.** Borrowers have all requisite licenses, permits, franchises, qualifications, certificates of occupancy or and other governmental authorizations to own, lease, occupy and operate the Project and carry on their business. Each Borrower Party has all requisite licenses, permits, franchises, qualifications and governmental authorizations to carry on its business. The Project are in compliance with all applicable zoning, subdivision, building and other legal requirements.
- (2) **No Condemnation.** No condemnation has been commenced or, to Borrowers' Knowledge, is contemplated with respect to all or any portion of any Project or for the relocation of roadways providing access to any Project.
- (3) **Access.** The Project has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of the Project are located in the public right-of-way abutting the Project, and all such utilities are connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the applicable Project. All roads necessary for the full utilization of the Project for their current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

Section 5.7 **Location of Borrowers.** Borrowers' principal place of business and chief executive offices are located at the address stated in **Section 12.1**, and Borrowers maintains their books and records at such location. Borrowers at all times have maintained their principal place of business and chief executive office at such location or at other locations within the same state.

Section 5.8 **ERISA.** No Borrower is (i) an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and the assets of Borrowers do not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA.; (ii) a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Borrowers are not and will not be subject to state statutes applicable to Borrowers regulating investments of, and fiduciary obligations with respect to, governmental plans; and (iii) Borrowers have no employees.

Section 5.9 **Margin Stock.** No part of proceeds of the Loan will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

Section 5.10 **Tax Filings.** Borrowers and Guarantor have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrowers and Guarantor, respectively.

Section 5.11 **Solvency.** Giving effect to the Loan, the fair saleable value of Borrowers' assets exceeds and will, immediately following the making of the Loan, exceed Borrowers' total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrowers' assets is and will, immediately following the making of the Loan, be greater than Borrowers' probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrowers' assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrowers do not intend to, and do not believe that they will,

incur Debts and liabilities (including contingent liabilities and other commitments) beyond their ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrowers and the amounts to be payable on or in respect of obligations of Borrowers). No petition in bankruptcy has been filed by or against any of the Borrowers or any Borrower Party in the last seven (7) years, and neither Borrowers nor any Borrower Party in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrowers nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrowers nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

Section 5.12 **Full and Accurate Disclosure.** No statement of fact made by or on behalf of Borrowers or any Borrower Party in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrowers which has not been disclosed to Lender in writing which materially adversely affects, nor as far as Borrowers can foresee, might materially adversely affect, the Project or the business, operations or condition (financial or otherwise) of Borrowers or any Borrower Party. All information supplied by Borrowers regarding any other Collateral is accurate and complete in all material respects. All evidence of Borrowers' and each Borrower Party's identity provided to Lender is genuine, and all related information is accurate.

Section 5.13 **Single Purpose Entity.** Each Borrower is and has at all times since its formation been a Single Purpose Entity. In addition, each Borrower agrees that in no event shall it modify, during the term of the Loan, such Borrower's operating agreement with respect to such status as a Single Purpose Entity.

Section 5.14 **Property Management Agreement.** As of the Closing Date, Borrowers have not entered into any property management agreement for the Project or any portion thereof, other than as approved by Lender.

Section 5.15 **No Conflicts.** The execution, delivery and performance of this Agreement and the other Loan Documents by Borrowers will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property or assets of Borrowers pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, operating agreement or other agreement or instrument to which Borrowers are parties or by which any of Borrowers' property or assets are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Borrowers or any of Borrowers' properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such regulatory authority or other governmental agency or body required for the execution, delivery and performance by Borrowers of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

Section 5.16 **Title.** Borrowers have good, marketable and insurable title to the Project, free and clear of all Liens whatsoever, except for the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and have rights and the power to transfer each item of Collateral upon which they purport to grant a Lien under the Security Instrument or any of the other Loan Documents. Upon recordation of the Security Instrument and any related financing statements, the Security Instrument creates a valid, perfected first-priority Lien on the Collateral, subject only to Permitted Encumbrances. There are no claims for payment for work, labor or materials affecting the Project which are or may become Liens prior to, or of equal priority with, the Liens created by the Loan

Documents. None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Security Instrument and this Agreement, materially and adversely affects the value of the Collateral, impairs the use or operations of the Collateral or impairs Borrowers' ability to pay its obligations in a timely manner.

Section 5.17 **Use of Loan.** The Loan proceeds are being used exclusively for the purposes identified in the "Sources and Uses" set forth on **Schedule 2.1(2)** and not for any other purpose.

Section 5.18 **Flood Zone.** Except as previously disclosed on the survey provided to Lender, no portion of the improvements comprising the Collateral is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law.

Section 5.19 **Insurance.** Borrowers have obtained and have delivered to Lender copies of all of the insurance policies for the Collateral reflecting the insurance coverages, amounts and other insurance requirements set forth in this Agreement. No claims have been made under any such policy, and no Person, including any of the Borrowers, has done, by act or omission, anything which would impair the coverage of any such policy.

Section 5.20 **Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable legal requirements currently in effect in connection with the transfer of the Project to Borrowers or any transfer of a controlling interest in Borrowers have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable legal requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Security Instrument, have been paid and, under current legal requirements, the Security Instrument is enforceable in accordance with its terms by Lender or any subsequent holder thereof, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 5.21 **Restricted Company.** No Borrower is a Restricted Company.

Section 5.22 **Leases.** With respect to leases of the Shoppes: (1) the rent roll delivered to Lender is true and correct, and the leases are valid and in full force and effect; (2) the leases are in writing, and there are no oral agreements with respect thereto; (3) the copies of the leases delivered to Lender are true and complete; (4) neither the landlord nor any tenant is in default under any of the leases; (5) Borrowers have no knowledge of any notice of termination or default with respect to any lease; (6) the leases, the rents or any interests therein are not subject to any assignment or pledge, except Loan Documents; (7) no tenant or other party has an option to purchase all or any portion of the Shoppes; and (8) no tenant has prepaid more than one month's rent in advance (except for bona fide security deposits identified in the rent roll).

ARTICLE 6

GENERAL COVENANTS

Borrowers covenant and agree with Lender as follows:

Section 6.1 **Due on Sale or Encumbrance; Transfers of Interests.** Without the prior written consent of Lender in Lender's sole discretion, no Transfer shall occur other than a Permitted

Transfer. Prior to any Permitted Transfer which would result in (i) a Person who has less than ten percent (10%) of the legal or beneficial ownership interests in any of the Borrowers having a ten percent (10%) or more legal or beneficial ownership interest in such Borrower, or (ii) a Person who does not have day-to-day control and management of Borrowers or Borrowers' general partner, managing member or non-member manager, and for whom Lender did not perform patriot act, money laundering and background checks prior to the Closing Date, having day-to-day control and management of Borrowers or Borrowers' general partner, managing member or non-member manager, Borrowers shall provide Lender with such information as shall be required by Lender to perform patriot act, money laundering and background checks regarding such proposed transferees and their source of funds. FOR AVOIDANCE OF DOUBT, THE PROHIBITION SET FORTH IN THIS SECTION 6.1 RESTRICTS NOT ONLY THE DIRECT TRANSFER OF THE COLLATERAL, BUT ALSO THE TRANSFER OF ANY DIRECT OR INDIRECT LEGAL, BENEFICIAL, ECONOMIC OR OTHER DIRECT OR INDIRECT OWNERSHIP INTEREST IN ANY BORROWER ON EVERY TIER OR LEVEL (OTHER THAN PERMITTED TRANSFERS).

Section 6.2 Taxes; Charges. Subject to the last sentence of this Section 6.2, Borrowers shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any Property Taxes, franchise taxes and charges, and other governmental charges that may become a Lien upon the Collateral or become payable during the term of the Loan, and will promptly furnish Lender with evidence of such payment. Borrowers shall not suffer or permit the joint assessment of the Collateral with any other real property constituting a separate tax lot or with any other real or personal property. Borrowers may in good faith contest, by proper legal actions or proceedings, the validity or amount of any Property Tax assessed upon the Collateral provided that at the time of commencement of any such action or proceeding, and during the pendency thereof, (1) no Event of Default shall be continuing; (2) Borrowers provide Lender with cash collateral or a release bond in such form and amount as are satisfactory to Lender with respect to the amount of Property Tax which has not been paid, including Lender's estimate of interest, penalties and attorneys' fees, or pays in full the appropriate tax due and payable and thereafter seeks reimbursement; (3) Borrowers maintain and prosecute such contest continuously with diligence; (4) the Collateral shall not be subject to forfeiture or loss or any Lien by reason of the institution or prosecution of such contest; and (5) Borrowers shall promptly pay or discharge the unpaid portion of such contested Property Tax and all additional charges, interest, penalties and expenses, if any, and shall deliver to Lender evidence acceptable to Lender of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to Borrowers.

Section 6.3 Control; Management. Without the prior written consent of Lender in Lender's sole discretion, there shall be no change in the day-to-day control and management of Borrowers, by either (i) Gary Dragul or of any entity through which Gary Dragul exercise(s) control over Borrowers as shown on Schedule 5.1, or (ii) the Key Employees or of any entity through which the Key Employees exercise control over Borrowers, as shown on Schedule 5.1, and there shall be no change in the Organizational Documents of Borrowers or any such entity relating to such control and management.

Section 6.4 Use; Maintenance; Inspection. At all times during the term of the Loan, Borrowers shall cause (1) the Project to have adequate rights of access to public ways and to be served by adequate water, sewer, sanitary sewer and storm drain facilities and (2) all public utilities necessary or convenient to the full use and enjoyment of the Project to be located in the public right of way abutting the Project, and to be connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Project. Borrowers shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Project. Borrowers shall not, without the prior written consent of Lender, undertake any material alteration of the Project (other than the Work, restoration work following casualty or condemnation and tenant improvement work, in each case as

contemplated by this Agreement) or permit any of the fixtures or personalty owned by Borrowers to be removed at any time from the Project, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrowers and free and clear of any Liens except those in favor of Lender. Borrowers shall permit Lender, Servicer and any of their respective agents, representatives and employees, upon reasonable prior notice to Borrowers, to inspect the Project and conduct such environmental and engineering studies and appraisals as Lender may require, provided such inspections and studies do not materially interfere with the use and operation of the Project or any rights of tenants and provided that any environmental inspections and studies shall be limited as set forth in Section 4.3 of the Hazardous Materials Indemnity Agreement.

Section 6.5 **Taxes on Security**. Borrowers shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender, prior to delinquency of such taxes, charges, filing, registration and recording fees, excises and levies payable. If there shall be enacted any law (1) deducting the Loan from the value of the Collateral for the purpose of taxation, (2) affecting any Lien on the Collateral, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrowers shall promptly pay to Lender, on demand, all taxes, costs and charges for which Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Lender may declare all amounts owing under the Loan Documents to be due and payable within ninety (90) days following notice thereof.

Section 6.6 **Compliance with Laws; Major Project Documents**.

- (1) **Legal Requirements**. Borrowers shall observe and comply with (or cause the observation and compliance with) all legal requirements applicable to its existence and to the ownership, use and operation of the Project.
- (2) **Major Project Documents**: Borrowers shall comply with and perform all of its material obligations under each Major Project Document when and as the same becomes due, and Borrowers shall not enter into, amend, modify or terminate any Major Project Document (or any schedule, exhibit, or addendum thereto) thereto without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed. Without limiting the foregoing hereof, Lender's approval of a Major Project Document may be conditioned upon Borrowers' demonstration that it has sufficient funds to cover the cost of performing Borrowers' obligations under such proposed Major Project Document. As of the Closing Date, **Schedule 6.6** sets forth all Major Project Documents to which any of the Borrowers is a party.
- (3) **Certificates, Consent and Acknowledgement**. At the request of Lender, Borrowers shall cause each contractor and each design professional with whom Borrowers contracts under a Major Project Document to deliver a Certificate, Consent and Acknowledgement to Lender in substantially the form attached hereto as **Schedule 6.6(3)** and shall cause each service provider or fee recipient to enter into a subordination agreement in a form reasonably acceptable to Lender.

Section 6.7 **Legal Existence; Name, Status, Etc.**

- (1) **Single Purpose Entity**. Each Borrower shall preserve and keep in full force and effect its existence as, and at all times operate as, a Single Purpose Entity.

(2) **Continued Existence.** Borrowers and each Borrower Party shall preserve and keep in full force and effect its entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits required to be obtained or maintained by Borrowers applicable to the ownership, use and operation of the Collateral. No Borrower shall become a Restricted Company. Neither Borrowers nor any Borrower Party shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into any Person. Without limiting the foregoing, neither Borrowers nor any Borrower Party shall reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the Closing Date. Each Borrower and each Borrower Party shall conduct business only in its own name and shall not change its name, identity, organizational structure, state of formation or the location of its chief executive office or principal place of business unless Borrowers (1) shall have obtained the prior written consent of Lender to such change, and (2) shall have taken all actions necessary or requested by Lender to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents. If any Borrower does not have an organizational identification number and later obtains one, such Borrower shall promptly notify Lender of its organizational identification number. Without the prior written consent of Lender, Borrowers shall not modify in any material respect the limited liability company agreements of Borrowers.

Section 6.8 **Affiliate Transactions.** Without the prior written consent of Lender, Borrowers shall not engage in any transaction with any Affiliate of Borrowers or of any Borrower Party, nor shall Borrowers pay any fees to any Affiliate of Borrowers or of any Borrower Party; provided, however, Lender's consent to such transaction or payment of fees shall not be unreasonably withheld, conditioned or delayed so long as (i) such transaction relates to the Collateral and is on an arm's-length basis with terms that are intrinsically fair and no less favorable than would be available for any unaffiliated third parties of Borrowers or any Borrower Party, (ii) Borrowers demonstrate that they have sufficient funds to cover the cost of performing Borrowers' obligations under such transaction or to pay such fees and (iii) such Affiliate enters into a subordination agreement with Lender reasonably acceptable to Lender. Notwithstanding anything to the contrary provided in this Agreement, those agreements affecting the Collateral that are with an Affiliate of Borrowers or of any Borrower Party set forth on **Schedule 6.8** hereof are hereby approved by Lender, subject to such Affiliate entering into a subordination agreement with Lender reasonably acceptable to Lender.

Section 6.9 **Limitation on Financing; Other Debt.** Borrowers shall not, without the prior written consent of Lender, (i) obtain any financing other than the Loan, (ii) permit or suffer to exist any mezzanine financing involving the Collateral, or any portion thereof, or any direct or indirect interest in Borrowers, or (iii) incur any Debt other than the (1) Loan, (2) the obligations of Borrowers under any Major Project Document approved by Lender, (3) any Affiliate transaction approved by Lender, and (4) other customary trade payables which are payable, and paid, within ninety (90) days of when incurred and do not exceed in the aggregate under this clause (4) \$50,000.00.

Section 6.10 **Mechanics' Liens.** Subject to the immediately following sentence, Borrowers shall pay (or cause to be paid) when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a mechanic's or materialman's or similar Lien and/or notice of pendency of action (each, a "**Mechanic's Lien**") being filed or recorded against the Collateral, and shall defend, indemnify and hold Lender harmless from all Mechanics' Liens, including all proceedings to foreclose on any Mechanic's Lien. If any Mechanic's Lien is served, filed, recorded or otherwise asserted against any portion of the Collateral, Borrowers shall, within twenty (20) Business Days, either (i) pay such Mechanic's Lien in full and cause the same to be released of record or (ii) obtain a statutory bond

which removes such Mechanic's Lien from attaching to the Collateral and each portion thereof. For avoidance of doubt, Borrowers shall be required to take the actions required by this Section 6.10 with respect to any Mechanic's Lien which attaches to or is filed against the Collateral regardless of source.

Section 6.11 ERISA. Throughout the term of the Loan: no Borrower will be (i) an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and no assets of Borrowers will constitute "plan assets" of one or more such employee benefit plans for purposes of Title I of ERISA; (ii) no Borrower will be a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Borrowers will not be subject to state statutes applicable to Borrowers regulating investments of, and fiduciary obligations with respect to, such governmental plans; and (iii) Borrowers shall have no employees.

Section 6.12 Further Assurances. Borrowers shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, (2) provide, and cause each Borrower Party to provide, Lender such additional information and documentation on Borrowers' and each Borrower Party's legal or beneficial ownership, policies, procedures and sources of funds as Lender deems necessary or prudent to enable Lender to comply with Anti-Money Laundering Laws as now in existence or hereafter amended, and (3) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Lender may request to further evidence and more fully describe the collateral for the Loan, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith. Borrowers shall preserve and protect the first lien and security interest status of the Security Instrument and the other Loan Documents. If any Lien other than the Permitted Encumbrances is asserted against the Collateral, Borrowers shall promptly, and at its expense, (a) give Lender a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in the same manner that Mechanic's Liens may be contested under Section 6.10. From time to time upon the written request of Lender, Borrowers shall deliver to Lender a schedule of the name, legal domicile address and jurisdiction of organization, if applicable, for each Borrower Party and each holder of a legal interest in Borrowers.

Section 6.13 Estoppel Certificates. Borrowers, within ten (10) days after request, shall furnish to Lender a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Lender may request.

Section 6.14 Notice of Certain Events. Borrowers shall promptly notify Lender of (1) any notice of default received by Borrowers or any Borrower Party under other obligations relating to the Project or otherwise material to Borrowers' business, including the Mezzanine Loan; and (2) any threatened in writing or pending legal, judicial or regulatory proceedings, including any dispute between Borrowers and any governmental authority, affecting Borrowers or the Project.

Section 6.15 Indemnification: Borrowers shall indemnify, defend and hold Lender and Servicer harmless from and against any and all out-of-pocket losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs and disbursements (including the reasonable fees and actual expenses of Lender's or Lender's counsel) actually incurred and of any kind or nature whatsoever, including those arising from the joint, concurrent, or comparative negligence of Lender, in connection with (1) Lender's or Servicer's exercise of its rights and remedies under the Security Instrument and other Loan Documents, (2) any lessor obligations or liabilities under any of the leases of the Collateral arising prior to Lender taking title to the Collateral, including any claim against

Lender by reason of any alleged obligation, undertaking, action or inaction on its part to perform or discharge any terms, covenants or conditions of such leases or with respect to the rents and other sums payable thereunder, (3) any inspection, review or testing of or with respect to the Project, (4) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Lender is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loan) in any way related to (a) the execution, delivery or performance of any Loan Document, to (b) the Project, (c) Borrowers or its owners, (d) the entire course of dealing prior to the Closing Date between Lender and Borrowers or any Borrower Party with respect to the Loan or the transactions contemplated by the Loan Documents, or (e) any dealings between Borrowers or its owners and any third parties (including any and all reasonable costs and expenses actually incurred by Lender or Servicer in responding to any third-party subpoenas or other third-party discovery requests and defending any depositions of their respective directors, officers, employees, agents or attorneys), (5) any proceeding instituted by any Person claiming a Lien, and (6) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the Loan, the Project, or any of the transactions contemplated in the Loan Documents, except to the extent any of the foregoing is caused by (A) Lender's or Lender's agent's gross negligence or willful misconduct or illegal acts, or (B) any occurrence or non-occurrence that initially occurs after final completion of foreclosure or other taking of title to or possession of the Collateral by Lender or other third party. Any amount covered by this indemnity shall be payable within ten (10) days after written demand, and shall bear interest from ten (10) days after the date of demand until the same is paid by Borrowers to Lender at the Default Rate.

Section 6.16 **Restriction of Distributions.** Borrowers shall not make any dividend, distribution or disbursement to any of its direct or indirect owners or Affiliates, other than, so long as no Event of Default exists, amounts due under any Affiliate Agreement with Borrowers which has been approved by Lender in writing.

Section 6.17 **Other Agreements; Defaults.** Neither Borrowers nor any Borrower Party shall become party to any agreement or instrument, or subject to any court order, injunction, permit or restriction, which adversely affects the Collateral or the business, operations, or condition (financial or otherwise) of Borrowers or any Borrower Party. Neither Borrowers nor any Borrower Party shall violate any agreement in a manner which would have an adverse effect on the Collateral, Borrowers or any Borrower Party, or on Borrowers' or any Borrower Party's business, properties, or assets, operations or condition, financial or otherwise.

Section 6.18 **Leases.** Without the prior written consent of Lender in its sole discretion, Borrowers shall not enter into any lease, license or other agreement to occupy the Project or any portion thereof other than on Borrowers' standard form of lease which has been approved by Lender, or amend, modify or cancel any such agreement.

Section 6.19 **Performance of the Work.**

(1) **Corrective Plan.** Within 60 days after Closing, Borrowers shall commence development of a corrective plan for the Work necessary to remediate the conditions identified in the Phase I Environmental Site Assessment dated February 14, 2018, prepared by Terracon Consultants, Inc., and shall submit a completed corrective plan to Lender for review no later than December 31, 2018. Upon receipt of Lender's approval, Borrowers shall promptly submit such plan to the Colorado Department of Public Health and Environment ("**CDPHE**").

(2) **Performance of Corrective Plan.** Upon approval of the corrective plan by CDPHE, Borrowers shall promptly commence performance of the Work, shall diligently perform the Work, and shall fully complete the Work at the Shoppes in a good and workmanlike manner. The Work,

or any item comprising the Work, shall be "complete", and "completion" shall have occurred when Lender has received a certification from an engineering or environmental consultant of Lender's choice as to the satisfactory completion of the Work, all sums due in connection with the Work have been paid in full, Borrowers have obtained an unconditional waiver and release from any contractor under a Major Project Document (and a true copy of such waiver and release has been delivered to Lender), and CDPHE shall have issued a letter indicating that no further remedial action is required or that Borrowers have completed the Work of the approved plan in a manner satisfactory to CDPHE.

(3) **Tenant Improvement Work.** Borrowers shall promptly commence performance of the Work related to tenant improvements, shall diligently perform such Work, and shall fully complete such Work in a good and workmanlike manner on or before the required completion date under the applicable Lease. The Work, or any item comprising the Work, shall be "complete", and "completion" shall have occurred when Lender has received a certification from an engineering or environmental consultant of Lender's choice as to the satisfactory completion of the Work, all sums due in connection with the Work have been paid in full, and Borrowers have obtained an unconditional waiver and release from any contractor under a Major Project Document (and a true copy of such waiver and release has been delivered to Lender).

(4) **Capital Expenditures.** Borrowers shall promptly commence performance of the Work related to the required capital improvements, shall diligently perform such Work, and shall fully complete such Work in a good and workmanlike manner on or before the date that is one year after the date of this Agreement. The Work, or any item comprising the Work, shall be "complete", and "completion" shall have occurred when Lender has received a certification from an engineering or environmental consultant of Lender's choice as to the satisfactory completion of the Work, all sums due in connection with the Work have been paid in full, and Borrowers have obtained an unconditional waiver and release from any contractor under a Major Project Document (and a true copy of such waiver and release has been delivered to Lender).

ARTICLE 7

FINANCIAL REPORTING

Section 7.1 **Financial Statements.**

(1) **Monthly Reports.** Within fifteen days after the end of each month, Borrowers shall furnish to Lender an updated rent roll the names of all tenants, the term and expiration date of their respective Leases, the space occupied, the rents payable and the name of any Lease guarantor, along with a schedule of all of the security deposited under such Leases; a report of all aged receivables; if applicable, tenant sales reports; a report of all leasing activity at the Project during the prior month; and copies of the bank statements for the Borrowers' bank account(s) for the prior month (to the extent not required to be delivered to Lender under the Clearing Bank Agreement).

(2) **Quarterly Reports.** Within thirty (30) days after the end of each calendar quarter (including calendar quarter ending December 31), Borrowers shall furnish to Lender, as applicable, current (as of the calendar quarter just ended) balance sheets, detailed operating statements stating operating revenues, operating expenses and net cash flows for such calendar quarter, updated rent rolls, and, if requested by Lender, written statements setting forth any variance from the annual budget, a general ledger, copies of

bank statements and bank reconciliations and other documentation supporting the information disclosed in the most recent financial statements.

(3) **Annual Reports.** Within ninety (90) days after the end of each calendar year, Borrowers shall furnish to Lender current (as of the end of such year) balance sheets, detailed operating statements stating operating revenues, operating expenses and net cash flows for each of Borrowers and the Collateral.

(4) **Certification; Supporting Documentation.** Each such financial statement shall be in scope and detail satisfactory to Lender and certified by the chief financial representative of Borrowers.

(5) **Tax Returns.** Borrowers shall furnish to Lender copies of Borrowers' filed federal, state and local income tax returns for each taxable year (with all forms and supporting schedules attached) within thirty (30) days after filing. By executing this Agreement, Borrowers authorize Lender to obtain for information and verification purposes from the U.S. Internal Revenue Service (IRS) a transcript of any Form 1040, Form 1120, Form 1120S, Form 1165, Form W-2, Form 1099 or any other income tax form actually filed with the IRS with respect to such persons (or a report from the IRS that the form for a particular date was not filed), and agree to provide to Lender fully executed IRS Forms 4506-T for such purposes at any time upon request of Lender.

(6) **Failure to Provide.** In the event that Borrowers or any Guarantor fails to provide to Lender the financial statements required under this **Section 7.1** or under the Guaranty when due and such failure continues for a period of fifteen (15) days after notice from Lender, the Contract Rate shall be increased by two (2) percent per annum until such failure is cured. Nothing herein, however, shall waive Lender's right to declare an Event of Default if such failure continues for a period of fifteen (15) days after notice from Lender and charge Borrowers interest at the Default Rate.

Section 7.2 Accounting Principles. All financial statements shall be prepared in accordance with sound accounting principles (or such other accounting basis reasonably acceptable to Lender) consistently applied from year to year. If the financial statements are prepared on an accrual basis, such statements shall be accompanied by a reconciliation to cash basis accounting principles.

Section 7.3 Other Information. Borrowers shall deliver to Lender such additional information regarding Borrowers, its subsidiaries, its business, any Borrower Party, and the Project within thirty (30) days after Lender's reasonable request therefor.

Section 7.4 Audits. Lender and its agents and third-party consultants shall be entitled to perform such financial investigations and audits of Borrowers' books and records as such party shall deem necessary. Borrowers shall permit such parties to examine such records, books and papers of Borrowers which reflect upon its financial condition, the income and expenses relative to the Project and the representations set forth in **Article 8**. Borrowers authorize Lender to communicate directly with Borrowers' accountants, and authorize such accountants to disclose to Lender any and all financial statements and other supporting financial documents and schedules, including copies of any management letter, with respect to the business, financial condition and other affairs of Borrowers. Borrowers shall not be required to pay for more than one such audit or investigation during the initial term on the Loan, unless there has occurred and is continuing an Event of default, or an event which, with the passage of time, the giving of notice or both would be an Event of Default.

ARTICLE 8

ANTI-MONEY LAUNDERING AND INTERNATIONAL TRADE CONTROLS

Section 8.1 **Compliance with International Trade Control Laws and OFAC Regulations: Borrowers' Funds.** Borrowers represent, warrant and covenant to Lender that:

(1) **Borrowers Not a Prohibited Person.** Neither Borrowers, nor any Borrower Party, nor any Person who owns a direct interest in Borrowers, is now nor shall be at any time until after the Loan is fully repaid a Person with whom a U.S. Person, including a Financial Institution, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under U.S. law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(2) **Verification of Funds.** It has taken, and shall continue to take until after the Loan is fully repaid, such measures as are required by law to verify that the funds invested in Borrowers and funds used to make payments on the Loan (including operating revenues and funds used to repay the Loan, whether from a refinancing, asset sale or otherwise) are derived (a) from transactions that do not violate U.S. law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (b) from permissible sources under U.S. law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(3) **No Investigations or Penalties.** To the best of Borrowers' Knowledge, neither Borrowers, nor any Borrower Party, nor any holder of a direct interest in Borrowers, nor any Person providing funds to Borrowers (a) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (b) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; and (c) has had any of its/his/her funds seized or forfeited in any action under any Anti-Money Laundering Laws.

(4) **Payments.** Borrowers shall make payments on the Loan solely from funds invested in Borrowers, operating revenues, the sale or refinance of the Student Housing Site, or insurance proceeds unless otherwise agreed to by Lender.

ARTICLE 9

EVENTS OF DEFAULT AND CURE PERIODS

Each of the following shall constitute an "**Event of Default**":

Section 9.1 **Events of Default Not Subject to Cure Periods.**

(1) **Payment of Principal and/or Interest.** Borrowers' failure to pay any regularly scheduled installment of principal or interest on the Loan when due.

- (2) **Payment at Maturity.** Borrowers' failure to pay the Loan and all amounts owing under the Loan Documents on the Maturity Date.
- (3) **Mezzanine Loan Default.** An "Event of Default", or an event that, with the giving of notice, the passage of time or both would be an Event of Default, shall occur under the Mezzanine Loan.
- (4) **Mezzanine Loan.** Any amendment, modification, extension, renewal or replacement of the Mezzanine Loan, including, without limitation, any increase to the stated amount or the interest rate, shall be entered into without the prior written consent of Lender.
- (5) **Insurance.** Borrowers' failure to maintain insurance as required under **Section 4.1** of this Agreement.
- (6) **Transfer.** Any Transfer occurs in violation of **Section 6.1** of this Agreement or any breach under **Section 6.3** of this Agreement.
- (7) **Article 8 Compliance.** Borrowers' failure to perform, observe or comply with any of the agreements, covenants or provisions contained in **Article 8**.
- (8) **Voluntary Petitions, Etc.** Commencement by any of the Borrowers or any Borrower Party (each, a "**Bankruptcy Party**") of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities, or seeking to consolidate its assets with the assets of any other Person, under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or its assets, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.
- (9) **Major Project Documents.** The default by Borrowers under any Major Project Document and Borrowers' failure to cure such default (or obtain a written waiver of such default) prior to the end of any applicable cure period set forth in such Major Project Document.
- (10) **Single Purpose Entity Covenants.** Borrowers' failure to perform, observe or comply with any of the agreements, covenants or provisions contained in **Section 6.7**.

Section 9.2 **Events of Default Subject to Specific Cure Periods.**

- (1) **Payments Prior to Maturity.** Borrowers' failure to pay any amount (other than as described in **Section 9.1(1) or (2)**) owing under the Loan Documents, within five (5) days of (and including) the date when due.

(2) **Involuntary Bankruptcy or Other Proceeding.** Commencement of an involuntary case or other proceeding against any Bankruptcy Party, or against the assets of any Bankruptcy Party, which seeks liquidation, reorganization or other relief with respect to such Bankruptcy Party or its Debts or other liabilities, or seeks to consolidate the assets of such Bankruptcy Party with the assets of any other Person, under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property; and such involuntary case or other proceeding shall remain undismissed or un-stayed for a period of sixty (60) days; or an order for relief against a Bankruptcy Party or its assets shall be entered in any such case under the Federal Bankruptcy Code.

(3) **Representations and Warranties.** If any representation or warranty made in any Loan Document proves to be untrue in any material respect as of the date the representation or warranty was made.

Section 9.3 **Other Events of Defaults.**

(1) **Specified Events of Default.** The occurrence of any specified "Event of Default" under this Agreement (other than this **Article 9**) or under any other Loan Document.

(2) **Specified Defaults Under Other Loan Documents.** If any term, covenant or provision set forth in the Loan Documents under which Borrowers or Guarantor is obligated expressly contains a specific grace or notice period, then Borrowers' or Guarantor's failure to perform, observe or comply with such term, covenant or condition after the expiration of such grace or notice period, as applicable.

(3) **Covenants Without Specific Grace Periods.** Borrowers or Guarantor shall continue to be in default under any of the other terms, covenants or provisions of this Agreement not specified in **Section 9.1**, **Section 9.2** or **Section 9.3(1) or (2)**, or under any of the terms, covenants or provisions contained in the other Loan Documents, for ten (10) days after receipt of notice of such default from Lender, in the case of any default which can be cured by the payment of a sum of money, or for thirty (30) days after receipt of notice of such default from Lender in the case of any other default; provided, however, that if (a) such non-monetary default is susceptible of cure but cannot reasonably be cured within such 30-day period, (b) the defaulting party shall have commenced to cure such default within such 30-day period and thereafter is diligently and expeditiously proceeding to cure such default, and (c) the defaulting party has provided Lender with security satisfactory to Lender against any interruption of payment or impairment of collateral as a result of such continuing default, then such 30-day period shall be extended for such additional time as is reasonably necessary for the defaulting party, exercising due diligence, to cure such default, provided further that in no event shall such additional period exceed thirty (30) days.

ARTICLE 10

LENDER'S REMEDIES

Section 10.1 **Remedies - Insolvency Events.** Upon the occurrence of any Event of Default described in **Section 9.1(6)** or **Section 9.3(2)**, the obligations of Lender to advance amounts hereunder

shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrowers; however, if the Bankruptcy Party under Section 9.1(6) or Section 9.2(2) is other than Borrowers, then all amounts due under the Loan Documents shall become immediately due and payable at Lender's election, in Lender's sole discretion. Furthermore, BORROWERS AGREE THAT IN THE EVENT OF A VOLUNTARY OR INVOLUNTARY LIQUIDATION OR REORGANIZATION CASE BY OR AGAINST ANY BORROWER UNDER BANKRUPTCY, RECEIVERSHIP OR OTHER INSOLVENCY LAW, LENDER SHALL BE FREE TO PURSUE FORECLOSURE AND OTHER REMEDIES WITH RESPECT TO THE COLLATERAL ENCUMBERED BY THE SECURITY INSTRUMENT, WITHOUT OPPOSITION OR INTERFERENCE BY BORROWERS, THAT LENDER SHALL BE ENTITLED TO SEEK AND OBTAIN RELIEF FROM THE AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE WITHOUT OBJECTION BY BORROWERS, AND THAT ANY RIGHTS TO STAY, ENJOIN, OR OTHERWISE DELAY OR IMPEDE LENDER'S REMEDIES AGAINST THE COLLATERAL, INCLUDING FORECLOSURE, WHICH MIGHT BE AVAILABLE TO BORROWERS, INCLUDING ANY RIGHTS UNDER SECTIONS 105 AND 262 OF THE BANKRUPTCY CODE, ARE HEREBY RELEASED AND WAIVED BY BORROWERS.

Section 10.2 Remedies - Other Events. Except as set forth in Section 10.1 above, while any Event of Default exists, Lender may (1) by written notice to Borrowers, declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrowers, (2) terminate the obligation, if any, of Lender to advance amounts hereunder, and (3) in any order as Lender may desire, in its sole discretion, exercise all rights and remedies therefor under the Loan Documents and at law or in equity including, but not limited to, the right to foreclose on any mortgage(s) of real property securing the Loan.

Section 10.3 Lender's Right to Perform the Obligations. If Borrowers shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Borrowers and without waiving or releasing any other right, remedy or recourse Lender may have because of such Event of Default, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrowers, and shall have the right to enter upon the Collateral (or the Project to the extent of Borrowers' rights) for such purpose and to take all such action thereon and with respect to the Collateral (or the Project to the extent of Borrowers' rights) as it may deem necessary or appropriate. If Lender shall elect to pay any sum due from Borrowers with reference to the Collateral (or the Project to the extent of Borrowers' rights), Lender may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, Lien, claim or charge before making an advance for the purpose of preventing or removing the same. Borrowers shall indemnify, defend and hold Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees and disbursements, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section 10.3, including those arising from the joint, concurrent, or comparative negligence of Lender, except to the extent caused by (i) Lender's or Lender's agent's gross negligence or willful misconduct or any illegal act of Lender, or (ii) any such occurrence or non-occurrence that initially occurs after final completion of foreclosure or other taking of title to or possession of the Collateral by Lender or other third party. All

sums paid by Lender pursuant to this Section 10.3 and all other sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents and shall be paid by Borrowers to Lender upon demand.

ARTICLE 11

LIMITATION ON LIABILITY

Section 11.1 Limitation on Liability of Lender's and Lender's Officers, Employees, Etc. Any obligation or liability whatsoever of Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Lender's or Lender's assets only, as applicable. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Lender's or Lender's respective shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

ARTICLE 12

MISCELLANEOUS

Section 12.1 Notices. All notices required or permitted to be given hereunder (each, a "Notice") shall be in writing addressed to the party to be so notified at its address set forth below, or at such other address as such party may specify by giving at least ten (10) days' prior written notice of such change of address, and (1) sent by electronic mail, in each case with a copy of the Notice sent concurrently by one of the means described in clauses (2), (3) or (4) below (provided that for electronic mail delivery, the beginning of the subject line in such electronic mail shall state, in capitalized letters and minimum 12 point font: "NOTICE PURSUANT TO LOAN AGREEMENT SECTION 12.1"), (2) sent by registered or certified mail, postage prepaid, return receipt requested, (3) delivered by hand, or (4) delivered by reputable overnight commercial courier. Notices shall be deemed to have been received: (a) if sent by electronic mail, upon the earlier of (i) the date that the sender receives a telephonic response from an employee or representative of the party receiving notice on behalf of such party, acknowledging receipt (which response shall not be a computer generated response) and (ii) the date of delivery on a Business Day (or the first attempted delivery if refused) of the copy of such Notice delivered in accordance with clause (2), (3) or (4) above, and (b) if delivered by hand, sent by registered or certified mail, or sent by overnight commercial courier, on the date of delivery on a Business Day (or the first attempted delivery of refused).

Addresses for Notices:

If to Borrowers:

c/o GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111
Attention: Gary Dragul
Telephone: (303) 221-5500
Email: gary@gdare.com

With a Copy to:

Moye White LLP
1400 16th Street, Suite 600
Denver, CO 80202
Attention: Trish Rogers
Telephone: (303) 292-7939
Email: trish.rogers@moyewhite.com

If to Lender:

AFF II Denver, LLC
2100 Powers Ferry Road, Suite 350
Atlanta, Georgia 30339
Attention: Dror Bezalel
Telephone: (770) 319-7408
Email: dbezalel@theardentcompanies.com

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attention: Michael Baum
Telephone: (312) 456-8400
Email: baumm@gtlaw.com

Section 12.2 **Amendments, Waivers, References.** This Agreement and any other Loan Document may be amended, modified or supplemented only by a written instrument signed by Borrowers and Lender. No waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought provided that copies of original signature pages to the amendment, modification or supplement, including copies delivered by PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement. This Agreement and the other Loan Documents shall not be executed, entered into, altered, amended, or modified by electronic means. Without limiting the generality of the foregoing, Borrowers and Lender hereby agree that no exchange of electronic correspondence between the parties shall operate to amend, modify or waive any term or provision of any Loan Document. Any reference to a Loan Document, whether in this Agreement or in any other Loan Document, shall be deemed to be a reference to such Loan Document as it may hereafter from time to time be amended, modified, consolidated, replaced, severed, supplemented, extended and restated.

Section 12.3 **Limitation on Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrowers, Lender with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Lender or charged by Lender for the use,

forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law, then, notwithstanding anything to the contrary in the Loan Documents: (1) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Note by the holder thereof (or, if the Note has been paid in full, refunded to Borrowers); and (2) if maturity is accelerated by reason of an election by Lender, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Note (or, if the Note has been paid in full, refunded to Borrowers). The terms and provisions of this **Section 12.3** shall control and supersede every other provision of the Loan Documents.

Section 12.4 **Invalid Provisions**. If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 12.5 **Reimbursement of Expenses**. Borrowers shall pay or reimburse Lender or Servicer, as applicable, on demand for (1) all actual out-of-pocket costs and expenses actually incurred by Lender in connection with the negotiation, documentation, closing, disbursement and administration of the Loan, including reasonable fees and expenses of Lender's or Servicer's attorneys and Lender's or Servicer's environmental, engineering, accounting, appraisal and other consultants; fees, charges and taxes for the recording or filing of Loan Documents; financial investigation, audit and inspection fees and costs; settlement of condemnation and casualty awards; title search costs, premiums for title insurance and endorsements thereto; fees and costs for lien and litigation searches and background checks; and costs and expenses of responding to third-party subpoenas; and (2) all amounts actually expended, advanced or incurred by Lender or Servicer to collect under the Notes, or to enforce the rights of Lender under this Agreement or any other Loan Document, to protect, defend or assert the rights, claims and actions of Lender under the Loan Documents or with respect to the Collateral (by litigation or other proceedings) or to defend any claims asserted against Lender by Borrowers or any Borrower Party with respect to the Loan, the Loan Documents, the Collateral or the transactions contemplated hereby, which amounts will include all transfer taxes payable upon foreclosure of any Collateral, court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be incurred by Lender in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to Lender. All amounts payable by Borrowers to Lender under this **Section 12.5** shall constitute part of the Loan and shall be secured by the Loan Documents.

Section 12.6 **Approvals; Third Parties; Conditions**. All rights retained or exercised by Lender to review or approve leases, contracts, plans, studies and other matters, including Borrowers' and any other Person's compliance with the provisions of **Article 8** and compliance with laws applicable to Borrowers, the Project or any other Person, are solely to facilitate Lender's credit underwriting and

administration of the Loan, and shall not be deemed or construed as a determination that Lender has passed on the adequacy thereof for any other purpose and may not be relied upon by Borrowers or any other Person. This Agreement is for the sole and exclusive use of Lender and Borrowers and may not be enforced, nor relied upon, by any Person other than Lender and Borrowers. All conditions of the obligations of Lender hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Lender, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time in their sole discretion.

Section 12.7 Lender Not in Control: No Partnership.

(1) **Lender's Status.** None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Lender the right or power to exercise control over the affairs or management of Borrowers. The power of Lender is limited to the right to exercise the rights and remedies under the Loan Documents.

(2) **Relationship of Parties.** Borrowers and Lender agree that the relationship between Borrowers and Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall be deemed or construed, to create, and Lender and Borrowers disclaim any intention to create, a partnership, joint venture, agency or common interest in profits or income among Lender and Borrowers, or to create an equity in the Collateral in Lender, or any sharing of liabilities, losses, costs or expenses. Lender neither undertakes nor assumes any responsibility or duty to Borrowers, to any direct or indirect constituent partners, members, stockholders or investors in Borrowers (each, a "**Borrowers Investor**") or to any other Person with respect to the Collateral or the Loan, except as expressly provided in the Loan Documents. Notwithstanding any other provision of the Loan Documents: (a) Lender shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind in Borrowers or any Borrowers Investor or Borrower Party, and neither Lender nor Lender intends to ever assume such status; (b) Lender shall in no event be liable for any debts, expenses or losses incurred or sustained by Borrowers or any Borrowers Investor or Borrower Party; and (c) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrowers or any Borrowers Investor or Borrower Party.

Section 12.8 Time of the Essence. Time is of the essence with respect to this Agreement and the other Loan Documents.

Section 12.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender and Borrowers and their respective successors and permitted assigns, provided that neither Borrowers nor any Borrower Party shall, without the prior written consent of Lender, assign any rights, duties or obligations hereunder.

Section 12.10 Renewal, Extension or Rearrangement. Subject to **Section 12.9**, all provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loan.

Section 12.11 **Waivers.** No course of dealing on the part of Lender, its respective officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any right, power or privilege of Lender under any of the Loan Documents, shall operate as a waiver thereof. Any waiver of a Potential Default or an Event of Default shall not be construed to be a waiver of any subsequent occurrence of the same or any other Potential Default or Event of Default.

Section 12.12 **Cumulative Rights.** The rights, powers and remedies of Lender under the Loan Documents shall be cumulative and not exclusive of any right, power or remedy available at law or in equity or otherwise. The exercise or partial exercise of any such right, power or remedy shall not preclude the exercise of any other right, power or remedy, each of which may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion.

Section 12.13 **Promotional Material.** Borrowers authorizes Lender to issue press releases, advertisements and other promotional materials in connection with Lender's or Lender's own promotional and marketing activities, and describing the Loan in general terms or in detail and Lender's or Lender's participation in the Loan, provided that all references to Borrowers, any Borrower Party and/or the Collateral contained in any such press releases, advertisements or promotional materials shall be approved in writing by Borrowers in advance of issuance. All references to Lender contained in any press release, advertisement or promotional material issued by Borrowers shall be approved in writing by Lender in advance of issuance.

Section 12.14 **Survival.** All of the indemnities of Borrowers hereunder, and under the indemnification provisions of the other Loan Documents, shall survive the repayment in full of the Loan and the release of the Liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Collateral to any party, whether or not an Affiliate of Borrowers.

Section 12.15 **WAIVER OF JURY TRIAL.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOAN OR THE COLLATERAL (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS AGREEMENT.

Section 12.16 **Punitive or Consequential Damages Waiver.** Lender shall not be responsible or liable to Borrowers, any Borrower Party or any Affiliate of any of them for any punitive, exemplary or consequential damages which may be alleged by Borrowers, any Borrower Party or any Affiliate of any of them as a result of the Loan or the transactions contemplated hereby, including any breach or other default by any party hereto. Borrowers represent and warrant to Lender that as of the Closing Date neither Borrowers nor any Borrower Party has any claims against Lender in connection with the Loan.

Section 12.17 **Governing Law: Jurisdiction and Venue.**

(1) **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF COLORADO (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW OTHER THAN THE CHOICE OF LAW RULES OF THE UNIFORM COMMERCIAL CODE OF SUCH STATE).

(2) **Jurisdiction and Venue.** Borrowers hereby agree that all actions or proceedings initiated by Borrowers and arising directly or indirectly out of the Loan shall be litigated in the federal or state courts located in the City and County of Denver, Colorado. Borrowers hereby expressly submit and consent in advance to such jurisdiction in any action or proceeding commenced by Lender in any of such courts, and hereby waive personal service of the summons and complaint, or other process or papers issued therein, and agree that service of such summons and complaint or other process or papers may be made by registered or certified mail addressed to Borrowers at the address to which notices are to be sent pursuant to this Agreement. Borrowers waive any claim that such court of the State is an inconvenient forum or an improper forum based on lack of venue. Should Borrowers, after being so served, fail to appear or answer to any summons, complaint, process or papers so served within the number of days prescribed by law after the mailing thereof, Borrowers shall be deemed in default and an order and/or judgment may be entered by Lender against Borrowers as demanded or prayed for in such summons, complaint, process or papers. The exclusive choice of forum for Borrowers set forth in this section shall not be deemed to preclude the enforcement by Lender of any judgment obtained in any other forum or the taking by Lender of any action to enforce the same in any other jurisdiction, and Borrowers hereby waive the right, if any, to collaterally attack any such judgment or action.

Section 12.18 **Entire Agreement.** This Agreement and the other Loan Documents embody the entire agreement and understanding between Lender, on the one hand, and Borrowers, on the other hand, and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof, including any commitment letter (if any) issued by Lender with respect to the Loan and any confidentiality agreements previously executed by the parties with respect to the Loan. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between this Agreement and any of the other Loan Documents (other than the Hazardous Materials Indemnity Agreement), the terms of this Agreement shall control.

Section 12.19 **Counterparts.** This Agreement may be executed in multiple counterparts, any or all of which may contain the signatures of fewer than all of the parties, but all of which taken together shall constitute a single instrument. Copies of originals, including copies delivered by PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement.

Section 12.20 **Brokers.** Borrowers hereby represent to Lender that Borrowers have not dealt with any broker, underwriters, placement agent, or finder in connection with the transactions contemplated by this Agreement and the other Loan Documents. Borrowers hereby agree to indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrowers in connection with the transactions contemplated herein.

Section 12.21 **Claims Against Lender.** Lender shall not be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the default claimed by

Borrowers shall have been given to Lender within six (6) months after Borrowers first had knowledge of the occurrence of the event which Borrowers alleges gave rise to such claimed default and Lender does not remedy or cure the default, if any default actually exists, promptly thereafter. Borrowers waives any claim, set-off or defense against Lender arising by reason of any alleged default by Lender as to which Borrowers does not give such notice timely as required by this Section 12.21 and, in any event, within six (6) months after the Maturity Date or earlier repayment of the Loan. Borrowers acknowledges that such waiver is or may be essential to Lender's ability to enforce its remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Lender and Borrowers with regard to the Loan. No Borrower Party or tenant of the Project is intended to have any rights as a third-party beneficiary of the provisions of this Section 12.21.

Section 12.22 Assignments and Participations.

- (1) **Assignments by Borrowers.** Borrowers may not assign any of their rights or obligations hereunder or under the Note without the prior written consent of Lender.
- (2) **Assignments by Lender.** Lender may assign any or all of its portion of the Loan and the Note.
- (3) **Participations.** Lender may sell or agree to sell to one or more other Persons (each a "**Participant**") a participation in all or any part of the Loan.
- (4) **Pledges.** Lender may pledge all or any portion of its portion of the Loan and Note to any Person.
- (5) **Provision of Information to Assignees, Participants and Pledges.** Lender may furnish any information concerning Borrowers or any of its Affiliates in the possession of Lender from time to time to assignees and Participants (including prospective assignees and Participants).

Section 12.23 Joint and Several Liability. The liability of all persons and entities obligated in any manner under this Agreement or any of the Loan Documents, other than Lender, shall be joint and several.

Section 12.24 Joint Borrower Provisions.

(1) The Borrowers acknowledge and agree that they shall be jointly and severally liable for the Loan and all other obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, the Borrowers acknowledge and agree as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each of the Borrowers hereby irrevocably appoints the others as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce the Lender to make the Loan, and in consideration thereof, the Borrowers hereby agree to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by the Borrowers or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or

(ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) The Borrowers acknowledge that the liens and security interests created or granted herein and by the other Loan Documents will secure obligations of the Borrowers under the Loan Documents and, in full recognition of that fact, the Borrowers consent and agree that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to, the obligations of any Borrower under this Agreement or any of the Loan Documents;

(ii) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to any of the Borrowers and independently of any other remedy or security Lender at any time may have or hold in connection with the obligations under this Agreement. Lender may file a separate action or actions against any of the Borrowers to enforce the obligations under this Agreement, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. .

(iii) The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all obligations under this Agreement may be or hereafter may become invalid or otherwise unenforceable against any of the Borrowers or any other Person and whether or not Borrowers or any other Person shall have any personal liability with respect to such obligations

In connection with its joint and several obligations under the Loan Documents, each of the Borrowers waives: (i) any defense based upon any legal disability or other defense of the other party, or by reason of the cessation or limitation of the liability of the Borrowers from any cause other than full payment of all sums payable under the Note or any of the other Loan Documents; (ii) any and all rights and defenses arising out of an election of remedies by Lender; and (iii) any right of subrogation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned have executed this Loan Agreement as of the date first above written.

LENDER:

AFF II DENVER, L.L.C.,
a Delaware limited liability company

By: 

Name: Dror Bezaie

Title: Authorized Signatory

BORROWERS:

HC SHOPPES 18 A, LLC, a Delaware limited liability company

By: GDA Real Estate Management, Inc., a Colorado corporation, its manager

By: 
Name: Gary J. Dragul
Title: President

HC SHOPPES 18 B, LLC, a Delaware limited liability company

By: GDA Real Estate Management, Inc., a Colorado corporation, its manager

By: 
Name: Gary J. Dragul
Title: President

SCHEDULE A

BORROWERS

HC Shoppes 18 A, LLC
HC Shoppes 18 B, LLC

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT

PARCEL ONE:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 264.79 FEET;
THENCE SOUTH A DISTANCE OF 64.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1984 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, COLORADO, BEING THE TRUE POINT OF BEGINNING;

THENCE EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 346.18 FEET TO A POINT ON THE WEST LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE SOUTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET;
THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 104.00 FEET;
THENCE NORTH ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 200.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;

THENCE EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 419.17 FEET TO THE NORTHWEST CORNER OF TRACT "A", BELMONT HEIGHTS SUBDIVISION FILING NO. 2, AS RECORDED IN BOOK 23 AT PAGE 18, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE SOUTH ALONG THE WEST LINE OF SAID TRACT "A" A DISTANCE OF 350.00 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF SAID SUBDIVISION;

THENCE SOUTH 44 DEGREES 31 MINUTES 32 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID SUBDIVISION, A DISTANCE OF 495.81 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET, AS MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1 IN BOOK 23 AT PAGE 10 IN THE OFFICES OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 742.06 FEET;

THENCE NORTH 00 DEGREES 03 MINUTES 55 SECONDS WEST ALONG THE EAST LINE OF STANDARD SERVICE STATION TRACT AS RECORDED IN BOOK 9476 AT PAGE 276 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, A DISTANCE OF 161.56 FEET TO THE TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM THE FOLLOWING PROPERTY:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A
POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE
DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS
IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER,
BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70
FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID
POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY
CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE
OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A
DISTANCE OF 454.00 FEET;
THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID
NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH
LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK
289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF
DENVER;
THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;
THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A
POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE
POINT OF BEGINNING,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL TWO:

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH,
RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 6;
THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 6 A DISTANCE OF 265.00 FEET;
THENCE SOUTH TO A POINT ON THE CENTERLINE OF HAPPY CANYON ROAD;
THENCE NORTHWESTERLY ALONG THE CENTERLINE OF HAPPY CANYON ROAD TO THE POINT OF
BEGINNING,
EXCEPT EXISTING RIGHTS OF WAY FOR PUBLIC ROADS,
EXCEPT THAT PORTION AS CONVEYED TO THE CITY AND COUNTY OF DENVER IN WARRANTY
DEED RECORDED JUNE 22, 2015 AT RECEPTION NO. 2015082302,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR ACCESS, PARKING, UTILITIES AND DRAINAGE CONTAINED IN
THAT CERTAIN AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS,
RECORDED MARCH 3, 2017 AT RECEPTION NO. 2017029949.

Exhibit A-2

SCHEDULE 1.1

DEFINITIONS

As used in this Agreement, the following terms have the meanings indicated:

“Advance” means any disbursement of proceeds of the Loan from the Reserve.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person. A Person shall be deemed to **“Control”** another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, membership interests, by contract, or otherwise. Each Borrower Party shall be deemed to be an Affiliate of Borrowers.

“Agreement” means this Loan Agreement.

“Anti-Money Laundering Laws” means those laws, regulations and sanctions, state and federal, criminal and civil, that (a) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (b) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (c) require identification and documentation of the parties with whom a Financial Institution conducts business; or (d) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the Patriot Act, the Bank Secrecy Act, the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

“Bankruptcy Party” has the meaning assigned in Section 9.1(6).

“Bank Secrecy Act” means the Bank Secrecy Act, 31 U.S.C. Sections 5311 et seq.

“Borrowers” has the meaning assigned in the first paragraph of this Agreement.

“Borrowers Investor” has the meaning assigned in Section 12.7(2).

“Borrowers’ Knowledge” shall mean the actual knowledge of Gary Dragul, Aaron Metz, Elizabeth Gold and Susan Markusch.

“Borrower Parties” means Borrowers and Guarantor.

“Business Day” means a day other than a Saturday, a Sunday, or a legal holiday on which national banks located in the State are not open for general banking business.

“Cash Management Account” shall have the meaning set forth in Section 2.7(1).

“CDPHE” means the Colorado Department of Public Health and Environment.

“Clearing Account” shall have the meaning set forth in Section 2.7(4).

“Clearing Bank” shall mean any Eligible Bank approved or appointed by Lender.

“Clearing Bank Agreement” shall mean that certain Deposit Account Control Agreement by and among Borrowers, Lender and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to the operation and maintenance of the Clearing Account.

“Closing Advance” has the meaning assigned in **Section 2.1(1)**.

“Closing Date” means the date on which Lender makes the Advance.

“Collateral” means the Project and all other **“Mortgaged Property”** described in the Security Instrument, and any other property that at any time secures the Loan or any portion thereof. Without limiting the foregoing, **“Collateral”** shall mean and include all of the following personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of Borrowers, and regardless of where located (all capitalized terms having the meanings given to them in the Uniform Commercial Code of the State: Accounts; Chattel Paper (including, without limitation, all Tangible Chattel Paper and all Electronic Chattel Paper); Intellectual Property Collateral; Documents; Equipment; Fixtures; General Intangibles; Goods; Instruments; Inventory; letters of credit and Letter-of-Credit Rights; Commercial Tort Claims; Software and all recorded data of any kind or nature, regardless of the medium of recording; Contracts, together with all Contract Rights arising thereunder; other personal property not otherwise described above; Supporting Obligations; and accessions to, substitutions and replacements for and Proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

“Contract Rate” has the meaning assigned in **Section 2.2(1)**.

“Control Event” shall mean the occurrence of one or more of the following: (i) the occurrence of an Event of Default; or (ii) Joy’s Consignment Shops either vacates or becomes the subject of a bankruptcy or other insolvency proceeding.

“Debt” means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or any of its assets is liable or subject, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person or any of its assets would be liable or subject, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members or other equity holders, or as a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person or any of its assets is liable or subject, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person or any of its assets is liable or subject, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“Default Rate” means the lesser of (x) twenty-four percent (24%) per annum and (y) the highest interest rate permitted by applicable law.

“Development Budget” means a budget of the costs of the capital improvements and environmental remediation to be performed at the Shoppes, approved by Lender and attached to this Agreement as **Schedule 3.3**.

“Development Reserve” has the meaning assigned in **Section 3.1(3)**.

“Dollars” and **“\$”** means lawful money of the United States of America.

“Eligible Bank” means a bank that insures the deposits hereunder through the Federal Deposit Insurance Corporation.

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

“Event of Default” has the meaning assigned in **Article 9**.

“Fixed Rate” has the meaning assigned in **Section 2.2(1)**.

“Financial Institution” means a United States Financial Institution as defined in 31 U.S.C. Section 5312, as periodically amended.

“Guarantor” means each Person(s) executing a Guaranty.

“Guaranty” means the Guaranty of Payment, and each other guaranty now or hereafter delivered in respect of the Liabilities or any portion thereof.

“Guaranty of Payment” means that certain Guaranty of Payment from Guarantor in favor of Lender dated as of the date hereof.

“Hazardous Materials Indemnity Agreement” means the Hazardous Materials Indemnity Agreement executed by Borrowers and Guarantor in favor of Lender with respect to the Project.

“Independent Manager” means an individual who is not at the time of initial appointment and has not been at any time during the preceding five (5) years and shall not be at any time while serving as Independent Manager: (a) a stockholder, director, officer, employee, partner or member of any Borrower or any Borrower’s affiliates; (b) a customer, supplier or other person who derived more than 10% of its purchases or revenues from its activities with any Borrower or any of such Borrower’s affiliates of; (c) a person or other entity controlling or under common control with any such stockholder, director, officer, employee, partner, member, customer, supplier or other person; (d) a member of the immediate family of such stockholder, director, officer, employee, partner, member, customer, supplier or other person. (As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.)

“Interest Period” means the first (1st) day of the calendar month immediately following the previous Interest Period and shall end on (and include) the last calendar day of each such calendar month; provided however, (i) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (ii) no Interest Period shall extend beyond the Maturity Date of the Loan, and (iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period. The first (1st) Interest Period hereunder shall be the period commencing on the date hereof and ending on (and including) the last day of the calendar month in which this Agreement is dated.

“Interest Reserve” has the meaning assigned in **Section 3.1(2)**.

“Key Employees” means the senior management of GDA Real Estate Services, LLC, consisting of Aaron Metz, (director of acquisitions), Elizabeth Gold (director of leasing) and Susan Markusch (controller).

“Land” means the real property legally described in **Exhibit A** hereto, together with the appurtenances and tenements thereof.

“Lender” has the meaning assigned in the first paragraph of this Agreement. Any action that may be taken by Lender pursuant to this Agreement or any other Loan Document (other than the obligation to advance on the Closing Date), and any right or remedy granted to Lender pursuant to this Agreement or any other Loan Documents may be exercised by Servicer on behalf of Lender.

“Liabilities” means all principal, interest, cost, expenses and fees (including the Exit Fee and any Minimum Interest Amount) and all other amounts due and payable or to become due and payable to Lender under the Loan Documents, together with all other obligations of Borrowers under the Loan Documents.

“LIBOR” means the rate per annum determined by Lender in accordance with its usual procedures (which determination shall be conclusive) to be the rate in effect on the first day of each Interest Period for deposits of one month in United States dollars in amounts approximately equal to the outstanding balance of the Note, as published by the Wall Street Journal (or such other commercially available source providing quotations of LIBOR as designated by Lender from time to time) at approximately 11:00 A.M. (London time) on the second Business Day prior to each Interest Period.

“Lien” means any interest, or claim thereof, in the Collateral securing an obligation owed to, or a claim by, any Person other than the owner of the Collateral, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, hypothecation, preference, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term **“Lien”** shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Collateral.

“Loan” means the loan to be made by Lender to Borrowers under this Agreement and all other amounts evidenced or secured by the Loan Documents.

“Loan Documents” means: (a) this Agreement, (b) the Note, (c) the Security Instrument, (d) the Hazardous Materials Indemnity Agreement, (e) each Guaranty, (f) such pledges as may be required by Lender, (h) such assignments of contracts and other rights as may be required by Lender, and (g) all other agreements, documents, certificates and instruments evidencing, securing, governing or otherwise pertaining to the Loan.

“Lockbox” shall have the meaning set forth in **Section 2.7(2)**.

“Loss Proceeds” means amounts, awards or payments payable to Borrowers or Lender in respect of all or any portion of the Collateral in connection with a casualty or condemnation thereof (after the deduction therefrom and payment to Borrowers and Lender, respectively, of any and all reasonable out-of-pocket expenses incurred by Borrowers, Lender in the recovery thereof, including all reasonable attorneys’ fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in

any litigation or arbitration with respect to such casualty or condemnation) including proceeds from rental or business interruption insurance.

“Major Project Document” shall mean and include (i) construction or development agreement, (ii) any property management, asset management, construction management or development management agreement or broker agreement, and (iii) any other agreement which now exists or is hereafter entered into by the Borrowers the aggregate consideration for which is in excess of \$10,000.00.

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of Borrowers to perform its payment obligations under the Loan Documents to which it is a party, or to perform its obligations thereunder in respect of the maintenance or operation of the Project or the maintenance of insurance or the payment of Taxes and other charges in respect of the Project, (b) the validity or enforceability of (i) the material terms of the Loan Documents, (ii) the lien of the Mortgage or (iii) the material rights and remedies of Lender under any of the Loan Documents, including, without limitation, the rights and remedies set forth in Section 10, (c) the ability of Guarantor to perform its obligations under the respective Guaranties or (d) the Project or any other Collateral for the Loan, other than a material adverse effect on the Project (or such other Collateral for the Loan) resulting from changes in general economic, financial market and/or real estate market conditions.

“Maturity Date” means the earlier of (a) January 31, 2020, as the same may be extended in accordance with the terms of this Agreement, or (b) any earlier date on which the entire Loan is required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.

“Mechanic’s Lien” has the meaning assigned in Section 6.10.

“Mezzanine Loan” means that certain loan in the original principal amount of \$2,750,000 made by Greeley Asset Funding, LLC to DBHC Holdings, LLC, Borrowers’ sole member, and secured by, among other things, pledge of the interests in DBHC Holdings, LLC and in the Borrowers.

“Net Cash Flow” means for any month, the actual gross revenues of the Project less the aggregate amount of money expended in such month by Borrowers in connection with the Project, on a cash basis, for ordinary and necessary expenses of Project operations, maintenance and preservation, made pursuant to arms-length transactions, all as reasonably approved by Lender.

“Note” means the promissory note of even date herewith as provided for in Section 2.1(3) and all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, replaced, severed, modified, amended or extended from time to time.

“OFAC” means the Office of Foreign Assets Control, Department of the Treasury, and any successor governmental authority.

“Operating Account” shall have the meaning set forth in Section 2.7(3).

“Organizational Documents” means, with respect to any entity, such entity’s filed document of formation, operating agreement, resolutions and good standing certificate, and the Tenancy-in-Common Agreement governing the ownership of such entity’s Project .

“Participant” has the meaning assigned in Section 12.22(3).

"Patriot Act" means the USA PATRIOT Act of 2001, Pub. L. No. 107-56, and any successor statute.

"Payment Date" has the meaning assigned in Section 2.3(1).

"Permitted Encumbrances" means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the Security Instrument, together with the liens and security interests in favor of Lender created by the Loan Documents and any liens for any unpaid taxes not yet delinquent, and any other matters approved by Lender in writing after the date hereof.

"Permitted Transfer" means any of the following:

(i) So long as no breach of Section 6.3 occurs, a Transfer by a natural Person who is a direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in a Borrower or any tier or level to a revocable inter vivos trust having such natural Person as both trustor and trustee of such trust and one or more immediate family members of such natural Person as the sole beneficiaries of such trust;

(ii) So long as no breach of Section 6.3 occurs, a Transfer by devise or descent or by operation of law upon the death of a natural Person who is a direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in a Borrower or any tier or level.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

"Potential Default" means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

"Project" means all related facilities, amenities, fixtures, and personal property and improvements now or hereafter located on the Land, consisting of the Happy Canyon Shoppes shopping center.

"Property Taxes" means real estate taxes, assessments and similar charges related to the Collateral or which if unpaid could result in a lien on the Collateral.

"Requisition" means a requisition in the form of a spreadsheet containing the information set forth in Section 3.3(1), together with all invoices, bills of sale, schedules and other submissions required by Lender, including an updated Development Budget if any.

"Reserve" or **Reserves** has the meaning assigned in Section 3.2.

"Restricted Company" means (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) any entity that is subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

“Security Instrument” means the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing executed by Borrowers in favor of Lender, covering the **“Mortgaged Property”** described therein.

“Servicer” means Ardent Loan Servicing, LLC or any other entity or entities appointed by Lender from time to time to serve as servicer and/or special servicer of the Loan. If at any time no entity shall be so appointed, the term “Servicer” shall be deemed to refer to Lender.

“Shoppes” means the retail shopping center located at 4992-5082 E. Hampden Avenue, Denver, CO, and known as the “Happy Canyon Center.

“Borrowers” has the meaning assigned to such term on Schedule A.

“Single Purpose Entity” means a Person (other than an individual, a government, or any agency or political subdivision thereof), which (a) is formed or organized solely for the purpose of owning the Collateral; (b) does not engage in any business other than the ownership, management and operation of the Collateral; (c) does not have any assets other than those related to its interest in the Collateral; (d) does not incur, create or assume any Debt other than the Loan and Debt permitted under Section 6.9; (e) does not guarantee, hold itself out to be responsible for, or otherwise become liable on or in connection with any Debt or other obligation of any other Person, and does not pledge its assets for the benefit of any other Person, (f) not enter into any contract or agreement with any stockholder, partner, principal, member or Affiliate of such Person or any Affiliate of any such stockholder, partner, principal, member or Affiliate except as may be permitted pursuant to Section 6.8; (g) does not make any loans or advances to any other Person (including any Affiliate), (h) conducts and operates its business in all material respects as presently conducted and operated, (i) maintains its books and records and bank accounts separately from those of its Affiliates, including its general partners or members, as may be applicable, (j) at all times holds itself out to the public as a legal entity separate and apart from any other Person (including any Affiliate), and promptly corrects any known misunderstandings regarding its separate identity, (k) files its own tax returns to the extent required by applicable law, (l) intends to maintain adequate capital for its normal obligations, reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided, however, that an entity shall not be required to make any capital calls or require any capital contributions to satisfy this requirement), (m) maintains its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person, (n) complies with all of the limitations on powers set forth in its organizational documentation as in effect on the Closing Date, (o) holds title to its assets in its own name, (p) utilizes its own letterhead, invoices and checks, (q) allocates fairly and reasonably any overhead expenses that are shared with any Affiliate including paying for office space and services performed by any employee of any Affiliate, (r) maintains a segregated operating account for the Collateral from which all operating expenses and debt service on the Loan is paid, and (s) requires the consent of an Independent Manager to place it or any entity in which it is manager into bankruptcy, insolvency or dissolution proceedings or to amend its or such entity’s separateness covenants.

“Specially National and Blocked Persons” means those Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC.

“State” means the State of Colorado.

“Taking” has the meaning assigned in Section 4.3.

“Tax and Insurance Reserve” has the meaning assigned in Section 3.1(1).

"Tenant Direction Letter" shall have the meaning set forth in Section 2.7(2).

"Title Company" means Alliant National Title Insurance Company.

"Transfer" means any sale (including any installment sale), conveyance, assignment, mortgage, pledge, lease (including any ground lease), encumbrance, alienation or grant of Lien (other than Permitted Encumbrances) or, grant of any option with respect to or grant of any other interest in the Collateral, any part thereof or any interest therein (including any direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in Borrowers on every tier or level), directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record. For avoidance of doubt, Transfer shall also include the granting of any rights in, or restricting the use or development or zoning of, the Collateral.

"U.S. Person" means any United States citizen, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories.

"Variable Rate" has the meaning assigned in Section 2.2.2(1).

"Work" means the performance of all work in connection with capital improvements (as identified in that certain Property Condition Report dated January 31, 2018, tenant improvements as set forth in any approved Lease, and the environmental remediation at the Shoppes.

SCHEDULE 2.1(2)

SOURCES AND USES

Shoppes Loan Sources & Uses

<u>Sources</u>	\$ Amount	% of Total
Debt	\$19,500,000	82.3%
Equity	3,987,500	17.7%
Total	\$23,647,500	100.0%

<u>Uses</u>	\$ Amount	% of Total
Purchase	\$21,300,000	90.69%
Development Reserve	1,130,000	4.81%
Interest Reserve	375,000	1.60%
Origination Fee	487,500	2.08%
Closing Cost	195,000	0.83%
Total	\$23,487,500	100.0%

SCHEDULE 2.7

ACCOUNTS

Operating Account: [post-closing]

Clearing Account: [post-closing]

SCHEDULE 3.3

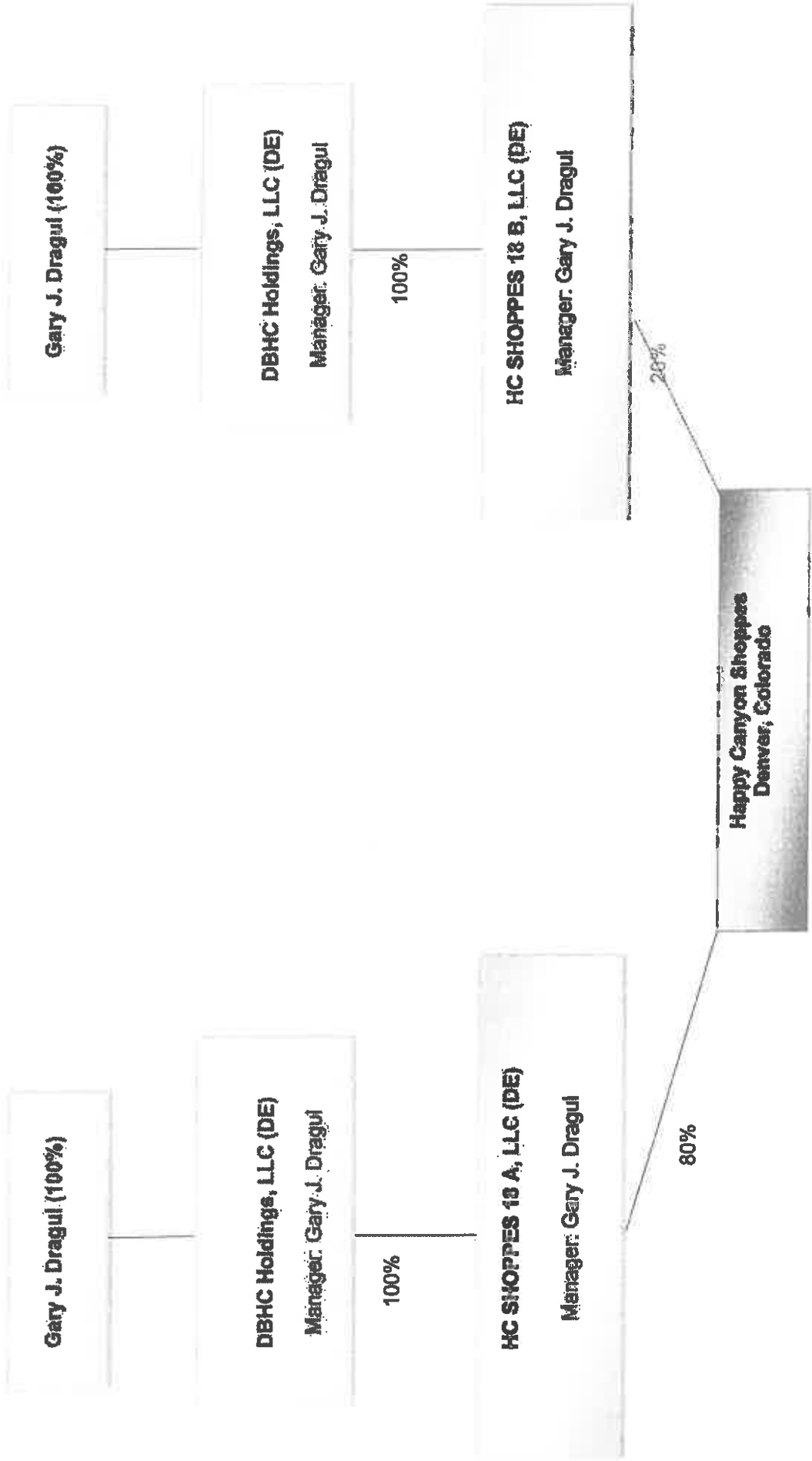
DEVELOPMENT BUDGET

Happy Canyon Shops Development Reserve

Discover Chiropractic	\$11,500
Wish Boutique	138,434
New Tenant	68,149
New Tenant	32,400
Other TI	90,000
Capex Reserves	289,517
Environmental Reserve	500,000
Total	\$1,130,000

SCHEDULE 5.1

**HAPPY CANYON SHOPPES
ORGANIZATIONAL CHART**



SCHEDULE 5.3(1)

LITIGATION

1. Southern Glazer's Wine and Spirits of Colorado, LLC v. MC Liquor 02, LLC dba Incredible Wine & Spirits, and Gary. J. Dragul, Adams County District Court, Case No. unknown.
 - a. Status: Negotiated resolution in process.
 - b. Description: Liquor store distribution payment dispute.
 - c. Amount Claimed: \$115,000.00

2. People of the State of Colorado v. Gary Jule Dragul, Arapahoe County District Court, 18CR1092.
 - a. Status: Action/resolution pending.
 - b. Description: State Securities Act enforcement action regarding alleged promissory note disclosure omissions.
 - c. Amount Claimed: N/A

3. Colorado Department of Public Health and Environment v. YM Retail 07 A, LLC, GDA Real Estate Management, Inc., GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz, Denver District Court, Case No. 2013CV33076.
 - a. Status: Ongoing receivership and court supervised environmental remediation efforts pursuant to Stipulation.
 - b. Description: Owner/operator environmental remediation liability claims. The property is overseen by a receiver, there is a foreclosure action, and ongoing remediation continues.
 - c. Amount Claimed: N/A

4. Christopher A. Helms v. GDA Real Estate Services, LLC and Gary J. Dragul, Arapahoe County District Court, Case No. 2018CV31358
 - a. Status: Responsive pleading deadline extended by party Stipulation pending workout and/or forbearance negotiations.
 - b. Description: Unsecured promissory note claim.
 - c. Amount Claimed: \$450,000.00

SCHEDULE 6.6

MAJOR PROJECT DOCUMENTS

Management Agreement, dated as of the Closing Date, by and among HC Shoppes 18 A, LLC, HC Shoppes 18 B, LLC, and GDA Real Estate Management, Inc.

SCHEDULE 6.6(3)

FORM OF CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT-CONTRACTOR

CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT

(CONTRACTOR)

THIS CERTIFICATE, CONSENT AND ACKNOWLEDGMENT (this "Certificate") is delivered by [_____], a [_____] ("Contractor") to AFF II DENVER, LLC, a Delaware limited liability company, as lender ("Secured Party") in accordance with the terms of that certain Loan Agreement dated July __, 2018 (the "Loan Agreement"), between Secured Party and [BORROWER], a [_____] ("Assignor").

1. Certifications. Contractor hereby certifies to Secured Party as follows as follows:
 - (a) Reference is hereby made to that certain [_____] between Assignor and Contractor (including all general conditions, exhibits, schedules, addendums, plans, specifications and the like attached thereto or incorporated therein by reference or prepared in connection therewith, as amended, modified, supplemented and/or changed in accordance herewith, the "Contract"). A true, correct and complete copy of the Contract is attached hereto as Schedule 1. As of the date hereof, except as attached hereto in Schedule 1, no change orders or other amendments, modifications or supplements have been entered into or are pending.
 - (b) To the knowledge of Contractor, no matured default of any of Assignor's obligations under the Contract has occurred and no condition exists or event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default.
2. Assignment. Contractor hereby acknowledges and consents to the assignment of the Contract by Assignor in favor of Secured Party pursuant to the Loan Agreement.
3. Amendments, Modifications, Supplements, Change Orders, etc. Contractor agrees that it will not enter into any amendment, modification, supplement or change order to the Contract without the prior written consent of the Lender. Lender has agreed with Borrowers that it will not unreasonably withhold condition or delay such consent.
4. Default and Secured Party's Right To Cure. Contractor agrees that it will send to Secured Party copies of all default notices simultaneously with the sending of any such notices to Assignor. All notices shall be sent pursuant to the notice provisions in the Contract to Secured Party at 2100 Powers Ferry Road, Suite 350, Atlanta, Georgia 30339. Contractor further agrees that Secured Party is hereby granted the right (but not the obligation) to cure any defaults by Assignor within thirty (30) days after receipt of written notice by the undersigned of the Assignor's failure to cure any such default; provided, however, with respect to all non-monetary defaults said thirty (30) day period shall be extended so long as within said thirty (30) day period the Secured Party has commenced to cure and is proceeding with due diligence to cure said defaults.
5. Right To Performance. Contractor agrees to look solely to the Assignor for the performance of any of the obligations of the Assignor under the Contract. However, if Secured Party exercises, with respect to the Contract, any rights and privileges conferred upon it by the assignment of the Contract and asserts the present right to have the benefits of the Contract and to enforce the same against the Contractor in the place and stead of the Assignor, the Contractor agrees with respect to such

Contract (i) to perform for, and for the benefit of, Secured Party, all of the obligations of Contractor under and pursuant to the Contract if the balance then due under the Contract (being the portion of the total Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of the Contractor) has been paid or is then paid, and if Secured Party thereafter pays Contractor such amounts that become due under the Contract as such amounts become due, and (ii) Secured Party shall have no personal obligations or liabilities of any kind under the Contract.

The foregoing Certificate is furnished for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Contractor, and the Contractor understands and intends that Secured Party will disburse substantial sums in reliance on, and will otherwise rely on, the foregoing and that the Contractor will be legally bound by the foregoing.

This Certificate shall inure to the benefit of Secured Party and its successors and assigns (including any purchasers at a foreclosure sale or transferees who acquire the Project (or any portion thereof to which the Contract is applicable) by deed in lieu or otherwise and their respective successors and assigns).

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate, Consent and Acknowledgment as of [_____], pursuant to proper authority duly granted.

[_____], a [_____]

By:

Name: _____
Title: _____

SCHEDULE 1
[ATTACH CONTRACT]

SCHEDULE 2

LIST OF EXISTING CHANGE ORDERS

**FORM OF CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT-DESIGN
PROFESSIONAL**

CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT

(DESIGN PROFESSIONAL)

THIS CERTIFICATE, CONSENT AND ACKNOWLEDGMENT (this "**Certificate**") is delivered by [_____] a [_____] ("**Design Professional**") to [LENDER], a [Delaware] limited liability company, as lender ("**Secured Party**") in accordance with the terms of that certain Loan Agreement dated _____, 201__, between Secured Party and [BORROWER], a [_____] ("**Assignor**"), respecting the Project (the "**Loan Agreement**").

1. **Certifications.** Design Professional hereby certifies to Secured Party as follows:

(a) Reference is hereby made to [_____] (including all general conditions, exhibits, schedules, addendums, plans, specifications and the like attached thereto or incorporated therein by reference or prepared in connection therewith, as amended, modified, supplemented and/or changed, the "**Contract**"). A true, correct and complete copy of the Contract is attached hereto as **Schedule 1**. As of the date hereof, except as attached hereto in **Schedule 1**, no change orders or other amendments, modifications or supplements have been entered into or are pending.

(b) To the knowledge of Design Professional, no matured default of any of Assignor's obligations under the Contract has occurred and no condition exists or event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default.

2. **Assignment.** Design Professional hereby acknowledges receipt of a copy of, and consents to, the assignment of the Contract from Assignor in favor of Secured Party ("**Security Agreement and Assignment**").

3. **Amendments, Modifications, Supplements, Change Orders, etc.** Design Professional agrees that it will not enter into any amendment, modification, supplement or change order to the Contract without the prior written consent of the Lender. Lender has agreed with Borrowers that it will not unreasonably withhold, condition or delay such consent.

4. **Default and Secured Party's Right To Cure.** Design Professional agrees that it will send to Secured Party copies of all default notices simultaneously with the sending of any such notices to Assignor. All notices shall be sent pursuant to the notice provisions in the Contract to Secured Party at 2100 Powers Ferry Road, Suite 350, Atlanta, Georgia 30339. Design Professional further agrees that Secured Party is hereby granted the right (but not the obligation) to cure any defaults by Assignor within thirty (30) days after receipt of written notice by the undersigned of the Assignor's failure to cure any such default; provided, however, with respect to all non-monetary defaults said thirty (30) day period shall be extended so long as within said thirty (30) day period the Secured Party has commenced to cure and is proceeding with due diligence to cure said defaults.

5. **Right To Performance.** Design Professional agrees to look solely to the Assignor for the performance of any of the obligations of the Assignor under the Contract. However, if Secured Party exercises, with respect to the Contract, any rights and privileges conferred upon it by the assignment of the Contract and asserts the present right to have the benefits of the Contract and to enforce the same

against the Design Professional in the place and stead of the Assignor, the Design Professional agrees with respect to such Contract (i) to perform for, and for the benefit of, Secured Party, all of the obligations of Design Professional under and pursuant to the Contract if the balance then due under the Contract (being the portion of the total Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of the Design Professional) has been paid or is then paid, and if Secured Party thereafter pays Design Professional such amounts that become due under the Contract as such amounts become due, and (ii) Secured Party shall have no personal obligations or liabilities of any kind under the Contract.

The foregoing Certificate is furnished for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Design Professional, and the Design Professional understands and intends that Secured Party will disburse substantial sums in reliance on, and will otherwise rely on, the foregoing and that the Design Professional will be legally bound by the foregoing.

This Certificate shall inure to the benefit of Secured Party and its successors and assigns (including any purchasers at a foreclosure sale or transferees who acquire the Project (or any portion thereof to which the Contract is applicable) by deed in lieu or otherwise and their respective successors and assigns).

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of _____, 20__, pursuant to proper authority duly granted.

_____, a [_____]

By: _____
Name: _____
Title: _____

SCHEDULE 1

[ATTACH CONTRACT]

SCHEDULE 2

LIST OF EXISTING CHANGE ORDERS

SCHEDULE 6.8
APPROVED AFFILIATE AGREEMENTS

None.

PROMISSORY NOTE

\$19,500,000.00

July 27, 2018

For value received, the entities signatory to this Promissory Note ("**Borrowers**"), promise and agree to pay to the order of AFF II Denver, LLC, a Delaware limited liability company ("**Lender**"), in lawful money of the United States of America, the principal sum of Nineteen Million Five Hundred Thousand Dollars (\$19,500,000.00) or so much thereof as may be outstanding under the Loan and Security Agreement of even date herewith between Borrower and Lender (as modified, supplemented, extended and in effect from time to time, the "**Loan Agreement**"), with interest on the unpaid principal sum owing thereunder at the rate or rates or in the amounts computed in accordance with the Loan Agreement, together with all other amounts due Lender under the Loan Agreement, all payable in the manner and at the time or times provided in the Loan Agreement.

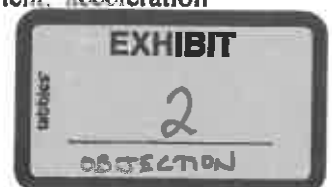
Capitalized terms used in this Note, but not defined, shall have the meanings assigned to them in the Loan Agreement.

If not sooner due and payable in accordance with the Loan Agreement, Borrowers shall pay to Lender all amounts due and unpaid under the Loan Agreement on January 31, 2020, as such date may possibly be extended as provided in Section 2.3(d) of the Loan Agreement, or on any earlier Maturity Date as set forth in the Loan Agreement. Every payment on this Note, whether such payment is a regular installment, prepayment or final payment, shall be made by wired federal funds, or other immediately available funds in accordance with such wire transfer instructions as Lender may from time to time provide. All payments to Lender shall be drawn on accounts owned by Borrowers or another Person approved in writing in advance by Lender and maintained at a banking institution organized under the laws of the United States or one of its constituent States, or at a federally-regulated securities broker-dealer.

This Note is the Note referred to in the Loan Agreement and evidences the Loan made by Lender thereunder.

Except as otherwise provided in the Loan Documents, Borrowers, co-makers, sureties, endorsers and guarantors expressly waive demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intent to accelerate the maturity hereof, notice of the acceleration of the maturity hereof, bringing of suit and diligence in taking any action to collect amounts called for under this Note and in the handling of securities at any time existing in connection with this Note; such parties are and shall be jointly, severally, directly and primarily liable for the payment of all sums owing and to be owing on this Note, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for under this Note or in connection with any right, lien, interest or property at any and all times had or existing as security for any amount called for under the Loan Documents, except as expressly provided for in any of the Loan Documents.

This Note evidences all advances made, interest due and all amounts otherwise owed to Lender under the Loan Agreement. This Note is executed in conjunction with the Loan Agreement and is secured by the liens and security interests created under the Loan Documents (including those arising under the Security Instrument). Reference is made to the Loan Agreement for provisions relating to repayment of the indebtedness evidenced by this Note, including mandatory repayment, acceleration



following default, late charges, default rate of interest, limitations on interest and restrictions on prepayment.

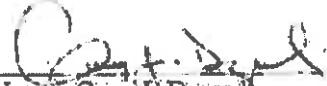
This Note shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to conflict of laws principles.

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


HC SHOPPES 18 A, LLC, a Delaware limited liability company

By: GDA Real Estate Management, Inc., a Colorado corporation, its manager

By: 
Name: Gary J. Dragul
Title: President

HC SHOPPES 18 B, LLC, a Delaware limited liability company

By: GDA Real Estate Management, Inc., a Colorado corporation, its manager

By: 
Name: Gary J. Dragul
Title: President

**FIRST AMENDMENT
TO
LOAN AND SECURITY AGREEMENT**

by and among

AFF II Denver, LLC,
a Delaware limited liability company,
as Lender

and

HC Shoppes 18 A, LLC,
a Delaware limited liability company
and
HC Shoppes 18 B, LLC,
a Delaware limited liability company,
as Borrowers

and

Gary A. Dragul,
as Guarantor

Dated: August 7, 2018



THIS FIRST AMENDMENT TO LOAN AGREEMENT (this "Amendment"), dated August __, 2018, is made by and among AFF II Denver, LLC ("Lender"), HC Shoppes 18 A, LLC and HC Shoppes 18 B, LLC (together, "Borrowers"), and Gary A. Dragul ("Guarantor").

BACKGROUND

A. Borrowers and lender entered into a Loan and Security Agreement dated July 27, 2018 (the "Loan Agreement"), pursuant to which Lender made a loan to Borrowers in the original principal amount of \$19,500,000.00 (the "Shoppes Loan") to fund the acquisition and improvement of the Happy Canyon Shoppes shopping center in Denver Colorado (the "Shoppes Property"). (All capitalized terms used in this Amendment and not otherwise defined herein shall have the terms given to them in the Loan Agreement.)

B. Guarantor has agreed to guarantee the full payment and performance of Borrowers' obligations in respect of the Shoppes Loan.

C. In connection with the extension of an additional loan facility in the original principal amount of \$8,900,000.00 (the "Marketplace Loan") by Lender to Happy Canyon Box 18 A, LLC, Happy Canyon Box 18 B, LLC, and Happy Canyon Box 18 C, LLC, affiliates of Borrowers ("Marketplace Borrowers"), Lender has required that the Shoppes Loan be cross-defaulted with the Marketplace Loan, and that the Shoppes Property be security for the Marketplace Loan.

D. Borrowers, Guarantor and Lender to enter into this Amendment to reflect the aforesaid terms and to amend the Loan Agreement as set forth below.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are by this Amendment acknowledged, the parties hereto agree as follows:

I. Amendments to Certain Loan Agreement Provisions.

(a) Schedule 1.1 (Definitions) is amended by adding the following definitions:

"Marketplace Loan" shall mean that certain loan made by Lender to Happy Canyon Box 17 A, LLC, Happy Canyon Box 17 B, LLC, and Happy Canyon Box 17 C, LLC,, jointly and severally, in the original principal amount of \$8,900,000.00 pursuant to a Loan and Security Agreement dated as of August 3, 2018.

(b) Section 2.3 (4) (Extension) is amended by adding the following condition:

"The Marketplace Loan shall have been extended;"

2. Cross-Default. Section 9.1 (Events of Default Not Subject to Cure Periods) is amended by adding the following Event of Default:

"Default Under Marketplace Loan. An Event of Default shall have occurred under the documents evidencing and/or securing the Marketplace Loan."

3. Conditions Precedent. Prior to the date of this Amendment, or simultaneously with the execution of this Amendment:

(a) Borrowers and Guarantor shall have paid the costs and expenses incurred by Lender in connection with this Amendment and the transactions contemplated by this Amendment.

(b) Borrowers shall have delivered to Lender the following:

(i) An executed and acknowledged Amendment to the Security Instrument, in recordable form.

(ii) Written Consent of the sole member and manager of each of the Borrowers;

(iii) An endorsement to the existing ALTA mortgage title insurance policy (or pro forma title insurance policy) insuring or committing to insure the Security Instrument, increasing the stated amount of the insurance to the aggregate amount of the Shoppes Loan and the Marketplace Loan.

4. Effect of Amendment. Except as specifically amended by this Amendment, the Loan Agreement remains unmodified and in full force and effect, and Borrowers, by this Amendment, ratify and reaffirm all terms, covenants, conditions and agreements contained in the Loan Agreement, as amended by this Amendment. All references to the Loan Agreement in the other Loan Documents shall hereafter be deemed to refer to the Loan Agreement as amended by this Amendment.5. Miscellaneous.

(a) This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado

(b) This Amendment may be executed in any number of counterparts, any or all of which may contain the signatures of all the parties, but all of which together shall constitute a single instrument.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Loan Agreement as of the date first above written.

LENDER:

AFF II DENVER, LLC,
a Delaware limited liability company

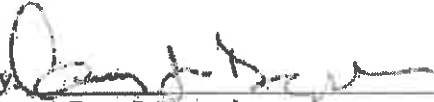
By: _____

Name: Dror Bezalel
Title: Authorized Signatory

BORROWERS:


HC SHOPPES 18 A, LLC, a Delaware limited
liability company

By: GDA Real Estate Management, Inc., a Colorado corporation, its manager

By: 
Name: Gary J. Dragul
Title: President

HC SHOPPES 18 B, LLC, a Delaware limited liability company

By: GDA Real Estate Management, Inc., a Colorado corporation, its manager

By: 
Name: Gary J. Dragul
Title: President

GUARANTOR:


Gary A. Dragul

EXECUTED under seal as of the date first above written.

AFF II Denver, LLC, a Delaware limited liability company

By: [Signature]
Name: Dror Bezalel
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF Georgia)
) ss.
County of Cobb)

The foregoing instrument was acknowledged before me this 21 day of August, 2018, by Dror Bezalel, authorized signatory for AFF II Denver, LLC, a Delaware limited liability company.

[Signature]
Notary Public

WITNESS MY HAND AND OFFICIAL SEAL

My commission expires: 3-21-21





08/01/2018 08:40 AM
City & County of Denver
Electronically Recorded

R \$103.00

DOT

D \$0.00

After Recording Return to:

Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Attn: Rachel Kipnes, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND
FIXTURE FILING**

(Shoppes)

THIS DEED OF TRUST COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY. THE MAILING ADDRESSES OF THE SECURED PARTY/BENEFICIARY AND THE DEBTOR/TRUSTOR ARE WITHIN.

THIS DEED OF TRUST SECURES FUTURE ADVANCES UP TO THE MAXIMUM PRINCIPAL AMOUNT OF \$19,500,000.00 AS GOVERNED BY C.R.S. § 38-39-106.

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument" or "Deed of Trust") is executed as of July 24, 2018, by the undersigned entities listed on Schedule 1 attached hereto and incorporated herein by reference (collectively, "Trustor"), whose address for notice purposes hereunder is 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, in favor of the Public Trustee of the City and County of Denver, as trustee under this Deed of Trust (the "Trustee"), for the benefit of AFF II Denver, LLC, a Delaware limited liability company ("Beneficiary"), whose address is 2100 Powers Ferry Road, Suite 350, Atlanta, GA 30339.

ARTICLE 1

DEFINITIONS

Section 1.1 **Definitions.** As used herein, the following terms shall have the following meanings:



After Recording Return to:

Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Attn: Rachel Kipnes, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND
FIXTURE FILING**

(Shoppes)

THIS DEED OF TRUST COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY. THE MAILING ADDRESSES OF THE SECURED PARTY/BENEFICIARY AND THE DEBTOR/TRUSTOR ARE WITHIN.

THIS DEED OF TRUST SECURES FUTURE ADVANCES UP TO THE MAXIMUM PRINCIPAL AMOUNT OF \$19,500,000.00 AS GOVERNED BY C.R.S. § 38-39-106.

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ARTICLE 1

DEFINITIONS

Section 1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

"Indebtedness" means the sum of all (a) principal, interest and all other amounts due from Trustor under or secured by the Loan Documents, including, without limitation, the indebtedness evidenced by the Note, (b) principal, interest, and other amounts which may hereafter be loaned by Beneficiary, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (c) any and all additional advances made by Beneficiary to protect or preserve the Mortgaged Property or the lien hereof on the Mortgaged Property, or to pay taxes, to pay premiums or insurance on the Mortgaged Property or to repair or maintain the Mortgaged Property, or to complete improvements on the Mortgaged Property (whether or not the original Trustor remains the owner of the Mortgaged Property at the time of such advances and whether or not the original Beneficiary remains the owner of the Indebtedness and this Security Instrument), (d) the Exit Fee and the Minimum Interest Amount, if any, (e) any and all expenses incident to the collection of the Indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained and (f) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Trustor to Beneficiary under documents which recite that they are intended to be secured by this Security Instrument.

"Loan Documents" means (1) the Loan and Security Agreement of even date between Trustor and Beneficiary (the "**Loan Agreement**"), (2) the Promissory Note of even date, executed by Trustor, payable to the order of the Beneficiary or any one or more of them (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the "**Note**"), in the aggregate stated principal amount of NINETEEN MILLION FIVE HUNDRED THOUSAND U.S. Dollars (\$19,500,000.00), which matures on January 31, 2020, the maturity of which may be extended for one (1) additional six-month period, as provided in the Loan Agreement, with all interest thereon and all late charges, loan fees, commitment fees, and prepayment premiums (if any), (3) this Security Instrument, (4) the Guaranty, (5) the Hazardous Materials Indemnity Agreement (6) all other documents now or hereafter executed by Trustor, Guarantor or any other person or entity to evidence, guaranty or secure the payment and performance of the Obligations and (7) all amendments, modifications, restatements, extensions, renewals and replacements of the foregoing.

"Mortgaged Property" or "Trust Property" means all estate, right, title, interest, claim and demand whatsoever which Trustor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof (the "**Land**"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"), (3) all materials, supplies, appliances, equipment (as each such term is defined in the UCC), apparatus and other items of personal property now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Trustor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Trustor with any governmental authorities, boards, corporations, providers of utility services, public or private, including all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees

and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Personalty"). Notwithstanding the foregoing, Personalty shall not include any property belonging to tenants under leases, Manager (as defined in those certain Management Agreements between HC Shoppes 18 A, LLC and GDA Management Services, LLC and Happy Canyon Box 17 A, LLC and GDA Management Services, LLC), guests or invitees of the Land and the Improvements, except to the extent that Trustor shall have any right or interest therein, (5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Trustor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Trustor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "Rents"), (9) all other agreements (to the extent assignable), such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Trustor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all present and future accessories, additions, attachments, replacements and substitutions of, for or to any of the foregoing and all proceeds and products thereof, (12) subject to the terms of the Loan Agreement, all insurance policies (regardless of whether required by Beneficiary), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Trustor, (13) all mineral, water, oil and gas rights relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Security Instrument, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located;

"Obligations" means, collectively, all (1) Indebtedness due under or secured by the Loan Documents and (2) covenants, agreements, conditions, warranties, representations and other obligations made or undertaken by Trustor to Beneficiary under the Loan Documents.

"UCC" means the Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

All other capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

ARTICLE 2

GRANT

Section 2.1 **Grant**. To secure the full and timely payment and performance of the Obligations, Trustor hereby GRANTS, TRANSFERS, BARGAINS, ASSIGNS, SELLS and CONVEYS to Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession, for the use and benefit of Beneficiary, the Trust Property, TO HAVE AND TO HOLD the Trust Property unto Trustee for the benefit of Beneficiary IN FEE SIMPLE FOREVER, with power of sale, and Trustor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee and Beneficiary, subject only to the Permitted Encumbrances; provided, however, that if the Obligations shall be paid and performed in full in accordance with the terms of the Loan Documents, then this conveyance shall be null and void and may be canceled of record at the request and cost of Trustor.

Section 2.2 **Conveyance**. THIS CONVEYANCE is intended to operate and is to be construed as a deed of trust and is made under those provisions of the existing laws of the State of Colorado relating to deeds of trust to secure debt, and is given to secure the Obligations.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Trustor warrants, represents and covenants to Beneficiary as follows:

Section 3.1 **Cooperation**. Where any of the Mortgaged Property is in the possession of a third party, Trustor will join with Beneficiary in notifying the third party of Beneficiary's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Beneficiary. Trustor will cooperate with Beneficiary in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter-of-credit rights or electronic chattel paper.

Section 3.2 **Payment and Performance**. Trustor shall pay and perform, or cause to be paid or performed, the Obligations when due under the Loan Documents.

Section 3.3 **Replacement of Fixtures and Personalty**. Trustor shall not incorporate into the Mortgaged Property any item of Personalty, Fixtures or other property that is not owned by Trustor free and clear of all liens or security interests except the liens and security interests in favor of Beneficiary created by the Loan Documents.

Section 3.4 **Beneficiary Approval of Restrictions**. Trustor shall not, without the prior consent of Beneficiary, create or make application for any new public restriction (including any zoning ordinance) or change to any existing public restriction (including any zoning ordinance), or create or modify any private restriction affecting the use of the Mortgaged Property.

Section 3.5 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference, and together with covenants in this **Article 3**, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property and against certain transfers of interests in Trustor or in entities owning interests in Trustor, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Beneficiary with respect to the Loan, (c) the right of Beneficiary to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Beneficiary may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (f) except as otherwise permitted under the Loan Agreement, the obligation of Trustor to obtain Beneficiary's consent prior to entering into, modifying or taking other actions with respect to Leases.

Section 3.6 **Condemnation Awards and Insurance Proceeds.** Trustor assigns to Beneficiary all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, and all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. All such awards, compensation and proceeds shall be governed by and subject to the provisions of the Loan Agreement governing the same.

ARTICLE 4

DEFAULT AND FORECLOSURE

Section 4.1 **Remedies.** If an Event of Default exists and is continuing, Beneficiary may, at Beneficiary's election, exercise any or all of the following rights, remedies and recourses as permitted by applicable legal requirements:

(a) **Acceleration.** Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Trustor to the extent permitted by applicable law), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property, subject to the rights of tenants under Leases, and take exclusive possession thereof and of all books, records and accounts relating thereto. If Trustor remains in possession of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Trustor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary in connection therewith in accordance with the provisions of **Section 4.7**.

(d) **Foreclosure and Sale.** Institute proceedings for the foreclosure of this Security Instrument (including judicial foreclosure and non-judicial foreclosure pursuant to or by the power of sale), in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Trustor agrees

that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial or nonjudicial proceedings with respect to all or any of the Mortgaged Property or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Trustor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Trustor, including any and all right or equity of redemption. Beneficiary, at its option, may, including through Trustee or a receiver, sell the Mortgaged Property or any part of the Mortgaged Property at any judicial, nonjudicial or public sale or sales before the door of the courthouse of the county in which the Mortgaged Property or any part of the Mortgaged Property is situated, to the highest bidder for cash, in order to pay the Obligations and accrued interest thereon and insurance premiums, liens, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon, and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorneys' fees. At any such public sale, Beneficiary may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property in fee simple, with full warranties of title (or without warranties if Beneficiary shall so elect) and to this end, Trustor hereby constitutes and appoints Beneficiary, its successors and assigns, the agent and attorney-in-fact of Trustor to make such sale and conveyance, and thereby to divest Trustor of all right, title, interest, equity and equity of redemption that Trustor may have in and to the Mortgaged Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Trustor. The power of sale and agency hereby granted are coupled with an interest and are irrevocable by dissolution, insolvency or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Obligations secured hereby and shall not be exhausted by one exercise thereof but may be exercised until full payment of all Obligations secured hereby. In the event of any such foreclosure sale by Beneficiary, Trustor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over. Beneficiary may adjourn or postpone from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned. Any Person, including Trustor or Beneficiary, may be a purchaser at such sale. If Beneficiary is the highest bidder, Beneficiary may credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash. In connection with any foreclosure sale: (i) Beneficiary shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Trustor waives any right it may have to require Beneficiary to pursue any third party for any of the Obligations; (iii) Beneficiary may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property; (iv) Beneficiary may specifically disclaim any warranties of title or the like; (v) [reserved]; and (vi) Beneficiary may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Beneficiary. Compliance by Beneficiary with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Trustor or regard to the

adequacy of the Mortgaged Property for the Obligations secured thereby, the appointment of a receiver of the Mortgaged Property, and Trustor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent and collect rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7; *provided, however*, that notwithstanding the appointment of any receiver, Beneficiary shall be entitled to collect as pledgee to the possession and control of any cash, deposits, or instruments at the time held by or payable or deliverable under the terms of the Loan Agreement to Trustor.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Security Instrument).

Section 4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Beneficiary, in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Trustor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 **Release of and Resort to Collateral.** Subject to the terms and conditions of the Loan Agreement, Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment and performance of the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

Section 4.5 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Trustor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Trustor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Beneficiary's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 **Discontinuance of Proceedings.** If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such

an event, Beneficiary shall be restored to its former position with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.7 **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of, the Mortgaged Property, shall be applied by Beneficiary (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and performing Trustor's obligations under the Loan Documents during the period of Trustor's ownership of the Mortgaged Property, including reasonable (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement, (5) utility costs and charges incurred during the Trustor's ownership of the Mortgaged Property, (6) insurance premiums incurred during Trustor's ownership of the Mortgaged Property, (7) costs and expenses with respect to any litigation affecting the Mortgaged Property as a result of any occurrence or non-occurrence occurring during Trustor's ownership of the Mortgaged Property, (8) wages and salaries of employees and commissions of agents, (9) all ground rent, real estate taxes and assessments incurred during Trustor's ownership of the Mortgaged Property, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold, and (10) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the foregoing that are incurred during Trustor's ownership of the Mortgaged Property.

(b) to the payment of all amounts (including interest thereon), other than the unpaid principal balance of the Note and accrued but unpaid interest thereon, which may be due to Beneficiary under the Loan Documents;

(c) to the payment and performance of the Obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.8 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to **Section 4.1(d)** shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9 **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Trustor. All sums advanced and expenses incurred at any time by Beneficiary under this **Section 4.9** or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of

reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Security Instrument.

(b) Trustor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Security Instrument and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Security Instrument and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise. "Reasonable attorney fees" shall mean an amount actually charged by the attorneys (such to be based on time actually spent, at its usual hourly rates) retained by the Beneficiary in exercising its rights under this Security Instrument.

Section 4.10 **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this **Article 4**, the assignment of the Rents and Leases under **Article 5**, the security interests under **Article 6**, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Beneficiary to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5

ASSIGNMENT OF RENTS AND LEASES

Section 5.1 **Assignment.** Trustor unconditionally and absolutely assigns to Beneficiary all of Trustor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Beneficiary and not an assignment as security for the payment and performance of the Obligations.

Section 5.2 **Rights of Beneficiary.** Subject to the provisions of **Section 5.5** below, Beneficiary (or its receiver) shall have the right, power and authority to: (a) notify any Person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, subject to the rights of tenants under Leases, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Trustor under the Leases and exercise any and all rights of Trustor therein contained to the full extent of Trustor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary's request, Trustor shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Trustor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Trustor, to comply with all demands of Beneficiary under this Agreement and to turn over to Beneficiary on demand all Rents which it receives.

Section 5.3 **No Obligation.** Notwithstanding Beneficiary's rights hereunder, Beneficiary shall not be obligated to perform, and Beneficiary does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this

Security Instrument. Beneficiary shall have no responsibility on account of this Security Instrument for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4 **Right to Apply Rents.** Beneficiary shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with **Section 4.7** hereof.

Section 5.5 **Revocable License.** Notwithstanding that the assignment of the Rents and Leases under this **Article 5** is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Beneficiary grants to Trustor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Upon the occurrence and during the continuance of any Event of Default, such license may be revoked by Beneficiary, without notice to or demand (in accordance with applicable law) upon Trustor, and Beneficiary immediately shall be entitled to receive and apply all Rents, whether or not Beneficiary enters upon and takes control of the Mortgaged Property. Prior to such revocation, Trustor shall apply any Rents which it receives in accordance with the Loan Agreement.

Section 5.6 **Liability of Beneficiary.** Beneficiary shall not in any way be liable to Trustor for any action or inaction of Beneficiary, its employees or agents under this **Article 5**.

Section 5.7 **No Merger of Estates.** So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Trustor, Beneficiary, any lessee or any third party by purchase or otherwise.

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 **Security Interest.** This Security Instrument constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Trustor grants to Beneficiary, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Trustor at least ten (10) Business Days prior to any action under the UCC shall constitute reasonable notice to Trustor.

Section 6.2 **Financing Statements.** Trustor hereby irrevocably authorizes Beneficiary, at any time and from time to time, to file in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Trustor where permitted by law. Trustor agrees to furnish Beneficiary, promptly upon request, with any information required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Trustor ratifies and confirms its authorization of all such filings. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the

prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary's prior written consent, subject to Trustor's rights under Section 9-509(d)(2) of the UCC. Trustor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 6.3 **Fixture Filing**. This Security Instrument shall also constitute a "fixture filing" under applicable law against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Trustor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Security Instrument. The name and address of the Debtor (Trustor) and Secured Party (Beneficiary) are as set forth in the first paragraph of this Security Instrument, the description of the collateral is included in the definition of Mortgaged Property set forth in **Article 1** of this Security Instrument and the description of real estate to which the collateral is attached or upon which it is or will be located is described in **Exhibit A** attached hereto. **This Financing Statement covers the following types or items of property:** The Trust Property. This Deed of Trust covers goods or items of personal property which are or are to become fixtures upon the Land. The Trustor is the record owner of the Land.

ARTICLE 7

MISCELLANEOUS

Section 7.1 **Notices**. All Notices required or permitted to be given hereunder shall be in accordance with **Section 12.1** of the Loan Agreement.

Section 7.2 **Covenants Running with the Land**. All of the covenants in the Loan Agreement and in **Article 3** of this Security Instrument, and all other Obligations contained in this Security Instrument, are intended by Trustor and Beneficiary to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Trustor" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 7.3 **Attorney-in-Fact**. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns (including, without limitation, any receiver), as its attorney-in-fact, which agency is coupled with an interest, (a) while any Event of Default exists, to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Trustor shall fail to do so within ten (10) days after written request by Beneficiary, (b) to execute any or all of the rights or powers described in **Article 5** with the same force and effect as if executed by Trustor, and Trustor ratifies and confirms any and all acts done or omitted to be done by Beneficiary, its agents, servants, employees or attorneys in, to or about the Mortgaged Property, (c) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the Beneficiary of any such deed and as may be necessary or desirable for such purpose, (d) to prepare,

execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Mortgaged Property, and (e) while any Event of Default exists, to perform any obligation of Trustor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Trustor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Trustor or any other Person for any failure to take any action which it is empowered to take under this Section.

Section 7.4 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Beneficiary and Trustor and their respective successors and assigns. Trustor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 7.5 No Waiver. Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Loan Agreement. If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern; provided, however, the terms and conditions of this Security Instrument shall continue to control and govern with respect to matters relating to the creation, perfection, priority and enforcement of the lien and security title of this Security Instrument.

Section 7.7 Release or Reconveyance. Upon full payment and performance of the Obligations, Beneficiary, at Trustor's expense, shall cancel and surrender of record this Security Instrument, and release the liens and security interests created by this Security Instrument or reconvey the Mortgaged Property.

Section 7.8 Waiver of Stay, Moratorium and Similar Rights. Trustor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the Indebtedness secured hereby, or any agreement between Trustor and Beneficiary or any rights or remedies of Beneficiary, or any one or more of them.

Section 7.9 Obligations of Trustor, Joint and Several. If more than one Person or entity has executed this Security Instrument as "Trustor," the obligations of all such Persons hereunder shall be joint and several, and all such persons hereby waive any and all rights and remedies accorded by applicable law to sureties or guarantors, including the benefit of C.R.S. § 13-50-101 through C.R.S. § 13-50-103 inclusively.

Section 7.10 Governing Law. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF COLORADO (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW OTHER THAN THE CHOICE OF LAW RULES OF THE UNIFORM COMMERCIAL CODE OF SUCH STATE).

Section 7.11 Interpretation. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in

construing, the text of such Articles, Sections or Subsections. When used in this Security Instrument, "include(s)" shall mean "include(s), without limitation," and "including" shall mean "including, but not limited to."

Section 7.12 Counterparts. This Security Instrument may be executed in any number of identical counterparts, any of which may contain the signatures of fewer than all of the parties, but all of which together shall constitute a single instrument. Copies of originals, including copies delivered by facsimile, PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Security Instrument. For purposes of recordation, original, executed counterpart signature pages shall be attached to one copy of this Security Instrument to form one document.

Section 7.13 Entire Agreement. This Security Instrument and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Trustor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.14 Future Advances. This Security Instrument is given to secure not only existing Indebtedness (including, without limitation, any existing obligations incurred or any advances made at or prior to the recording of this Security Instrument), but also future advances and/or future obligations made pursuant to or as provided in the Loan Documents and any other documents from time to time evidencing any of the advances or obligations secured hereby, to the same extent as if such future advances and/or future obligations were made on the date of recording hereof, and although there may be no Indebtedness outstanding at the time any advance is made or obligation incurred. To the fullest extent permitted by law, the lien of this Security Instrument shall be valid as to all such Indebtedness, including, without limitation, all revolving credit and future advances and other future obligations, from the time this Security Instrument is recorded. The maximum principal amount that may be secured by this Security Instrument at any one time is NINETEEN MILLION FIVE HUNDRED THOUSAND and No/00 Dollars (\$19,500,000.00). The period in which future obligations may be incurred and secured by this Security Instrument is the period between the date hereof and that date which is the earlier of (i) the stated maturity date of the Note or (ii) fifteen (15) years from the date hereof.

Section 7.15 WAIVER OF TRUSTOR'S RIGHTS. BY EXECUTION OF THIS SECURITY INSTRUMENT, TRUSTOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE OBLIGATIONS AND THE POWER OF ATTORNEY GIVEN HEREIN TO BENEFICIARY TO SELL THE MORTGAGED PROPERTY BY NON-JUDICIAL FORECLOSURE UPON DEFAULT BY TRUSTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE (EXCEPT AS OTHERWISE PROVIDED HEREIN); (B) EXCEPT TO THE EXTENT PROVIDED OTHERWISE HEREIN, WAIVES ANY AND ALL RIGHTS WHICH TRUSTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY; (C) ACKNOWLEDGES THAT TRUSTOR HAS READ THIS SECURITY DEED AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO TRUSTOR AND TRUSTOR HAS CONSULTED WITH COUNSEL OF TRUSTOR'S CHOICE PRIOR TO EXECUTING THIS SECURITY DEED; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF TRUSTOR HAVE

BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY TRUSTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

[Remainder of page intentionally left blank.]

EXECUTED under seal as of the date first above written.

HC SHOPPES 18 B, LLC, a Delaware limited liability company

By: **GDA Real Estate Management, Inc.**, a Colorado corporation, its manager

By: *Gary J. Dragul*
Name: Gary J. Dragul
Title: President

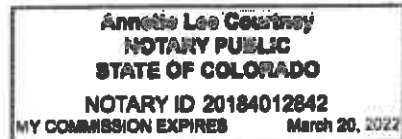
ACKNOWLEDGMENT

STATE OF Colorado)
) ss.
County of Archuleta)

The foregoing instrument was acknowledged before me this 27 day of July, 2018, by Gary J. Dragul, as President of GDA Real Estate Management, Inc., a Colorado corporation, as the manager of HC SHOPPES 18 B, LLC, a Delaware limited liability company, on behalf of HC SHOPPES 18 B, LLC.

Annette Lee Courtney

Notary Public



WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: March 20, 2022

EXECUTED under seal as of the date first above written.

HC SHOPPES 18 A, LLC, a Delaware limited liability company

By: GDA Real Estate Management, Inc., a Colorado corporation, its manager

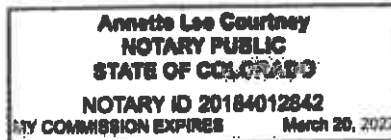
By: 
Name: Gary J. Dragul
Title: President

ACKNOWLEDGMENT

STATE OF Colorado)
) ss.
County of Arapahoe)

The foregoing instrument was acknowledged before me this 17 day of July, 2018, by Gary J. Dragul, as President of GDA Real Estate Management, Inc., a Colorado corporation, as the manager of HC SHOPPES 18 A, LLC, a Delaware limited liability company, on behalf of HC SHOPPES 18 A, LLC.


Annette Lee Courtney
Notary Public



WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: March 20, 2022

SCHEDULE 1

TRUSTOR

HC Shoppes 18 A, LLC, a Delaware limited liability company

HC Shoppes 18 B, LLC, a Delaware limited liability company

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

PARCEL ONE:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 264.79 FEET;
THENCE SOUTH A DISTANCE OF 64.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1984 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, COLORADO, BEING THE TRUE POINT OF BEGINNING;

THENCE EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 346.18 FEET TO A POINT ON THE WEST LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET;
THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 104.00 FEET;
THENCE NORTH ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 200.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 419.17 FEET TO THE NORTHWEST CORNER OF TRACT "A", BELMONT HEIGHTS SUBDIVISION FILING NO. 2, AS RECORDED IN BOOK 23 AT PAGE 18, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID TRACT "A" A DISTANCE OF 350.00 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF SAID SUBDIVISION;
THENCE SOUTH 44 DEGREES 31 MINUTES 32 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID SUBDIVISION, A DISTANCE OF 495.81 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET, AS MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1 IN BOOK 23 AT PAGE 10 IN THE OFFICES OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 742.06 FEET;
THENCE NORTH 00 DEGREES 03 MINUTES 55 SECONDS WEST ALONG THE EAST LINE OF STANDARD SERVICE STATION TRACT AS RECORDED IN BOOK 9476 AT PAGE 276 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, A DISTANCE OF 161.56 FEET TO THE TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM THE FOLLOWING PROPERTY;

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A

[Exhibit A to Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing (Shoppes)]

POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE. AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;
THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;
THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING,

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL TWO:

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 6;
THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 6 A DISTANCE OF 265.00 FEET;
THENCE SOUTH TO A POINT ON THE CENTERLINE OF HAPPY CANYON ROAD;
THENCE NORTHWESTERLY ALONG THE CENTERLINE OF HAPPY CANYON ROAD TO THE POINT OF BEGINNING,
EXCEPT EXISTING RIGHTS OF WAY FOR PUBLIC ROADS,
EXCEPT THAT PORTION AS CONVEYED TO THE CITY AND COUNTY OF DENVER IN WARRANTY DEED RECORDED JUNE 22, 2015 AT RECEPTION NO. 2015082302,

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR ACCESS, PARKING, UTILITIES AND DRAINAGE CONTAINED IN THAT CERTAIN AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED MARCH 3, 2017 AT RECEPTION NO. 2017029949.



08/01/2018 08:40 AM
City & County of Denver
Electronically Recorded

R \$13.00

MIS

D \$0.00

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity¹ named HC SHOPPES 18 A, LLC and is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.

2. The entity is a:

- corporation
- nonprofit corporation
- limited liability company
- general partnership
- limited partnership
- other: _____
- registered limited liability partnership
- registered limited liability limited partnership
- limited partnership association
- government or governmental subdivision or agency
- trust (Section 38-30-108.5, C.R.S.)

3. The entity is formed under the laws of: DELAWARE

4. The mailing address for the entity is: 5890 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111

5. The name position of each person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity is:

Gary J. Dragul, President of the Manager, GDA Real Estate Management, Inc.,

6.2 The authority of the foregoing person(s) to bind the entity is not limited.

7. Other matters concerning the manner in which the entity deals with interests in real property:

Executed this July 27 2018

HC SHOPPES 18 A, LLC

MANAGER

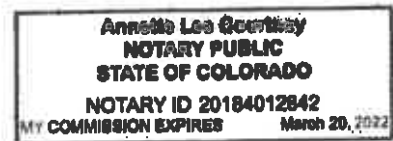
GDA Real Estate Management, Inc.,
a Colorado corporation

BY [Signature]
Gary J. Dragul, President

Subscribed and sworn to before me this 27 day of July, 2018

By Annette Lea Courtney Gary Dragul

[Signature]
Notary Public



¹This form should not be used unless the entity is capable of holding title to real property.
²The absence of any limitation shall be prima facie evidence that no such limitation exists.
³The statement of authority must be recorded to obtain the benefits of the statute.

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity¹ named HC SHOPPES 18 A, LLC and is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.

2. The entity is a:

- | | |
|---|---|
| <input type="checkbox"/> corporation | <input type="checkbox"/> registered limited liability partnership |
| <input type="checkbox"/> nonprofit corporation | <input type="checkbox"/> registered limited liability limited partnership |
| <input checked="" type="checkbox"/> limited liability company | <input type="checkbox"/> limited partnership association |
| <input type="checkbox"/> general partnership | <input type="checkbox"/> government or governmental subdivision or agency |
| <input type="checkbox"/> limited partnership | <input type="checkbox"/> trust (Section 38-30-108.5, C.R.S.) |
| <input type="checkbox"/> other: _____ | |

3. The entity is formed under the laws of: DELAWARE

4. The mailing address for the entity is: 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111

5. The name position of each person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity is:

Gary J. Dragul, President of the Manager, GDA Real Estate Management, Inc.,

6.2 The authority of the foregoing person(s) to bind the entity is not limited.

7. Other matters concerning the manner in which the entity deals with interests in real property:

Executed this July 27 2018

HC SHOPPES 18 A, LLC

MANAGER

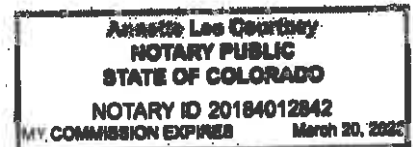
GDA Real Estate Management, Inc.,
a Colorado corporation

BY: [Signature]
Gary J Dragul, President

Subscribed and sworn to before me this 27 day of July, 2018.

By Annette Lee Courtney Gary Dragul

Annette Lee Courtney
Notary Public



¹This form should not be used unless the entity is capable of holding title to real property.
²The absence of any limitation shall be prima facie evidence that no such limitation exists.
³The statement of authority must be recorded to obtain the benefits of the statute.



08/01/2018 08:40 AM
City & County of Denver
Electronically Recorded

R \$13.00

MIS

D \$0.00

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity¹ named HC SHOPPES 18 B, LLC and is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.

2. The entity is a:

- corporation
- nonprofit corporation
- limited liability company
- general partnership
- limited partnership
- other: _____
- registered limited liability partnership
- registered limited liability limited partnership
- limited partnership association
- government or governmental subdivision or agency
- trust (Section 38-30-108.5, C.R.S.)

3. The entity is formed under the laws of: DELAWARE

4. The mailing address for the entity is: 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111

5. The name position of each person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity is:
Gary J. Dragul, President of the Manager, GDA Real Estate Management, Inc.,

6.² The authority of the foregoing person(s) to bind the entity is not limited.

7. Other matters concerning the manner in which the entity deals with interests in real property:

Executed this July 27 2018

HC SHOPPES 18 B, LLC

MANAGER

GDA Real Estate Management, Inc.,
a Colorado corporation

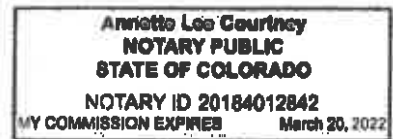
By: [Signature]
Gary J. Dragul, President

Subscribed and sworn to before me this 27 day of July, 2018

By: [Signature]

[Signature]
Notary Public

Gary Dragul



¹This form should not be used unless the entity is capable of holding title to real property.
²The absence of any limitation shall be prima facie evidence that no such limitation exists.
³The statement of authority must be recorded to obtain the benefits of the statute.

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity¹ named HC SHOPPES 18 B, LLC and is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.

2. The entity is a:

- corporation
- nonprofit corporation
- limited liability company
- general partnership
- limited partnership
- other: _____
- registered limited liability partnership
- registered limited liability limited partnership
- limited partnership association
- government or governmental subdivision or agency
- trust (Section 38-30-108.5, C.R.S.)

3. The entity is formed under the laws of: DELAWARE

4. The mailing address for the entity is: 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111

5. The name position of each person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity is:
Gary J. Dragul, President of the Manager, GDA Real Estate Management, Inc.,

6.2 The authority of the foregoing person(s) to bind the entity is not limited.

7. Other matters concerning the manner in which the entity deals with interests in real property:

Executed this July 27 2018

HC SHOPPES 18 B, LLC

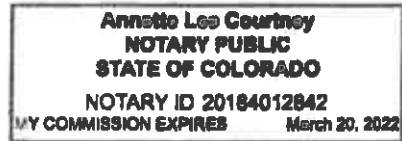
MANAGER

GDA Real Estate Management, Inc.,
a Colorado corporation

By: [Signature]
Gary J Dragul, President

Subscribed and sworn to before me this 27 day of July, 2018.

By: [Signature]
Annette Lee Courtney
Notary Public



[Signature]
Gary Dragul

¹This form should not be used unless the entity is capable of holding title to real property.
²The absence of any limitation shall be prima facie evidence that no such limitation exists.
³The statement of authority must be recorded to obtain the benefits of the statute.

After Recording Return to:

Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Attn: Rachel Kipnes, Esq.

CERTIFIED TO BE A TRUE &
EXACT COPY OF ORIGINAL

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

(Shoppes)

THIS FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (Shoppes) (this "Amendment") is made and entered into effective as of the 3rd day of August, 2018, by the undersigned entities listed on Schedule 1 attached hereto and incorporated herein by reference (collectively, "Trustor"), whose address for notice purposes hereunder is 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, in favor of the Public Trustee of the City and County of Denver, as trustee under this Deed of Trust (the "Trustee"), for the benefit of AFF II Denver, LLC, a Delaware limited liability company ("Beneficiary"), whose address is 2100 Powers Ferry Road, Suite 350, Atlanta, GA 30339.

A. Trustor has executed that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated July 24, 2018 and recorded August 1, 2018 at Reception No. 2018004789 in the real property records of the City and County of Denver (the "Deed of Trust").

B. Beneficiary has agreed to extend a loan in the amount of \$8,900,000.00 (the "Crossed Loan") to the entities listed on Schedule 2 (the "Marketplace Borrowers") attached hereto and incorporated herein by reference pursuant to that Loan and Security Agreement (The Marketplace) by and among Beneficiary and the Marketplace Borrowers dated August 3, 2018 (the "Marketplace Loan Agreement").

C. Trustor, as affiliates of the Marketplace Borrowers, are materially benefitted by Beneficiary making and entering into the Crossed Loan, and desire to execute and deliver this Amendment in order to induce Beneficiary to make the Crossed Loan. Trustor acknowledges that this Amendment constitutes material consideration, without which Trustor would be unwilling to enter into the Marketplace Loan Agreement or make the Crossed Loan.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be fully and legally bound, do hereby agree as follows:



1. The term "Loan Documents" as used in the Deed of Trust is hereby amended and restated as follows:

"Loan Documents" means (1) the Loan and Security Agreement of even date between Trustor and Beneficiary (the "Loan Agreement"), (2) the Promissory Note of even date, executed by Trustor, payable to the order of the Beneficiary or any one or more of them (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the "Note"), in the aggregate stated principal amount of NINETEEN MILLION FIVE HUNDRED THOUSAND U.S. Dollars (\$19,500,000.00), which matures on January 31, 2020, the maturity of which may be extended for one (1) additional six-month period, as provided in the Loan Agreement, with all interest thereon and all late charges, loan fees, commitment fees, and prepayment premiums (if any), (3) the Promissory Note of even date, executed by the entities listed on Schedule 2 attached hereto and incorporated herein by reference (collectively, the "Marketplace Borrowers"), payable to the order of the Beneficiary or any one or more of them (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the "Crossed Note"), in the aggregate stated principal amount of EIGHT MILLION NINE HUNDRED THOUSAND AND NO/100 U.S. Dollars (\$8,900,000.00), which matures on January 31, 2020, the maturity of which may be extended for one (1) additional six-month period, as provided in the Loan Agreement, with all interest thereon and all late charges, loan fees, commitment fees, and prepayment premiums (if any), (4) this Security Instrument, (5) the Guaranty, (6) the Hazardous Materials Indemnity Agreement (7) all other documents now or hereafter executed by Trustor, Guarantor or any other person or entity to evidence, guaranty or secure the payment and performance of the Obligations and (8) all amendments, modifications, restatements, extensions, renewals and replacements of the foregoing.

2. The Deed of Trust is hereby further amended to include the following provisions:

Article 8

CROSS-DEFAULT/CROSS-COLLATERALIZATION

Section 8.1 Related Loan. As of the date hereof, in addition to the Obligations, Beneficiary is the holder of a loan in the amount of EIGHT MILLION NINE HUNDRED THOUSAND and No/100 Dollars (\$8,900,000.00) (the "Crossed Loan"), which is secured by property as further described on Exhibit A attached hereto and incorporated by reference (the "Crossed Property"). In connection with the Crossed Loan, the Marketplace Borrowers executed the Crossed Note. The Crossed Note is secured by a Deed of Trust, Assignment of Rents and Leases Security Agreement and Fixture Filing (Marketplace) on the Crossed Property (the "Crossed Deed of Trust"). The Crossed Note, the Crossed Deed of Trust, and any and all other documents executed as security for, or in connection with the Crossed Loan shall sometimes be collectively referred to herein as the "Crossed Loan Documents").

Section 8.2 Cross-Default. Trustor covenants and agrees for the benefit of Beneficiary that an Event of Default under any of the Crossed Loan Documents shall also constitute an Event of Default hereunder and shall entitle Beneficiary to exercise any and all rights provided herein or otherwise available at law or in equity. Should an Event of Default occur under any of the Loan Documents or the Crossed Loan Documents, Beneficiary may, at its option, foreclose any or all of this Deed of Trust or the Crossed Deed of Trust. If Beneficiary shall foreclose any of this Deed of Trust or the Crossed Deed of Trust, then the sale by Beneficiary of the property secured thereby shall not exhaust Beneficiary's foreclosure rights and remedies as to the other such properties, and Beneficiary is specifically allowed to have successive sales conducted under applicable foreclosure provisions until all of the properties (the Mortgaged Property and the Crossed Property) shall be sold or the entire indebtedness of the Loan and the Crossed Loan, shall be extinguished.

Section 8.3 Cross-Collateralization. The Loan and the Crossed Loan are cross-collateralized; specifically, Trustor covenants and agrees that, in the event that either this Deed of Trust, or the Crossed Deed of Trust are foreclosed, and the proceeds of such foreclosure exceeds the primary indebtedness secured thereby (the Crossed Loan being the primary indebtedness secured by the Crossed Deed of Trust), the excess proceeds shall be retained by Beneficiary and applied to the outstanding indebtedness under the Crossed Loan in such order and manner as Beneficiary shall determine in its sole discretion. Beneficiary shall be entitled to retain all proceeds of any foreclosure sale until all indebtedness secured by this Deed of Trust and the Crossed Deed of Trust shall have been paid in full.

Section 8.4 Effect of Cross-Default/Cross-Collateralization. Except as set forth within the Note and/or the Crossed Note, Trustor covenants and agrees that none of the Loan or the Crossed Loan may be prepaid except with simultaneous prepayment of the Note and the Crossed Note, respectively, and in strict accordance with the terms of the Note and the Crossed Note.

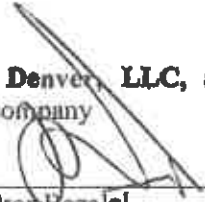
3. All references in the Deed of Trust to "\$19,500,000.00" as the maximum principal amount secured by the Deed of Trust are hereby amended to "\$28,400,000.00."

4. The Deed of Trust, as amended by this Amendment, is hereby declared to remain in full force and effect without further modification.

[Signature Pages Follow]

EXECUTED under seal as of the date first above written.

AFF II Denver, LLC, a Delaware limited liability company

By: 
Name: Dror Bezalel
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF Georgia)
) ss.
County of Cobb)

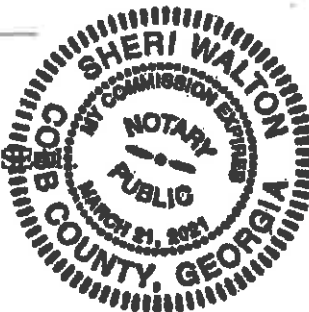
The foregoing instrument was acknowledged before me this 2nd day of August, 2018, by Dror Bezalel, authorized signatory for AFF II Denver, LLC, a Delaware limited liability company.



Notary Public

WITNESS MY HAND AND OFFICIAL

My commission expires: 3-21-21



GUARANTY OF PAYMENT

GUARANTY OF PAYMENT (as the same may be amended, supplemented or otherwise modified from time to time, this "**Guaranty**") is made as of July ~~27~~ 2018, by GARY DRAGUL, an individual (the "**Guarantor**") for the benefit of AFF II DENVER, LLC, a Delaware limited liability company (together with its successors and assigns, "**Lender**").

WITNESSETH:

WHEREAS, pursuant to that certain Loan and Security Agreement (together with all renewals, amendments, modifications, increases and extensions thereof, the "**Loan Agreement**") dated as of the date of this Guaranty between Lender and the borrowers listed on Schedule I (collectively, the "**Borrower**"), Lender has agreed to make a loan to Borrower in the aggregate maximum principal amount of \$19,500,000.00 (the "**Loan**"). The Loan is evidenced by that certain Promissory Note (as the same may be renewed, amended, modified, increased or extended from time to time, the "**Note**") executed by Borrower in favor of Lender, in the aggregate principal amount of the Loan.

WHEREAS, the Loan is secured by, among other things, that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing executed by Borrower in favor of Lender, covering the Collateral (together with all renewals, modifications, increases and extensions thereof, the "**Security Instrument**"), which grants to Lender, among other things, a first priority lien on and security interest in the "Mortgaged Property" described therein. The Loan Agreement, the Note, the Security Instrument, and each of the other documents evidencing, securing or guaranteeing the Loan from time to time, as the same may be amended, modified, restated or supplemented, are hereinafter referred to collectively as the "**Loan Documents**."

WHEREAS, Lender is not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment and performance to Lender of the Guaranteed Obligations (as herein defined); and

WHEREAS, Guarantor is the owner of direct or indirect interests or has a financial interest in Borrower, and Guarantor will directly benefit from Lender's making the Loan to Borrower.

NOW, THEREFORE, as an inducement to Lender to enter into the Loan Agreement and make the Loan to Borrower and to extend such additional credit as Lender may from time to time agree to extend under the Loan Documents, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor does hereby agree as follows:



ARTICLE I
DEFINED TERMS

Section 1.1 Defined Terms. Capitalized terms used in this Guaranty and not specifically defined in this Guaranty have the meaning provided in the Loan Agreement. In addition, the term "Liabilities" means all principal, interest, cost, expenses and fees (including the Exit Fee and any Minimum Interest Amount) and all other amounts due and payable or to become due and payable to Lender under the Loan Documents (including under the Hazardous Materials Indemnity Agreement), together with all other obligations of Borrower under the Loan Documents (including under the Hazardous Materials Indemnity Agreement). If any of the Liabilities are reduced, discharged or released pursuant to the United States Bankruptcy Code or similar state insolvency laws or by reason of any case or action brought thereunder or in connection therewith, the term "Liabilities" for purposes of this Guaranty shall mean the Liabilities without giving effect to such reduction, discharge or release.

ARTICLE 2
NATURE AND SCOPE OF GUARANTY

Section 2.1 Guaranty. Guarantor hereby irrevocably and unconditionally guarantees to Lender the payment and performance of the Guaranteed Obligations (as hereinafter defined) as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary obligor.

Section 2.2 Definition of Guaranteed Obligations. As used herein, the term "Guaranteed Obligations" means all of the Liabilities.

Section 2.3 Last Dollar.

(a) This Guaranty is a "last dollar" guaranty, and accordingly, all amounts paid by Borrower or any other Person under the Loan Documents (other than a payment received by Lender from Guarantor in accordance with Section 2.3(b) below) shall be deemed applied first to obligations not hereby guaranteed.

(b) Any payment by Guarantor to Lender under this Guaranty shall be from Guarantor's personal funds and shall specify that it is a payment under this Guaranty, and no payment made by Guarantor under any other Loan Document, including, without limitation, any other Guaranty, shall be deemed a payment by Guarantor hereunder.

ARTICLE 3
GENERAL TERMS AND CONDITIONS

Section 3.1 Nature of Guaranty. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance, and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to all Guaranteed Obligations existing from time to time (i) notwithstanding any attempted revocation and (ii) with respect to any Guarantor that is a natural person, after such Guarantor's death (in which event such deceased Guarantor's obligations under this Guaranty shall be binding upon such Guarantor's estate and such Guarantor's legal representatives and heirs).

Section 3.2 Guaranteed Obligations Not Reduced by Offset. The Guaranteed Obligations shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or

defense of Borrower or any other Person (as defined below) against Lender or against payment of the Guaranteed Obligations, whether such offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.

Section 3.3 **No Duty To Pursue Others.** Lender has the right to require Guarantor to pay, comply with and satisfy the Guaranteed Obligations under this Guaranty, and shall have the right to proceed immediately against such Guarantor with respect thereto. Without limitation of the generality of the foregoing, it shall not be necessary for Lender (and Guarantor hereby waives any rights which such Guarantor may have to require Lender), in order to enforce the Guaranteed Obligations against Guarantor, first to (i) institute a suit or exhaust its remedies against Borrower or others liable on the Loan or the Guaranteed Obligations or any other person or any of the collateral for the Loan, (ii) enforce Lender's rights against any of the collateral for the Loan, (iii) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, (iv) demonstrate that the collateral for the Loan provides inadequate security for the Loan, or (v) resort to any other means of obtaining payment of the Guaranteed Obligations.

Section 3.4 **Payments: Interest on Amounts Payable Hereunder.** If all or any part of the Guaranteed Obligations shall not be punctually paid when due (taking into account any cure periods provided under the Loan Documents), whether on demand, maturity, acceleration or otherwise, Guarantor shall be liable to pay to Lender, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, or notice of acceleration of the maturity, in immediately available lawful money of the United States of America, as an addition to the Guaranteed Obligations, interest on the Guaranteed Obligations (to the extent not paid when due) at the Default Rate until paid in full. Lender may apply all money received by Lender from Guarantor to any of the Guaranteed Obligations, interest thereon as herein provided, and Enforcement Costs (as defined below), in such priority and proportions, and at such time or times as Lender may elect in its sole discretion.

Section 3.5 **Enforcement Costs.** Guarantor hereby agrees to pay, on written demand by Lender, all reasonable costs actually incurred by Lender in collecting any amount payable under this Guaranty or enforcing or protecting its rights under the Loan Documents, in each case whether or not legal proceedings are commenced (the "**Enforcement Costs**"). Such fees and expenses shall be in addition to the Guaranteed Obligations and shall include, without limitation, costs and expenses of both in-house and outside counsel, paralegals and other hired professionals, special servicing fees (including portfolio management fees), court fees, costs incurred in connection with pre-trial, trial and appellate level proceedings (including discovery and expert witnesses), costs incurred in post-judgment collection efforts or in any bankruptcy proceeding to the extent such costs relate to the Guaranteed Obligations or the enforcement of this Guaranty. Amounts incurred by Lender shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full upon Lender's written demand for payment. This ~~Section 3.5~~ shall survive the payment in full of the Note.

Section 3.6 **Cumulative Remedies.** Guarantor acknowledges that, following an Event of Default, Lender is entitled to accelerate the Loan and exercise all other rights and remedies as have been provided to Lender under the Loan Documents and by law or in equity, including, without limitation, enforcement of this Guaranty. All rights and remedies of Lender are cumulative and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right or remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Guarantor in any instance will not entitle Guarantor to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance

without notice or demand. Lender may release other security for the Loan, may release any party liable for the Loan, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Loan, in each case without prejudice to its rights under this Guaranty and without such action being deemed an accord and satisfaction or a reinstatement of the Loan. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies.

Section 3.7 Unimpaired Liability. Guarantor acknowledges and agrees that all obligations hereunder are and shall be absolute and unconditional under any and all circumstances without regard to the validity, regularity or enforceability of any or all of the Loan Documents or the existence of any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. Without limiting the foregoing, Guarantor acknowledges and agrees that its liability hereunder shall in no way be released, terminated, discharged, limited or impaired by reason of any of the following (whether or not Guarantor has any knowledge or notice thereof):

(a) Borrower's or any other Person's lack of authority or lawful right to enter into any of the Loan Documents or any officers' or representatives' lack of authority or right to enter into Loan Documents on its behalf, or the obligations thereunder being ultra vires;

(b) any modification, supplement, extension, consolidation, restatement, waiver or consent provided by Lender with respect to any of the Loan Documents including, without limitation, the grant of extensions of time for payment or performance;

(c) the failure to record any Loan Document or to perfect any security interest intended to be provided by the Loan Documents;

(d) the release, surrender, exchange, subordination, deterioration, waste, loss, impairment or substitution, in whole or in part, of any collateral for the Loan, the failure to protect, secure or insure such collateral, the acceptance of additional collateral for the Loan or the failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral for the Loan;

(e) Lender's failure to exercise, or delay in exercising, any rights or remedies Lender may have under the Loan Documents or under this Guaranty or otherwise available at law or in equity, including but not limited to any neglect, delay, omission, failure or refusal of Lender (i) to take or prosecute any action for the collection of all or any part of the Guaranteed Obligations, or (ii) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon any collateral for the Loan, or (iii) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Obligations;

(f) the release of any Person from performance, in whole or in part, under this Guaranty or the release of Borrower or any other Person now or hereafter party to a Loan Document from performance, in whole or in part, under any of Loan Document to which each is a party, in each case whether by operation of law, Lender's voluntary act, or otherwise, and Guarantor expressly waives the benefit of C.R.S. §§ 13-50-101 through 13-50-103, inclusive;

(g) any bankruptcy, insolvency, reorganization, adjustment, dissolution, liquidation or other like proceeding involving or affecting Borrower or any other Person;

(h) the termination or discharge of the Security Instrument or any other Loan Document or the exercise of any power of sale or any foreclosure (judicial or otherwise) or delivery or acceptance of a deed-in-lieu of foreclosure;

(i) the existence of any claim, setoff, counterclaim, defense or other rights which Guarantor may have against Borrower, Lender or any other Person, whether in connection with the Loan or any other transaction;

(j) the accuracy or inaccuracy of the representations and warranties made by Borrower or any other Person in any of the Loan Documents;

(k) any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to Borrower or any other Person;

(l) any sale, lease or transfer of any or all of the assets of Borrower or any other Person;

(m) the Guaranteed Obligations, or any part thereof, exceeding the maximum amount permitted by law or violating any usury law;

(n) any valid defenses, claims or offsets (whether at law, in equity or by agreement) by Borrower which render the Guaranteed Obligations wholly or partially uncollectible from Borrower, whether arising in connection with the Loan Documents or otherwise,

(o) the illegality or unenforceability of, or the inability to collect, the Guaranteed Obligations;

(p) any of the Loan Documents being irregular or not genuine or authentic; or

(q) any changes (whether directly or indirectly) in the shareholders, partners or members of Borrower or the reorganization, merger or consolidation of Borrower into or with any other Person.

Section 3.8 Waivers. Guarantor hereby waives and relinquishes, to the fullest extent permitted by law: (a) all rights or claims of right to cause a marshalling of assets or to cause Lender to proceed against any of the collateral for the Loan before proceeding under this Guaranty against Guarantor or any other guarantor or indemnitor under the Loan; (b) all rights and remedies accorded by applicable law to sureties or Guarantor, except any rights of subrogation and contribution (the exercise of which are subject to the terms of this Guaranty); (c) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought by or against Guarantor; (d) notice of acceptance of this Guaranty and of any action taken or omitted in reliance hereon; (e) presentment for payment, demand, protest, notice of nonpayment or failure to perform or observe, or any other proof, notice or demand to which Guarantor might otherwise be entitled with respect to the Guaranteed Obligations; (f) all homestead or exemption rights against the Guaranteed Obligations and the benefits of any statutes of limitation or repose; and (g) any defense based upon an election of remedies by Lender, including any election to proceed by judicial or non-judicial foreclosure of such collateral, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable or any election of remedies, including remedies relating to real property or personal property security, which destroys or otherwise impairs the subrogation rights of Guarantor or the rights of Guarantor to proceed against Borrower or any other guarantor for reimbursement, contribution, or both.

Section 3.9 **Waivers of Notice.** Guarantor agrees to the provisions of the Loan Documents and hereby waives notice of (a) any disbursements thereunder made by Lender to Borrower, (b) any amendment or extension of the Loan Documents, (c) the execution and delivery by Borrower and Lender of any other loan or credit agreement or of Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Project, (d) the occurrence of any Event of Default, (e) Lender's transfer or disposition of the Guaranteed Obligations, or any part thereof, (f) the sale or foreclosure (or posting or advertising for sale or foreclosure) of the Project, (g) any default by Borrower under or with respect to the Loan Documents, or (h) any other action at any time taken or omitted by Lender and, generally, all demands and notices of every kind in connection with this Guaranty and the other Loan Documents.

Section 3.10 **Guarantor Bound by Judgment Against Borrower.** Guarantor agrees that it shall be bound conclusively, in any jurisdiction, by the judgment in any action by Lender against Borrower in connection with the Loan Documents (wherever instituted) as if Guarantor were a party to such action even if not so joined as a party.

Section 3.11 **Certain Consequences of Borrower's Bankruptcy.**

(a) Any payment made on the Guaranteed Obligations, whether made by Borrower or Guarantor or any other Person, that is required to be refunded or recovered from Lender as a preference or a fraudulent transfer or is otherwise set-aside pursuant to 11 U.S.C. § 101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**"), or a voluntary petition, complaint or application under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (together with the Bankruptcy Code, the "**Debtor Relief Laws**") shall not be considered as a payment made on the Guaranteed Obligations or under this Guaranty. Guarantor's liability under this Guaranty shall continue with respect to any such payment, or be deemed reinstated, with the same effect as if such payment had not been received by Lender, notwithstanding any notice of revocation of this Guaranty prior to such avoidance or recovery or payment in full of the Loan, until such time as all periods have expired within which Lender could be required to return any amount paid at any time on account of the Guaranteed Obligations.

(b) Until repayment in full of the Liabilities, including interest accruing after the commencement of a proceeding by or against Borrower under the Bankruptcy Code or any other Debtor Relief Law ("**Post-Petition Interest**"), which interest the parties agree remains a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under any applicable Debtor Relief Law generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right (but not the obligation) to file proof of claim and to vote in any other bankruptcy or insolvency action, including the right to vote on any plan of reorganization, liquidation or other proposal for debt adjustment under federal or state law.

Section 3.12 **Subrogation and Contribution.** Guarantor agrees that no payment by Guarantor under this Guaranty shall give rise to, and Guarantor hereby unconditionally and irrevocably waives, releases and abrogates any and all rights Guarantor may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating Guarantor to the rights of Lender) to assert, (a) any rights of subrogation against Borrower or the collateral for the Loan, or (b) any rights of contribution against any other guarantor of the Loan or any other Person, in each case unless and until Lender have received full and indefeasible payment of the Liabilities. If the deferral of such rights shall be unenforceable for any reason, Guarantor agrees that (x) Guarantor's rights of

subrogation shall be junior and subordinate to Lender's rights against Borrower and the collateral for the Loan, and (y) Guarantor's rights of contribution against any other Person liable for the Loan or any Guaranteed Obligations shall be junior and subordinate to Lender's rights against such other Person.

Section 3.13 **Subordination by Guarantor.**

(a) Guarantor agrees that any indebtedness of Borrower to Guarantor, whether now or hereafter existing, whether direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities be evidenced by note, contract, open account or otherwise, and irrespective of the person or persons in whose favor such debts or liabilities may, at their inception, have been or may hereafter be created, or the manner in which they have been or may hereafter be acquired by Guarantor, including, without limitation, all rights and claims of Guarantor against Borrower (arising as a result of subrogation or otherwise) as a result of Guarantor's payment of all or a portion of the Guaranteed Obligations, together with any interest thereon (collectively, "**Guarantor Claims**"), shall be and hereby is deferred, postponed and subordinated to the prior payment in full of the Liabilities. Further, until payment in full of the Liabilities, Guarantor agrees that should Guarantor receive any payment, satisfaction or security for any Guarantor Claim, the same shall be delivered to Lender in the form received (endorsed or assigned as may be appropriate) for application on account of, or as security for, the Loan and until so delivered to Lender, shall be held in trust for Lender as security for the Loan.

(b) In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving Guarantor as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims for application against any due and payable Guaranteed Obligations. Guarantor hereby assigns such dividends and payments to Lender. Should Lender receive, for application against the Guaranteed Obligations, any such dividends or payments which is otherwise payable to Guarantor and which, as between Borrower and Guarantor, shall constitute a credit against the Guarantor Claims, then, upon payment to Lender in full of the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Lender to the extent that such payments to Lender on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that portion of the Guaranteed Obligations which would have been unpaid if Lender had not received dividends or payments upon the Guarantor Claims.

(c) Guarantor agrees that any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor presently exist or are hereafter created or attach. Without the prior written consent of Lender, Guarantor shall not (i) exercise or enforce any creditor's right Guarantor may have against Borrower, or (ii) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including without limitation the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgage, deeds of trust, security interests, collateral rights, judgments or other encumbrances held by Guarantor on assets of Borrower.

Section 3.14 **Lender Transferees; Secondary Market Activities; No Transfer by Guarantor.** Guarantor acknowledges and agrees that Lender, without notice to Guarantor or Guarantor's

consent, may assign all or any portion of its rights hereunder in connection with any sale or assignment of the Loan or servicing rights related to the Loan, grant participations in the Loan, transfer the Loan as part of a securitization in which Lender or assigns its rights to a securitization trustee, or contract for the servicing of the Loan, and that each such assignee, participant or servicer shall be entitled to exercise all of Lender's rights and remedies hereunder. Guarantor further acknowledges that Lender or may provide third parties with an existing or prospective interest in the servicing, enforcement, ownership, purchase, participation or securitization of the Loan, including, without limitation, any rating agency rating the securities issued in respect of a securitization or participation of the Loan, and any entity maintaining databases on the underwriting and performance of commercial mortgage loans, any and all information which Lender now have or may hereafter acquire relating to the Loan, the Project or with respect to Borrower or Guarantor, as Lender determine necessary or desirable. Guarantor irrevocably waives all rights Guarantor may have under applicable laws, if any, to prohibit such disclosure, including, without limitation, any right of privacy. Guarantor may not assign any of its rights, powers, duties and obligations hereunder, or substitute other Persons in lieu of itself as the obligor hereunder.

Section 3.15 Financial Statements. Guarantor represents and warrants to Lender that (i) the financial statements of Guarantor previously submitted to Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities, and fairly present the financial condition of Guarantor, and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Guaranty, and (ii) no material adverse change has occurred in the financial statements from the dates thereof until the date hereof. Guarantor shall furnish to Lender:

(a) If Guarantor is not a natural Person (other than a trust established for estate planning purposes), as soon as available and in no event later than sixty (90) days after the close of each calendar year: (A) a balance sheet for Guarantor as of the end of each calendar year and a statement of profit and loss for Guarantor and for Guarantor's operations for such calendar year, together with all supporting schedules certified by Guarantor as true, complete and correct; and stating that such materials (1) were prepared in accordance with in accordance with sound accounting principles (or such other accounting basis reasonably acceptable to Lender) consistently applied from year to year, (2) fairly present Guarantor's financial condition, (3) show all material liabilities, direct and contingent, (4) fairly present the results of Guarantor's operations, (5) disclose the existence of any hedge and/or off-balance sheet transactions; and as soon as available and in no event later than forty-five (45) days after the close of each calendar quarter and (6) contain a statement of net worth and liquidity: (A) a balance sheet for Guarantor as of the end of each calendar quarter and a statement of profit and loss for Guarantor and for Guarantor' operations for each calendar quarter, together with all supporting schedules certified by Guarantor as true, complete and correct in all material respects.

(b) If Guarantor is a natural Person or a trust established for estate planning purposes, deliver to Lender as soon as available and in no event later than forty-five (45) days of the end of each calendar quarter, a financial statement certified by Guarantor as (1) true, complete and correct, (2) fairly presenting Guarantor's financial condition, (3) containing a statement of net worth and liquidity, (4) identifying all of Guarantor's assets and liabilities, (including contingent liabilities), sources of income, and a schedule of real estate reflecting percentage ownership, estimated fair market value and current mortgage indebtedness, and (5) otherwise in a form substantially similar to the form of financial statements previously submitted to Lender by Guarantor, unless otherwise approved by Lender in writing; and

(c) within thirty (30) days after filing, a copy of the federal and each state income tax return filed for Guarantor for the prior calendar in each case certified by Guarantor as being a true, complete and correct copy of such tax return as filed. Guarantor authorizes Lender to obtain

for information and verification purposes from the U.S. Internal Revenue Service (IRS) a transcript of any Form 1040, Form 1120, Form 1120S, Form 1165, Form W-2, Form 1099 or any other income tax form actually filed with the IRS with respect to such persons (or a report from the IRS that the form for a particular date was not filed), and agree to provide to Lender fully executed IRS Forms 4506-T for such purposes at any time upon request of Lender.

Section 3.16 **No Reliance.** Guarantor agrees and acknowledges that (a) Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, ability to collect, or value of the collateral for the Loan; (b) Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party, and (c) Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other parties will be liable to pay the Guaranteed Obligations, or that Lender will look to other parties to pay or perform the Guaranteed Obligations.

Section 3.17 **Termination.** This Guaranty shall be automatically discharged as of the date on which the Liabilities have been indefeasibly paid in full.

Section 3.18 **Transfers; Sales, Etc.** For a Guarantor who is not a natural Person (i) Guarantor shall not sell, lease, transfer, convey or assign any of its assets, unless such sale, lease, transfer, conveyance or assignment, is performed in the ordinary course of its business consistent with past practices, and will not have a material adverse effect on the business or financial condition of Guarantor or its ability to perform its obligations hereunder; and (ii) Guarantor further covenants and agrees that it shall not become a party to any merger or consolidation, or, except in the ordinary course of its business consistent with past practices, acquire all or substantially all of the assets of, a controlling interest in the stock of, or a partnership or joint venture interest in, any other entity, in each case without the prior written consent of Lender. For a Guarantor who is a natural Person, Guarantor shall not sell, lease, transfer, convey or assign any of Guarantor's assets, unless such sale, lease, transfer, conveyance or assignment will not have a material adverse effect on the financial condition of Guarantor.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

Section 4.1 **Guarantor Due Diligence and Benefit.** Guarantor represents and warrants to Lender that (a) the Loan and this Guaranty are for commercial purposes, (b) Guarantor has had adequate opportunity to review the Loan Documents, (c) Guarantor is fully aware of obligations of Borrower thereunder and of the financial condition, assets and prospects of Borrower, and (d) Guarantor is executing and delivering this Guaranty based solely upon Guarantor's own independent investigation of the matters contemplated by clauses (a) through (c) of this **Section 4.1** and in no part upon any representation, warranty or statement of Lender with respect thereto.

Section 4.2 **General.** Guarantor represents and warrants to Lender that:

(a) **Authority.** If Guarantor is a natural Person, Guarantor has the requisite legal and mental capacity to execute and deliver this Guaranty and perform Guarantor's obligations hereunder. If Guarantor is not a natural Person, Guarantor has all requisite authority to execute and deliver this Guaranty and perform Guarantor's obligations hereunder.

(b) **Valid and Binding Obligation.** This Guaranty constitutes Guarantor's legal, valid and binding obligation, enforceable against Guarantor in accordance with its terms, except to the extent enforceability may be limited under applicable bankruptcy and insolvency laws and similar laws affecting creditors' rights generally and to general principles of equity.

(c) **No Conflict with Other Agreement.** Guarantor's execution, delivery and performance of this Guaranty will not (i) if Guarantor is not a natural Person, violate any of the organizational documents of Guarantor, (ii) result in the breach of, or conflict with, or result in the acceleration of, any obligation under any guaranty, indenture, credit facility or other instrument to which Guarantor or any of its assets may be subject, or (iii) violate any order, judgment or decree to which Guarantor or any of its assets is subject.

(d) **No Pending Litigation.** No action, suit, proceeding or investigation, judicial, administrative or otherwise (including without limitation any reorganization, bankruptcy, insolvency or similar proceeding), currently is pending or, to the best of Guarantor's knowledge, threatened against Guarantor which, either in any one instance or in the aggregate, may have a material, adverse effect on Guarantor's ability to perform Guarantor's obligations under this Guaranty, other than those disclosed in Schedule 5.3(1) of the Loan Agreement.

(e) **Consideration.** Guarantor owns a direct or indirect interest or has a financial interest in Borrower and will derive substantial benefit from the making of the Loan to Borrower.

(f) **Financial Condition.** Guarantor currently is solvent and will not be rendered insolvent by providing this Guaranty. No adverse change has occurred in the financial condition of Guarantor since the date of Guarantor's most recent financial statements submitted to Lender, other than such changes that has been disclosed in writing to Lender and acknowledged by Lender.

ARTICLE 5 MISCELLANEOUS

Section 5.1 **Notices.** All notices required or permitted to be given hereunder (each, a "**Notice**") shall be in writing addressed to the party to be so notified at its address set forth below, or at such other address as such party may specify by giving at least ten (10) days' prior written notice of such change of address, and (1) sent by electronic mail, in each case with a copy of the Notice sent concurrently by one of the means described in clauses (2), (3) or (4) below (provided that for electronic mail delivery, the beginning of the subject line in such electronic mail shall state, in capitalized letters and minimum 12 point font: "NOTICE PURSUANT TO GUARANTY SECTION 5.1"), (2) sent by registered or certified mail, postage prepaid, return receipt requested, (3) delivered by hand, or (4) delivered by reputable overnight commercial courier. Notices shall be deemed to have been received: (a) if sent by electronic mail, upon the earlier of (i) the date that the sender receives a telephonic response from an employee or representative of the party receiving notice on behalf of such party, acknowledging receipt (which response shall not be a computer generated response) and (ii) the date of delivery on a Business Day (or the first attempted delivery if refused) of the copy of such Notice delivered in accordance with clause (2), (3) or (4) above, and (b) if delivered by hand, sent by registered or certified mail, or sent by overnight commercial courier, on the date of delivery on a Business Day (or the first attempted delivery of refused).

Addresses for Notices:

To Lender:

AFF II DENVER, LLC
2100 Powers Ferry Road, Suite 350
Atlanta, Georgia 30339
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With copy to:

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To Guarantor:

Gary Dragul
10 Cherry Lane Drive
Englewood, CO 80113
Email: gary@gdare.com

With copy to:

Moye White
16 Market Square, 6th Floor
1400 16th Street
Denver, CO 80111
Attn: Trish J. Rogers
Telephone: 302-292-7939
Email: trish.rogers@moyewhite.com

Section 5.2 **Invalid Provisions.** If any provision of this Guaranty is held to be illegal, invalid or unenforceable in whole or in part, such provision shall be fully severable; this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision (or portion thereof) had never comprised a part hereof; the remaining provisions hereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Guaranty a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 5.3 **Time of the Essence.** Time is of the essence with respect to this Guaranty and the performance and observance by Guarantor of each covenant, agreement, provision and term of this Guaranty.

Section 5.4 **Successors and Assigns.** This Guaranty shall be binding upon and shall inure to the benefit of the Lender, and its successors and assigns, except that (a) Guarantor may not assign or transfer rights hereunder or any interest herein or delegate Guarantor's duties, obligations and liabilities hereunder, and (b) Lender shall have the right to assign its rights hereunder in accordance with the Loan Agreement.

Section 5.5 **JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GUARANTOR, AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR**

OTHERWISE) BETWEEN OR AMONG GUARANTOR AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN GUARANTOR AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

Section 5.6 **Governing Law.** This Guaranty shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to conflict of laws principles.

Section 5.7 **JURISDICTION AND VENUE.** GUARANTOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY GUARANTOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS GUARANTY SHALL BE LITIGATED IN THE STATE OR FEDERAL COURTS LOCATED IN THE CITY AND COUNTY OF DENVER, COLORADO. GUARANTOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVE PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREE THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO GUARANTOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS GUARANTY. GUARANTOR WAIVES ANY CLAIM THAT SUCH COURT IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD GUARANTOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, GUARANTOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST GUARANTOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR GUARANTOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER JURISDICTION, AND GUARANTOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

Section 5.8 **Entire Agreement.** This Guaranty embodies the entire agreement and understanding between Lender and Guarantor with respect to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to the subject matter hereof. Accordingly, this Guaranty may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 5.9 **Phrases.** When used in this Guaranty, the phrase "including" (or a word of similar import) shall mean "including, but not limited to," the phrase "satisfactory to Lender shall mean "in form and substance satisfactory to Lender in all respects," the phrase "with Lender's consent" or "with Lender's approval" shall mean such consent or approval at Lender's discretion, and the phrase "acceptable to Lender" shall mean "acceptable to Lender at Lender's discretion", except as provided otherwise herein. Wherever the context of this Guaranty may so require, the gender shall include the masculine, feminine and neuter, and the singular shall include the plural and vice versa. This Guaranty shall be construed as though drafted by all of the parties hereto and shall not be construed against or in favor of any party.

Section 5.10 **Titles of Articles, Sections and Subsections.** All titles or headings to articles, sections, subsections or other divisions of this Guaranty or the exhibits hereto are only for the

convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between Guarantor and Lender.

Section 5.11 **Survival**. All of the representations, warranties, covenants, and indemnities hereunder, and any modification or amendment hereof, shall survive the closing and funding of the Loan, shall not be deemed to have merged herein, and shall (except to the extent expressly provided for herein) remain as continuing representations, warranties, covenants and indemnities so long as any Liabilities are outstanding.

Section 5.12 **Representation by Legal Counsel**. Guarantor acknowledges that Guarantor has been advised by Lender to seek the advice of legal counsel in connection with the negotiation and preparation of this Guaranty. If Guarantor has chosen not to obtain legal representation, whether due to cost considerations or for other reasons, the lack of such representation shall not furnish Guarantor with any defense to the enforcement of Lender's rights hereunder.

Section 5.13 **Injunctive Relief**. Guarantor recognizes that in the event Guarantor fails to perform, observe or discharge any of Guarantor's obligations hereunder, no remedy of law will provide adequate relief to Lender, and agrees that Lender shall be entitled to pursue temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 5.14 **Modification**. This Guaranty shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

Section 5.15 **Duplicate Originals; Counterparts**. This Guaranty may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Guaranty (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Guaranty even though all signatures do not appear on the same document. Receipt of an executed signature page to this Guaranty by facsimile or other electronic transmission shall constitute effective delivery thereof.

Section 5.16 **Recitals**. The recital and introductory paragraphs hereof are a part hereof, form a basis for this Guaranty and shall be considered prima facie evidence of the facts and documents referred to therein.

Section 5.17 **Joint and Several Obligations**. If more than one Person is a Guarantor hereunder, each such Guarantor shall have joint and several liability for the Guaranteed Obligations hereunder. If any Guarantor is a general partnership, the obligations of such Guarantor under this Guaranty are also the joint and several obligations of each such general partner thereof.

Section 5.18 **Reliance**. Lender would not make the Loan to the Borrower without this Guaranty. Accordingly, Guarantor intentionally and unconditionally enters into the covenants and agreements herein and understand that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

Section 5.19 **Waiver of Bankruptcy Stay**. Guarantor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Guarantor or Borrower, Guarantor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. §105 or any

other provision of the Bankruptcy Code or any other Debtor Relief Law, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Guarantor or Borrower under this Guaranty or otherwise.

Section 5.20 Further Assurances. Guarantor shall, upon reasonable request by Lender, execute, with acknowledgment or affidavit if required, and deliver, any and all documents and instruments required to effectuate the provisions hereof and of any other Loan Document.

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IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date first above written.

GUARANTOR:



Gary Drugal

SCHEDULE 1

BORROWERS

HC Shoppes 18 A, LLC, a Delaware limited liability company
HC Shoppes 18 B, LLC, a Delaware limited liability company

**LOAN AND SECURITY AGREEMENT
(The Marketplace)**

between

THE ENTITIES LISTED ON SCHEDULE A,
as Borrowers,

and

AFF II DENVER, LLC,
as Lender

August 7, 2018



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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") is entered into as of August __ 2018, by and between the entities listed on Schedule A attached to this Agreement ("Borrowers") and AFF II DENVER, LLC, a Delaware limited liability company (together with its successors and assigns, "Lender").

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

Section 1.1 **Defined Terms.** All capitalized terms used in this Agreement (and in all other Loan Documents, unless otherwise defined), shall have the meanings set forth for such terms in Schedule 1.1.

Section 1.2 **Singular and Plural.** Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 1.3 **Phrases.** Except as otherwise expressly indicated, whenever Lender's acceptance, approval, consent, determination or satisfaction is required with respect to any matter in any Loan Document, such acceptance, approval, consent, determination or satisfaction shall be in Lender's sole discretion, unless otherwise specifically provided. When used in any Loan Document, the word "including" shall mean "including, but not limited to" and the words "hereof", "herein", "hereunder" and similar words refer to such Loan Document as a whole and not to any particular provision thereof; and subsection, Section, Schedule and Exhibit references are to the particular Loan Document unless otherwise specified. The use of the phrases "an Event of Default exists", "no Event of Default has occurred and is continuing" or similar phrases in the Loan Documents shall not be deemed to grant Borrowers any right to cure an Event of Default, and each Event of Default shall continue unless and until the same is waived by Lender in writing in its sole discretion.

Section 1.4 **Exhibits and Schedules.** The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 1.5 **Titles of Articles, Sections and Subsections.** All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 1.6 **Non-Business Days.** Except as expressly set forth elsewhere in this Agreement, if any payment to be made or item to be delivered by Borrowers under any Loan Document shall come due on a day other than a Business Day, then such payment shall be made, or such item shall be delivered, on the immediately succeeding Business Day.

ARTICLE 2

LOAN TERMS

Section 2.1 Loan and Note.

- (1) Loan. The Loan of EIGHT MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,900,000.00) shall be funded in one advance (the "Closing Advance") on the Closing Date and repaid in accordance with this Agreement. On the Closing Date, Lender shall advance up to \$4,031,331.00 to Borrowers and shall deposit the remaining portion into the Development Reserve, as set forth in Article 3. The Loan is not a revolving credit loan, and Borrowers are not entitled to any re-advances of any portion of the Loan which they may (or are otherwise required to) prepay pursuant to the provisions of this Agreement.
- (2) Purpose. The advance of the Loan shall be used for the purposes set forth on the Sources and Uses attached hereto as Schedule 2.1(2).
- (3) Loan Note. The Loan shall be evidenced by a promissory note of Borrowers, payable to Lender in the principal amount of \$8,900,000.00
- (4) Loss, Theft, Destruction or Mutilation of Note. In the event of the loss, theft or destruction of the Note, upon Borrowers' receipt of a indemnification agreement and lost note affidavit executed in favor of Borrowers by the holder of such Note, or in the event of the mutilation of the Note, upon the surrender of such mutilated Note by the holder thereof to Borrowers, Borrowers shall execute and deliver to such holder a new replacement Note in lieu of the lost, stolen, destroyed or mutilated Note. Such replacement Note shall not be deemed a novation of the Loan and shall not disturb the then-existing priority of the Security Instrument or any other of the Loan Documents.

Section 2.2 Interest Rate; Late Charge.

- (1) Interest Rate. Except as otherwise set forth in this Agreement, the Loan shall bear interest as follows: from the date advanced by Lender, other than funds in the Development Reserve, at a variable rate of interest equal to 9.0% per annum over the greater of (a) 2% or (b) LIBOR (the "Variable Rate"), and so long as funds remain in the Development Reserve, such funds shall bear interest at a fixed rate of interest equal to three percent (3%) (the "Fixed Rate") (each such rate, as applicable, the "Contract Rate"). From and after sums are disbursed from the Development Reserve, such sums shall bear interest at the Variable Rate.
- (2) Actual/360. Interest owing for each month shall be computed on the basis of a fraction, the denominator of which is three hundred sixty (360) and the numerator of which is the actual number of days elapsed from the first day of such month (or, for the month in which the Closing Date occurs, from the date of such advance).
- (3) Late Fees. If Borrowers fail to make any payment of interest or principal within five (5) days of (and including) the date on which the same is due (including any payment due on the Maturity Date), Borrowers shall pay to Lender a late charge on such past due amount, as liquidated damages and not as a penalty, equal to ten percent (10%) of such amount, but not in excess of the maximum amount of interest allowed by applicable law.

The foregoing late charge is intended to compensate Lender for the expenses incident to handling any such delinquent payment and for the losses incurred by Lender as a result of such delinquent payment. Borrowers agree that, considering all of the circumstances existing on the date this Agreement is executed, the late charge represents a reasonable estimate of the costs and losses Lender will incur by reason of late payment. Borrowers and Lender further agree that proof of actual losses would be costly, inconvenient, impracticable and extremely difficult to fix. Acceptance of the late charge shall not constitute a waiver of the default arising from the overdue installment, and shall not prevent Lender from exercising any other rights or remedies available to Lender.

(4) **Default Rate.** While any Event of Default exists, the Loan shall bear interest at the Default Rate.

Section 2.3 **Terms of Payment.** The Loan shall be payable as follows:

(1) **Interest.** Commencing on September 15, 2018, Borrowers shall pay interest in arrears on the fifteenth day of each month (each a "**Payment Date**") until all amounts due under the Loan Documents are paid in full; provided that while an Event of Default exists, interest shall be payable on demand. Borrowers agree that if Loan proceeds are wired into escrow for the Loan closing, interest begins accruing from the date Loan proceeds are wired into escrow, regardless of whether the Closing Date occurs on the same date or a later date.

(2) **No Principal Amortization.** The Loan shall be an interest only loan and Borrowers shall not be required to make any regularly scheduled principal amortization payments.

(3) **Maturity.** On the Maturity Date, Borrowers shall pay to Lender all outstanding principal, accrued and unpaid interest, and any other amounts due under the Loan Documents, including the unpaid portion of the Exit Fee and any Minimum Interest Amount.

(4) **Extension.** Subject to the provisions of this **Section 2.3(4)**, Borrowers, at their option, may extend the term of the Loan for one (1) additional six-month period. Borrowers' right to extend the term of the Loan is subject to the satisfaction of each of the following conditions as to each extension:

(a) Borrowers shall deliver to Lender a written request to extend the term of the Loan (the "**Extension Request**") at least sixty (60) days, but not more than one hundred twenty (120) days, before the then existing Maturity Date;

(b) The Shoppes Loan shall have been extended;

(c) No Event of Default has occurred and is continuing on the date on which Borrowers deliver the Extension Request to Lender, or on the date the extension period commences;

(d) All of the Work shall have been completed;

(e) Borrowers shall have paid to Lender, in immediately available funds, together with the Extension Request, an extension fee equal to \$133,500.00, which funds

shall be held in escrow by Lender and returned to Borrowers if an extension is not granted or if Borrowers withdraw their Extension Request;

(f) Together with the Extension Request, Borrowers shall have made a payment of the Loan, in immediately available funds, in an amount equal to (1) ten percent (10%) of the original principal balance of the Loan, which shall be applied to the outstanding principal balance of the Loan and (2) the amount of the Exit Fee payable on such principal payment;

(g) Together with the Extension Request, Borrowers shall deposit in the Interest Reserve an amount which, when added to the amount remaining in the Interest Reserve, shall equal six (6) months of interest on the outstanding principal balance of the Loan (as of the date of the commencement of the extension period) as determined by Lender, which funds shall be held in escrow by Lender and returned to Borrowers if an extension is not granted or if Borrowers withdraws its Extension Request;

(h) Borrowers shall provide evidence to Lender that all Property Taxes then due and payable have been paid, and insurance premiums have been paid so as to provide all required coverages through term of the Loan as extended;

(i) Borrowers shall execute and deliver such other instruments, certificates, opinions of counsel and documentation as Lender shall reasonably request in order to preserve, confirm or secure the Liens and security granted to Lender by the Loan Documents, including any amendments, modifications or supplements to any of the Loan Documents, endorsements to Lender's title insurance policy and, if required by Lender, estoppels and other certificates; and

(j) Borrowers shall pay all reasonable out-of-pocket costs and expenses incurred by Lender in connection with such extension of the Loan, including Lender's attorneys' fees and disbursements.

(5) **Prepayment; Reduced Commitment.** Subject to **Subsections 7(b) and (c)** below, Borrowers may prepay the Loan, in whole or in part, at any time upon not less than fifteen (15) days' prior written notice to Lender. Borrowers may, in their sole discretion, by written notice to Lender, reduce the amount in the Development Reserve. Upon receipt of such notice, the amount designated by Borrowers shall no longer bear interest, shall be returned to Lender, deemed repaid (without the requirement of the payment of the Exit Fee), and shall no longer be available for disbursement.

(6) **Application of Payments.** So long as no Event of Default exists, except as otherwise expressly set forth herein, all payments received by Lender under the Loan Documents shall be applied in the following order: (a) to any fees and expenses due to Lender under the Loan Documents; (b) to any Default Rate interest or late charges; (c) to accrued and unpaid interest; (d) to amounts owed under any Reserves; and (e) to the principal sum and other amounts due under the Loan Documents. While any Event of Default exists, Lender may apply all payments to amounts then owing in any manner and in any order as determined by Lender.

Section 2.4 **Fees.** As partial consideration for Lender's agreement to make the Loan:

(1) **Origination Fee.** Borrowers have paid to Lender an origination fee of \$222,500.00 (the "**Origination Fee**").

(2) **Minimum Interest Payment.** Upon the earliest date to occur ("**Minimum Interest Date**") of (i) the payment in full of all unpaid principal and interest on the Note, (ii) the Maturity Date (as the same may be extended pursuant to **Section 2.3(4)** of this Agreement) and (iii) acceleration of the Loan, Borrowers shall pay to Lender, in immediately available funds, an amount ("**Minimum Interest Amount**") equal to the positive difference, if any, obtained by subtracting (x) the aggregate amount of Contract Rate interest (but excluding any Default Rate interest) actually received by Lender from Borrowers on or before the Minimum Interest Date, from (y) \$740,925.00.

(3) **Exit Fee.** Borrowers shall pay to Lender, in immediately available funds, an exit fee in the amount of two per cent (2.0 %) of the amount of the Loan being paid or prepaid at any time (the "**Exit Fee**"), which, to the extent not previously paid to Lender in accordance with this Agreement, shall be paid to Lender in full upon the earliest of (i) the payment in full of all unpaid principal and interest on the Note, (ii) the Maturity Date (as the same may be extended pursuant to **Section 2.3(4)** hereof) and (iii) acceleration of the Loan.

Section 2.5 **Security.**

(1) **Security Instrument.** The Loan and all amounts due under the Loan Documents, including the Exit Fee and the Minimum Interest Amount, if any, shall be secured by, among other things, the Security Instrument creating a first Lien on the Mortgaged Property.

(2) **General Assignment.** Borrowers hereby grants to Lender, as security for the payment and performance of Borrowers' obligations under the Loan, a first Lien on and security interest in the Collateral. Borrowers hereby authorizes Lender to prepare and file such financing statements, financing statement amendments and continuation statements as Lender may require to perfect or to continue the perfection of the foregoing security interests.

Section 2.6 **Payments: Etc.**

(1) **Payments by Borrowers.** Except to the extent otherwise provided herein, all payments to be made by Borrowers under any Loan Document shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Lender at an account designated by Lender by notice to Borrowers, not later than 1:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(2) **Extensions to Next Business Day.** If the due date of any payment under this Agreement or the Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day.

Section 2.7 **Clearing Account; Deposit of Rents; Withdrawals from Operating Account.**

(1) **Clearing Account.** The Borrowers confirm that they have established, and covenant that they shall maintain, pursuant to a Clearing Bank Agreement, an account at the Clearing Bank (the "**Clearing Account**"). The Clearing Account shall be in the name of the Borrowers for the benefit of Lender, provided that the Borrowers shall be the owners of all funds on deposit in its account for federal and applicable state and local tax purposes, and the Clearing Account shall be assigned the tax identification number of the Borrowers. The Borrowers acknowledge and agree that, so long as any portion of the Liabilities remains outstanding, neither the Borrowers nor any other Person acting on behalf of, or claiming through, the Borrowers, shall have any right or authority to change the identity, name, location, account number, bank location or other feature or attribute of the Clearing Account without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion. At the election of Lender, exercised from time to time (i) after the occurrence and during the existence of an Event of Default, (ii) at any time Lender reasonably believes that the Clearing Bank is not adequately performing its duties under the Clearing Bank Agreement, the Borrowers will establish a new Clearing Account at an Eligible Bank (and such Eligible Bank shall enter into new Clearing Bank Agreement in form and substance satisfactory to Lender). The Borrowers hereby irrevocably appoint Lender as their attorney-in-fact (coupled with an interest) to execute a modification of the Clearing Bank Agreement approved by Lender or establish a new Clearing Account at an Eligible Bank upon Lender's exercise of its rights under the preceding sentence, upon the failure of the Borrowers to do so within ten (10) days following Lender's written demand. The initial Clearing Account is identified on **Schedule 2.7** attached to this Agreement.

(a) The Clearing Account shall be under the sole and exclusive dominion and control of the Lender and neither the Borrowers nor any other party claiming on behalf of, or through, the Borrowers, shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit or deposited into the Clearing Account or have any other right or power with respect to the Clearing Account; provided, however, that the Borrowers shall have the right, if available through the Clearing Bank, to access information regarding balances, deposits into and withdrawals from the Clearing Account, so long as such information access right does not permit the Borrowers or any party other than Lender or Servicer to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in the Clearing Account.

(b) The Borrowers agree to timely pay the customary fees and expenses of Clearing Bank in connection with the Clearing Account and any Lockbox, as such fees and expenses are established from time to time. In the event that Clearing Bank seeks reimbursement of any item deposited into a Clearing Account but returned or disallowed or reimbursement of any other monetary sum pursuant to the Clearing Bank Agreement, the Borrowers shall promptly and timely pay such sum. Failure of the Borrowers to pay any sum due and payable to the Clearing Bank in connection with the Clearing Account within five (5) days after written demand by Lender shall constitute an Event of Default under this Agreement.

(2) **Lockbox.** The following provisions shall apply:

(a) Concurrently with the execution of this Agreement, the Borrowers have established lock box address at the Clearing Bank (each, a "**Lockbox**").

(b) Concurrently with the execution of this Agreement and until the Loan is repaid in full, the Borrowers shall notify and advise each tenant under each lease (whether such lease is presently effective or executed after the date hereof) pursuant to an instruction letter in the form approved by Lender (a "**Tenant Direction Letter**") to send directly to the Lockbox (or to the Clearing Account via ACH transfer or wire transfer) all sums due and payable by such tenant under its lease as and when due and payable. The Borrowers hereby grant to Lender a power of attorney (which power of attorney shall be coupled with an interest and irrevocable so long as any portion of the Liabilities remains outstanding) to sign and deliver to any tenant, upon failure of the Borrowers to do so within five (5) days following written demand from Lender, a Tenant Direction Letter. If notwithstanding the foregoing, the Borrowers should receive any payments on account of rent, the Borrowers shall deposit same with the Clearing Bank within one (1) Business Day after receipt.

(c) Without the prior written consent of Lender, so long as any portion of the Liabilities remain outstanding, the Borrowers shall not terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever or direct or cause any Tenant to pay any amount in any manner other than as provided in the related Direction Letter.

(d) So long as any portion of the Liabilities remain outstanding, the Borrowers shall not open or maintain any accounts into which rents are deposited other than the Clearing Account. The foregoing shall not prohibit the Borrowers from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to the Borrowers pursuant to the express terms of this Agreement.

(3) **Operating Account.** On each Business Day on which available funds are on deposit in the Clearing Account, the Clearing Bank shall transfer all such available funds to an operating account established, maintained (separately) by and under the exclusive dominion and control of the Borrowers (the "**Operating Account**"). Upon the occurrence of a Control Event, without limiting the foregoing provisions, all transfers from the Clearing Account to the Operating Account shall immediately cease and Lender shall have the right, at its sole option, to instruct the Clearing Bank, from time to time, to administer available sums on deposit in or deposited into the Clearing Account in the manner set forth in **Section 2.7** below or to transfer available sums on deposit in the Clearing Account, from time to time, to a Cash Management Account (as defined below). The initial Operating Account is identified on **Schedule 2.7** attached hereto. Provided that no Control Event has occurred and is continuing, the Operating Account shall be under the sole and exclusive dominion and control of the Borrowers, and the Borrowers shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit or deposited into the Operating Account and have any other right or power with respect to the Operating Account; provided, however, that Lender shall have the right to access information regarding balances, deposits into and withdrawals from the Operating Account.

(4) Cash Management Account

(a) Upon the occurrence of a Control Event, Lender may establish an account (the "Cash Management Account") at an Eligible Bank (the "Cash Management Bank") selected by Lender in its sole discretion. The Cash Management Account shall be in the names of the Borrowers for the benefit of the Lender, provided that the Borrowers shall be the owner of all funds on deposit in such accounts for federal and applicable state and local tax purposes and the Cash Management Account shall be assigned the tax identification number of the Borrowers.

(b) The Cash Management Account shall be under the sole and exclusive dominion and control of the Lender, and neither the Borrowers nor any other party claiming on behalf of, or through, the Borrowers, shall have any right to transfer, withdraw, access or otherwise direct the disposition of funds on deposit in the Cash Management Account or have any other right or power with respect to the Cash Management Account.

(5) The Borrowers agree to timely pay the customary fees and expenses of Cash Management Bank in connection with the Cash Management Account, as such fees and expenses are established from time to time.

(6) Default. Notwithstanding any other provision of this Agreement or of the other Loan Documents, during the continuation of an Event of Default, Lender reserves the right, exercisable at its sole option, to (x) take such enforcement actions (including, but not limited to, acceleration and foreclosure of the Project) as it deems appropriate under the Loan Documents or otherwise under law or in equity and/or (y) after the occurrence of a Control Event, apply all sums on deposit in or deposited into the Clearing Account, the Operating Account, the Cash Management Account, the Reserves and any other sums deposited by Borrowers with Lender to the payment of the Liabilities, in such order, manner, amounts and times as Lender in its sole discretion determines, and such reserved rights shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents. Nothing in this Section 2.7(6) shall limit, reduce or otherwise affect Borrowers' obligations to make any and all payments due under this Agreement and under the other Loan Documents, whether or not funds are available to make such payments.

(7) Security Interest. The Borrowers acknowledge and agree that they have granted to Lender a first-priority security interest in the Clearing Account, the Operating Account and the Cash Management Account and the sums on deposit therein. The Borrowers acknowledge and agree that, without limitation of any other provisions of this Agreement, the Security Instrument or the other Loan Documents, upon the occurrence and during the continuation of a Control Event, Lender may use the Clearing Account, the Operating Account, the Cash Management Account and/or any sums on deposit in either of them for any or all of the following purposes: (i) repayment of the Loan, including, but not limited to, interest, principal and any prepayment premium or fee applicable to any such full or partial prepayment, (ii) reimbursement of Lender for all losses, fees, costs and expenses (including, without limitation, reasonable legal fees and disbursements) suffered or incurred by Lender as a result of an Event of Default, (iii) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or any of the other Loan Documents,

(iv) payment of any item as required or permitted by this Agreement or any of the other Loan Documents or (v) any other purpose permitted by applicable law, provided, however, that any such application of funds shall not cure or be deemed to cure any Control Event. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender's rights and remedies as a secured party with respect to the Clearing Account, the Operating Account, the Cash Management Account and any sums on deposit in any of them and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Clearing Account, the Operating Account or Cash Management Account to effect a cure of any Event of Default, or to pay the Loan in any specific order of priority. The exercise of any or all of Lender's rights and remedies under this Agreement with respect to the Clearing Account, the Operating Account, the Cash Management Account and/or the sums on deposit therein shall not in any way prejudice or affect Lender's right to initiate and complete a foreclosure under the Security Instrument.

(8) **Indemnification by Borrowers.** Lender shall be responsible for the performance only of such duties with respect to the Clearing Account, the Operating Account and Cash Management Account as are specifically set forth herein, and no duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Lender shall not be liable for any acts, omissions, errors in judgment or mistakes of fact or law, including, without limitation, with respect to proceeds on deposit in the Clearing Account, the Operating Account, or Cash Management Account. Borrowers shall indemnify and hold the Lender, its successors, assigns, shareholders, directors, officers, employees, and agents (including, without limitation, any Servicers) harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such parties in connection with the Clearing Account, the Operating Account, the Cash Management Account or the investment by Lender of amounts in the Cash Management Account, other than such as result from the gross negligence or willful misconduct of Lender or intentional nonperformance by Lender of its obligations under this Agreement.

Section 2.8 **Conditions of Closing.** Lender shall not be obligated to close the Loan or make the Closing Advance unless all of the conditions precedent set forth in this **Section 2.8** have been satisfied or waived by Lender, on or before the Closing Date (it being understood that the funding of the Closing Advance on the Closing Date shall be deemed to a satisfaction or waiver of the conditions set forth in this **Section 2.8**):

(1) **Loan Documents.** The Loan Documents, in form and substance satisfactory to Lender, shall have been duly executed and delivered by the parties thereto and shall be in full force and effect, and Lender shall have received the originals or fully executed counterparts thereof.

(2) **Payment of Fees and Expenses.** Borrowers shall have paid all fees and expenses required by this Agreement, to the extent due and payable, including, without limitation, reasonable attorneys' fees and expenses of Lender's outside counsel, environmental and engineering evaluation fees, and other due diligence costs incurred by Lender.

(3) **Title Insurance Policy.** Borrowers shall have delivered to Lender a paid title insurance policy (or the corresponding marked-up title commitment subject to an irrevocable commitment on the part of the Title Company to deliver the title insurance policy upon recordation of the Security Instrument) in all respects satisfactory to Lender and Lender's outside counsel (together with true and complete copies of all exceptions to the title insurance policy), showing the Security Instrument as a valid first Lien on the Project in the amount of the Loan, together with all endorsements as required by Lender and subject only to the Permitted Encumbrances, along with co-insurance or reinsurance, if required by the Title Company, in such forms and amounts as may be required by Lender. Any reinsurance agreements shall provide for direct access with the other title insurance companies reasonably satisfactory to Lender.

(4) **Other Insurance.** Borrowers shall have delivered to Lender policies of all insurance (or certificates evidencing such insurance) meeting Lender's insurance requirements.

(5) **Environmental Report.** Lender shall have obtained and reviewed environmental assessment reports of one or more qualified environmental engineering or similar inspection firms approved by Lender in form, scope and substance satisfactory to Lender, which report or reports shall indicate a condition of the Project in all respects satisfactory to Lender for their intended use and upon which reports Lender is expressly entitled to rely.

(6) **Survey.** Borrowers shall have delivered to Lender a survey for the Project prepared in accordance with Lender's survey requirements, certified by a land surveyor registered as such in the State, which surveys shall be in form and substance satisfactory to Lender.

(7) **Government Approvals and Legal Requirements.** Borrowers shall have delivered to Lender evidence that they have obtained all Government Approvals necessary for the operation of the Project.

(8) **Organizational Documents.** Borrowers shall have delivered to Lender certified copies of the Organizational Documents of Borrowers, those constituent entity members of Borrowers requested by Lender, and any entity Guarantor, and the same shall be acceptable to Lender in all respects.

(9) **Legal Opinions.** Lender shall have received opinions in form, substance and scope satisfactory to Lender and Lender's outside counsel from counsel to Borrowers and Guarantor as to such matters as Lender may reasonably require.

(10) **Searches Regarding Collateral.** Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrowers' expense, upon request by Lender during the continuance of an Event of Default) that a search of the public records disclosed no judgment, UCC or tax liens affecting Borrowers or Guarantor, the Project or the Collateral, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the Collateral.

(11) **Financial Statements.** Borrowers shall have delivered to Lender all financial statements, with respect to Borrowers, Guarantor and/or the Project, required under this Agreement or any of the other Loan Documents.

(12) **Representations and Warranties.** The representations and warranties made by Borrowers and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrowers or Guarantor in connection therewith shall have been true and correct in all material respects on the date on which made and shall continue to be true and correct in all material respects on the Closing Date.

(13) **Deliveries and Documents.** All required deliveries in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be satisfactory to Lender and Lender's outside counsel in form and substance, and Lender shall have received all such deliveries and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as Lender and Lender's outside counsel may reasonably require to consummate the transactions contemplated hereby.

(14) **Lien Waivers.** Borrowers shall have delivered to Lender duly executed unconditional lien waivers and release and payment receipts, in a form acceptable to Lender, for all sums due in connection with the Work that will be paid out of the funds requested to be advanced at Closing.

(15) **Other Documents.** Borrowers shall have delivered to Lender such other documents and certificates as Lender or Lender's outside counsel may reasonably require.

ARTICLE 3

RESERVES

Section 3.1 **Reserves.** The following reserves shall be required in connection with the Loan:

(1) **Interest Reserve.** On the Closing Date, Borrowers shall deliver to Lender, to be held by Lender in a reserve, an amount equal to \$450,000.00 ("**Interest Reserve**"). Other deposits by Borrowers into the Interest Reserve shall be made to the extent required by this Agreement. So long as no Event of Default exists, Lender shall apply funds from the Interest Reserve (but never reducing the amount in the Interest Reserve below \$55,000.00) to the payment of any portion of the interest due and payable on the Loan in any month in which Net Cash Flow is insufficient to pay such amount in full. For avoidance of doubt, Borrowers shall be obligated to pay interest on the Loan, when due, whether or not Net Cash Flow and/or the amount on deposit in the Interest Reserve is available or sufficient to pay such interest. If at any time Lender reasonably determines that the amount on deposit in the Interest Reserve will not be sufficient to pay interest at the Contract Rate through the Maturity Date, Lender shall notify Borrowers of such determination, and Borrowers shall deposit with Lender the amount of such insufficiency within five (5) Business Days after its receipt of such notice.

(2) **Development Reserve.** On the Closing Date, Lender shall deposit Loan proceeds in an amount equal to \$4,868,699.00 into a reserve to be held by Lender (the "**Development Reserve**"), and so long as no Event of Default has occurred and is continuing, Lender will advance funds from the Development Reserve for the payment of

costs and expenses incurred by Borrowers in performing the Work (as more fully set forth in Section 6.19) and other costs and expenses set forth in the Development Budget.

Section 3.2 General Provisions Regarding Reserves. All funds deposited in the Interest Reserve or any other reserve established hereby (together with any other reserves or escrows required by Lender under the Loan Documents, each a "Reserve" and collectively, the "Reserves") shall be held by Lender, without interest, and may be commingled with Lender's general funds. To secure the Loan, Borrowers hereby grant to Lender a first-priority security interest in all funds deposited in the Reserves. While an Event of Default exists, Lender shall have no obligation to disburse any funds from the Reserves and while an Event of Default exists, Lender shall be entitled, without notice to Borrowers, to apply any funds in the Reserves to satisfy Borrowers' obligations under the Loan Documents in such order and manner as Lender shall determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender.

Section 3.3 Development Reserve Advances.

(1) Making the Advances.

(a) At such time as Borrowers desire to obtain any advance of funds from the Development Reserve (each, an "Advance"), Borrowers shall complete, execute and deliver to Lender a Requisition. Lender shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Advance.

(b) Borrowers shall have provided to Lender a search reflecting that a search of the public records disclosed no judgment, UCC, mechanics' or tax liens affecting the Borrowers or the Project for which the requisition has been submitted.

(c) Each Requisition shall be submitted to Lender at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month. Each Requisition shall be signed on behalf of Borrowers and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; and (c) that each obligation described therein is a cost under the budget of costs approved by Lender and attached hereto as Schedule 3.3 (as amended from time to time, subject to the prior approval of Lender, the "Development Budget"), has been properly incurred and has not been the basis for any previous disbursement. Lender shall endeavor to deposit the proceeds of each Advance into the applicable Borrowers' operating account or other account designated by such Borrowers within two (2) Business Days after the approval of the Requisition.

(d) Lender shall withhold from each Advance retainage equal to ten percent (10%) of all amounts funded under any contract for the provision of labor, materials, equipment and fixtures until the Work is complete, at which time such retainage shall be advanced as part of the final Advance with respect to such contract.

(e) At its option, Lender may make any or all Advances: (a) for costs incurred under any contract directly to any consultant, design professional or service provider, or (b) to any other Person to whom Lender in good faith determines payment is due.

(2) **No Default.** Lender shall have no obligation to make any Advance if at the time of such Advance there exists an Event of Default or a condition that, with the giving of notice, the passage of time or both would constitute an Event of Default.

(3) **Sufficiency of Reserve.** Lender shall not be obligated to make any Advance if, in its sole judgment, the amounts remaining for disbursement from the Development Reserve, either in the aggregate or for individual line items shown on the Development Budget, are not sufficient to pay all costs remaining to be incurred in order to complete the Work (including, without limitation, interest expenses payable under the Loan and all other soft costs), unless Borrowers shall have deposited with Lender in cash, or deposited into an account in which Lender has a security interest, or otherwise expended such sums as shall be necessary, in Lender's sole discretion, to offset any such insufficiency.

ARTICLE 4

INSURANCE AND CONDEMNATION.

Section 4.1 **Insurance.** Borrowers shall maintain insurance as follows:

(1) **Types and Amounts of Insurance.** Until the Loan and all amounts due under the Loan Documents are paid in full, Borrowers shall maintain such insurance coverages as Lender, in its reasonable discretion, may require from time to time. All such policies shall be in such form and shall contain provisions as are acceptable to Lender. On or before the Closing Date, such insurance shall be obtained and prepaid through at least the scheduled Maturity Date. Notwithstanding anything to the contrary contained in this Agreement, Borrowers acknowledge and agree that Lender's acceptance of any insurance provided by Borrowers pursuant to this Agreement does not constitute, and shall not be deemed by Borrowers to be, an affirmation by Lender of the validity or viability of any such policy maintained, or to be maintained, by Borrowers.

(2) **No Separate Insurance.** Borrowers shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Lender in all respects.

(3) **Failure to Maintain Insurance.** If Borrowers fail to maintain insurance in compliance with Lender's insurance requirements, Lender may, in its sole discretion, obtain such insurance and pay the premium therefor and Borrowers shall, on demand, reimburse Lender for all expenses incurred in connection therewith. This insurance may, but need not, also protect Borrowers' interest. If there is a loss or liability, the coverage Lender purchases may not pay any claim Borrowers make or any claim made against Borrowers. Lender will cancel this coverage at such time as Borrowers provide Lender with evidence satisfactory to Lender that Borrower have obtained the required policy or policies that satisfy Lender's insurance requirements. The effective date of coverage may be the date Borrowers' prior coverage lapsed or the date Borrowers failed to provide proof of coverage. The coverage Lender purchases may be more expensive than insurance Borrowers can obtain on its own.

(4) **Assignment.** Borrowers shall assign the policies or proofs of insurance to Lender, in such manner and form that Lender and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. Borrowers shall deliver to Lender copies of all required policies and all renewals thereof (which renewals

shall be delivered at least ten (10) Business Days prior to the expiration of the existing policies), in each case certified to Lender by the insurance company or authorized agent as being true copies, together with the endorsements required hereunder and together with proof of payment of premiums. If Borrowers elect to obtain any insurance which is not required under this Agreement, all related insurance policies shall be endorsed in compliance with Lender's insurance requirements, and such additional insurance shall be renewed during the term of the Loan unless Lender provides its prior written authorization. From time to time upon Lender's request, Borrowers shall identify to Lender all insurance maintained by Borrowers with respect to the Project. All Loss Proceeds shall be delivered directly to Lender, and shall be applied in accordance with Section 4.2. The Loss Proceeds coming into the possession of Lender shall not be deemed trust funds, and Lender shall be entitled to apply such proceeds as provided in this Agreement.

(5) Adjustments. Borrowers shall give immediate written notice of any loss to the insurance carrier and for any loss in excess of \$30,000.00 to Lender. Borrowers hereby irrevocably authorize and empower Lender, as attorney-in-fact for Borrowers, coupled with an interest, to notify any of Borrowers' insurance carriers to add Lender as a loss payee, mortgagee insured or additional insured, as the case may be, to any policy maintained by Borrowers (regardless of whether such policy is required under this Agreement), to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive Loss Proceeds (and endorse, on Borrowers' behalf, all checks, drafts and other negotiable demand instruments payable to Borrowers, or to Borrowers and Lender jointly), and to deduct therefrom Lender's expenses incurred in the collection of such Loss Proceeds. Nothing contained in this Section 4.1(5), however, shall require Lender to incur any expense or take any action hereunder.

Section 4.2 Application of Loss Proceeds. Loss Proceeds shall be applied to the payment of amounts outstanding under the Loan Documents, unless Lender, in its sole discretion, agrees to make such Loss Proceeds available to Borrowers for restoration. Borrowers, upon request by Lender, shall execute all instruments requested to confirm the assignment of the Loss Proceeds to Lender, free and clear of all liens, charges or encumbrances.

Section 4.3 Rights in Policies. In the event of a foreclosure of the Security Instrument or other transfer of title to the Project in extinguishment in whole or in part of the Debt, all right, title and interest of Borrowers in and to the policies then in force concerning the Project and all proceeds payable under such policies shall vest exclusively in Lender or the purchaser in foreclosure or other transferee in the event of such other transfer of title.

Section 4.4 Condemnation Awards. Borrowers shall immediately notify Lender of the institution of any proceeding for the condemnation or other taking of a Project or any portion thereof ("Taking") Lender may participate in any proceeding for a Taking and Borrowers will deliver to Lender all instruments necessary or required by Lender to permit such participation. Without Lender's prior consent, Borrowers (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the Taking or purchase in lieu of such Taking are hereby assigned to and shall be paid to Lender. Borrowers authorize Lender to collect and receive such awards and compensation (and, if any such award or compensation is paid by check, draft or other negotiable demand instrument made payable to Borrowers or to Borrowers and Lender jointly, to endorse the same on Borrowers' behalf), to give proper receipts and acquittances therefor, and in Lender's sole discretion to apply the same toward the

payment of the Loan, notwithstanding that the Loan may not then be due and payable, or to the restoration of the Collateral. Borrowers, upon request by Lender, shall execute all instruments requested to confirm the assignment of the awards and compensation to Lender, free and clear of all liens, charges or encumbrances.

ARTICLE 5

GENERAL REPRESENTATIONS AND WARRANTIES

Borrowers represent and warrant to Lender that:

Section 5.1 **Organization and Power.** Each Borrower Party (other than an individual Guarantor) is duly formed or organized, validly existing and in good standing under the laws of the state of its formation or existence, and each Borrower Party (other than an individual Borrower Party) is in compliance with all legal requirements applicable to doing business in the State. No Borrower Party is a "foreign person" within the meaning of Section 1445(f)(3) of the Code. Each of the Borrowers has only one state of incorporation, formation or organization, which is Delaware. The ownership structure of Borrowers and their constituent entities reflected on in Schedule 5.1 is true and correct as of the Closing Date.

Section 5.2 **Validity of Loan Documents.** The execution, delivery and performance by Borrowers and each Borrower Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not been obtained; and (2) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Borrowers and each Borrower Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 5.3 **Financial Condition; Litigation; Other Secured Transactions.**

(1) **Financial Statements.** The most recent financial statements delivered to Lender by Borrowers and each Borrower Party (a) are true and correct in all material respects, with no significant change since the date of preparation, and (b) fairly present the financial condition of Borrowers and each Borrower Party as of the date thereof and the results of Borrowers' and each Borrower Party's operations for the period covered thereby. Except as disclosed in such financial statements or as set forth on Schedule 5.3(1), there are no liabilities (fixed or contingent) affecting the Collateral, Borrowers or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to Borrowers' Knowledge, threatened, against the Collateral, Borrowers or any Borrower Party which if adversely determined is reasonably likely to have a Material Adverse Effect on such party, the Collateral or the Loan.

(2) **Debtor Status.** None of the Borrowers is, nor has been, bound (whether as a result of a merger or otherwise) as a debtor under a pledge or security agreement which has not been terminated prior to the Closing Date.

Section 5.4 **Taxes and Assessments.** The Collateral is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot.

There are no pending or, to Borrowers' Knowledge, proposed, special or other assessments for public improvements or otherwise affecting any Project, nor are there any contemplated improvements to any Project that may result in such special or other assessments.

Section 5.5 **Other Agreements; Defaults.** Neither Borrowers nor Guarantor is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which is likely to adversely affect the Project or the business, operations, or condition (financial or otherwise) of Borrowers or Guarantor. Neither Borrowers nor Guarantor is in violation of any agreement which violation if adversely determined, would reasonably likely have a Material Adverse Effect on any Project, Borrowers or Guarantor or Borrowers' or Guarantor's business, properties, or assets, operations or condition, financial or otherwise. Borrowers have provided Lender with a true, accurate and complete copy of each Major Project Document.

Section 5.6 **Compliance with Law; Condition.**

(1) **Licenses, Permits, etc.** Borrowers have all requisite licenses, permits, franchises, qualifications, certificates of occupancy or and other governmental authorizations to own, lease, occupy and operate the Project and carry on their business. Each Borrower Party has all requisite licenses, permits, franchises, qualifications and governmental authorizations to carry on its business. The Project are in compliance with all applicable zoning, subdivision, building and other legal requirements.

(2) **No Condemnation.** No condemnation has been commenced or, to Borrowers' Knowledge, is contemplated with respect to all or any portion of any Project or for the relocation of roadways providing access to any Project.

(3) **Access.** The Project has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of the Project are located in the public right-of-way abutting the Project, and all such utilities are connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the applicable Project. All roads necessary for the full utilization of the Project for their current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

Section 5.7 **Location of Borrowers.** Borrowers' principal place of business and chief executive offices are located at the address stated in **Section 12.1**, and Borrowers maintains their books and records at such location. Borrowers at all times have maintained their principal place of business and chief executive office at such location or at other locations within the same state.

Section 5.8 **ERISA.** No Borrower is (i) an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and the assets of Borrowers do not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA.; (ii) a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Borrowers are not and will not be subject to state statutes applicable to Borrowers regulating investments of, and fiduciary obligations with respect to, governmental plans; and (iii) Borrowers have no employees.

Section 5.9 **Margin Stock.** No part of proceeds of the Loan will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

Section 5.10 **Tax Filings.** Borrowers and Guarantor have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrowers and Guarantor, respectively.

Section 5.11 **Solvency.** Giving effect to the Loan, the fair saleable value of Borrowers' assets exceeds and will, immediately following the making of the Loan, exceed Borrowers' total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrowers' assets is and will, immediately following the making of the Loan, be greater than Borrowers' probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrowers' assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrowers do not intend to, and do not believe that they will, incur Debts and liabilities (including contingent liabilities and other commitments) beyond their ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrowers and the amounts to be payable on or in respect of obligations of Borrowers). No petition in bankruptcy has been filed by or against any of the Borrowers or any Borrower Party in the last seven (7) years, and neither Borrowers nor any Borrower Party in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrowers nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrowers nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

Section 5.12 **Full and Accurate Disclosure.** No statement of fact made by or on behalf of Borrowers or any Borrower Party in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrowers which has not been disclosed to Lender in writing which materially adversely affects, nor as far as Borrowers can foresee, might materially adversely affect, the Project or the business, operations or condition (financial or otherwise) of Borrowers or any Borrower Party. All information supplied by Borrowers regarding any other Collateral is accurate and complete in all material respects. All evidence of Borrowers' and each Borrower Party's identity provided to Lender is genuine, and all related information is accurate.

Section 5.13 **Single Purpose Entity.** Each Borrower is and has at all times since its formation been a Single Purpose Entity. In addition, each Borrower agrees that in no event shall it modify, during the term of the Loan, such Borrower's operating agreement with respect to such status as a Single Purpose Entity.

Section 5.14 **Property Management Agreement.** As of the Closing Date, Borrowers have not entered into any property management agreement for the Project or any portion thereof, other than as approved by Lender.

Section 5.15 **No Conflicts.** The execution, delivery and performance of this Agreement and the other Loan Documents by Borrowers will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property or assets of Borrowers pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, operating agreement or other agreement or instrument to which Borrowers are parties or by which any of Borrowers' property or assets are subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Borrowers or any of Borrowers'

properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such regulatory authority or other governmental agency or body required for the execution, delivery and performance by Borrowers of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

Section 5.16 **Title**. Borrowers have good, marketable and insurable title to the Project, free and clear of all Liens whatsoever, except for the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and have rights and the power to transfer each item of Collateral upon which they purport to grant a Lien under the Security Instrument or any of the other Loan Documents. Upon recordation of the Security Instrument and any related financing statements, the Security Instrument creates a valid, perfected first-priority Lien on the Collateral, subject only to Permitted Encumbrances. There are no claims for payment for work, labor or materials affecting the Project which are or may become Liens prior to, or of equal priority with, the Liens created by the Loan Documents. None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Security Instrument and this Agreement, materially and adversely affects the value of the Collateral, impairs the use or operations of the Collateral or impairs Borrowers' ability to pay its obligations in a timely manner.

Section 5.17 **Use of Loan**. The Loan proceeds are being used exclusively for the purposes identified in the "Sources and Uses" set forth on **Schedule 2.1(2)** and not for any other purpose.

Section 5.18 **Flood Zone**. Except as previously disclosed on the survey provided to Lender, no portion of the improvements comprising the Collateral is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law.

Section 5.19 **Insurance**. Borrowers have obtained and have delivered to Lender copies of all of the insurance policies for the Collateral reflecting the insurance coverages, amounts and other insurance requirements set forth in this Agreement. No claims have been made under any such policy, and no Person, including any of the Borrowers, has done, by act or omission, anything which would impair the coverage of any such policy.

Section 5.20 **Filing and Recording Taxes**. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable legal requirements currently in effect in connection with the transfer of the Project to Borrowers or any transfer of a controlling interest in Borrowers have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable legal requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Security Instrument, have been paid and, under current legal requirements, the Security Instrument is enforceable in accordance with its terms by Lender or any subsequent holder thereof, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 5.21 **Restricted Company**. No Borrower is a Restricted Company.

Section 5.22 **Leases**. With respect to leases of the Marketplace: (1) the rent roll delivered to Lender is true and correct, and the leases are valid and in full force and effect; (2) the leases are in writing, and there are no oral agreements with respect thereto; (3) the copies of the leases delivered to Lender are true and complete; (4) neither the landlord nor any tenant is in default under any of the leases; (5) Borrowers have no knowledge of any notice of termination or default with respect to any lease;

(6) the leases, the rents or any interests therein are not subject to any assignment or pledge, except Loan Documents; (7) no tenant or other party has an option to purchase all or any portion of the Marketplace; and (8) no tenant has prepaid more than one month's rent in advance (except for bona fide security deposits identified in the rent roll).

ARTICLE 6

GENERAL COVENANTS

Borrowers covenant and agree with Lender as follows:

Section 6.1 Due on Sale or Encumbrance: Transfers of Interests. Without the prior written consent of Lender in Lender's sole discretion, no Transfer shall occur other than a Permitted Transfer. Prior to any Permitted Transfer which would result in (i) a Person who has less than ten percent (10%) of the legal or beneficial ownership interests in any of the Borrowers having a ten percent (10%) or more legal or beneficial ownership interest in such Borrower, or (ii) a Person who does not have day-to-day control and management of Borrowers or Borrowers' general partner, managing member or non-member manager, and for whom Lender did not perform patriot act, money laundering and background checks prior to the Closing Date, having day-to-day control and management of Borrowers or Borrowers' general partner, managing member or non-member manager, Borrowers shall provide Lender with such information as shall be required by Lender to perform patriot act, money laundering and background checks regarding such proposed transferees and their source of funds. FOR AVOIDANCE OF DOUBT, THE PROHIBITION SET FORTH IN THIS SECTION 6.1 RESTRICTS NOT ONLY THE DIRECT TRANSFER OF THE COLLATERAL, BUT ALSO THE TRANSFER OF ANY DIRECT OR INDIRECT LEGAL, BENEFICIAL, ECONOMIC OR OTHER DIRECT OR INDIRECT OWNERSHIP INTEREST IN ANY BORROWER ON EVERY TIER OR LEVEL. (OTHER THAN PERMITTED TRANSFERS).

Section 6.2 Taxes; Charges. Subject to the last sentence of this Section 6.2, Borrowers shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any Property Taxes, franchise taxes and charges, and other governmental charges that may become a Lien upon the Collateral or become payable during the term of the Loan, and will promptly furnish Lender with evidence of such payment. Borrowers shall not suffer or permit the joint assessment of the Collateral with any other real property constituting a separate tax lot or with any other real or personal property. Borrowers may in good faith contest, by proper legal actions or proceedings, the validity or amount of any Property Tax assessed upon the Collateral provided that at the time of commencement of any such action or proceeding, and during the pendency thereof, (1) no Event of Default shall be continuing; (2) Borrowers provide Lender with cash collateral or a release bond in such form and amount as are satisfactory to Lender with respect to the amount of Property Tax which has not been paid, including Lender's estimate of interest, penalties and attorneys' fees, or pays in full the appropriate tax due and payable and thereafter seeks reimbursement; (3) Borrowers maintain and prosecute such contest continuously with diligence; (4) the Collateral shall not be subject to forfeiture or loss or any Lien by reason of the institution or prosecution of such contest; and (5) Borrowers shall promptly pay or discharge the unpaid portion of such contested Property Tax and all additional charges, interest, penalties and expenses, if any, and shall deliver to Lender evidence acceptable to Lender of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to Borrowers.

Section 6.3 Control; Management. Without the prior written consent of Lender in Lender's sole discretion, there shall be no change in the day-to-day control and management of Borrowers by either (i) Gary Dragul or of any entity through which Gary Dragul exercise(s) control over Borrowers as shown on Schedule 5.1, or (ii) the Key Employees or of any entity through which the Key Employees exercise

control over Borrowers, as shown on Schedule 5.1, and there shall be no change in the Organizational Documents of Borrowers or any such entity relating to such control and management.

Section 6.4 Use; Maintenance; Inspection. At all times during the term of the Loan, Borrowers shall cause (1) the Project to have adequate rights of access to public ways and to be served by adequate water, sewer, sanitary sewer and storm drain facilities and (2) all public utilities necessary or convenient to the full use and enjoyment of the Project to be located in the public right of way abutting the Project, and to be connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Project. Borrowers shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Project. Borrowers shall not, without the prior written consent of Lender, undertake any material alteration of the Project (other than the Work, restoration work following casualty or condemnation and tenant improvement work, in each case as contemplated by this Agreement) or permit any of the fixtures or personalty owned by Borrowers to be removed at any time from the Project, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrowers and free and clear of any Liens except those in favor of Lender. Borrowers shall permit Lender, Servicer and any of their respective agents, representatives and employees, upon reasonable prior notice to Borrowers, to inspect the Project and conduct such environmental and engineering studies and appraisals as Lender may require, provided such inspections and studies do not materially interfere with the use and operation of the Project or any rights of tenants and provided that any environmental inspections and studies shall be limited as set forth in Section 4.3 of the Hazardous Materials Indemnity Agreement.

Section 6.5 Taxes on Security. Borrowers shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender, prior to delinquency of such taxes, charges, filing, registration and recording fees, excises and levies payable. If there shall be enacted any law (1) deducting the Loan from the value of the Collateral for the purpose of taxation, (2) affecting any Lien on the Collateral, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrowers shall promptly pay to Lender, on demand, all taxes, costs and charges for which Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Lender may declare all amounts owing under the Loan Documents to be due and payable within ninety (90) days following notice thereof.

Section 6.6 Compliance with Law: Major Project Documents.

(1) Legal Requirements. Borrowers shall observe and comply with (or cause the observation and compliance with) all legal requirements applicable to its existence and to the ownership, use and operation of the Project.

(2) Major Project Documents. Borrowers shall comply with and perform all of its material obligations under each Major Project Document when and as the same becomes due, and Borrowers shall not enter into, amend, modify or terminate any Major Project Document (or any schedule, exhibit, or addendum thereto) thereto without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed. Without limiting the foregoing hereof, Lender's approval of a Major Project Document may be conditioned upon Borrowers' demonstration that it has sufficient funds to cover the cost of performing Borrowers' obligations under such proposed Major Project

Document. As of the Closing Date, Schedule 6.6 sets forth all Major Project Documents to which any of the Borrowers is a party.

(3) Certificates, Consent and Acknowledgement. At the request of Lender, Borrowers shall cause each contractor and each design professional with whom Borrowers contracts under a Major Project Document to deliver a Certificate, Consent and Acknowledgement to Lender in substantially the form attached hereto as Schedule 6.6(3) and shall cause each service provider or fee recipient to enter into a subordination agreement in a form reasonably acceptable to Lender.

Section 6.7 Legal Existence; Name, Status, Etc.

(1) Single Purpose Entity. Each Borrower shall preserve and keep in full force and effect its existence as, and at all times operate as, a Single Purpose Entity.

(2) Continued Existence. Borrowers and each Borrower Party shall preserve and keep in full force and effect its entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits required to be obtained or maintained by Borrowers applicable to the ownership, use and operation of the Collateral. No Borrower shall become a Restricted Company. Neither Borrowers nor any Borrower Party shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into any Person. Without limiting the foregoing, neither Borrowers nor any Borrower Party shall reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the Closing Date. Each Borrower and each Borrower Party shall conduct business only in its own name and shall not change its name, identity, organizational structure, state of formation or the location of its chief executive office or principal place of business unless Borrowers (1) shall have obtained the prior written consent of Lender to such change, and (2) shall have taken all actions necessary or requested by Lender to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents. If any Borrower does not have an organizational identification number and later obtains one, such Borrower shall promptly notify Lender of its organizational identification number. Without the prior written consent of Lender, Borrowers shall not modify in any material respect the limited liability company agreements of Borrowers.

Section 6.8 Affiliate Transactions. Without the prior written consent of Lender, Borrowers shall not engage in any transaction with any Affiliate of Borrowers or of any Borrower Party, nor shall Borrowers pay any fees to any Affiliate of Borrowers or of any Borrower Party; provided, however, Lender's consent to such transaction or payment of fees shall not be unreasonably withheld, conditioned or delayed so long as (i) such transaction relates to the Collateral and is on an arm's-length basis with terms that are intrinsically fair and no less favorable than would be available for any unaffiliated third parties of Borrowers or any Borrower Party, (ii) Borrowers demonstrate that they have sufficient funds to cover the cost of performing Borrowers' obligations under such transaction or to pay such fees and (iii) such Affiliate enters into a subordination agreement with Lender reasonably acceptable to Lender. Notwithstanding anything to the contrary provided in this Agreement, those agreements affecting the Collateral that are with an Affiliate of Borrowers or of any Borrower Party set forth on Schedule 6.8 hereof are hereby approved by Lender, subject to such Affiliate entering into a subordination agreement with Lender reasonably acceptable to Lender.

Section 6.9 **Limitation on Financing; Other Debt.** Borrowers shall not, without the prior written consent of Lender, (i) obtain any financing other than the Loan, (ii) permit or suffer to exist any mezzanine financing involving the Collateral, or any portion thereof, or any direct or indirect interest in Borrowers, or (iii) incur any Debt other than the (1) Loan, (2) the obligations of Borrowers under any Major Project Document approved by Lender, (3) any Affiliate transaction approved by Lender, and (4) other customary trade payables which are payable, and paid, within ninety (90) days of when incurred and do not exceed in the aggregate under this clause (4) \$50,000.00.

Section 6.10 **Mechanics' Liens.** Subject to the immediately following sentence, Borrowers shall pay (or cause to be paid) when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a mechanic's or materialman's or similar Lien and/or notice of pendency of action (each, a "**Mechanic's Lien**") being filed or recorded against the Collateral, and shall defend, indemnify and hold Lender harmless from all Mechanics' Liens, including all proceedings to foreclose on any Mechanic's Lien. If any Mechanic's Lien is served, filed, recorded or otherwise asserted against any portion of the Collateral, Borrowers shall, within twenty (20) Business Days, either (i) pay such Mechanic's Lien in full and cause the same to be released of record or (ii) obtain a statutory bond which removes such Mechanic's Lien from attaching to the Collateral and each portion thereof. For avoidance of doubt, Borrowers shall be required to take the actions required by this **Section 6.10** with respect to any Mechanic's Lien which attaches to or is filed against the Collateral regardless of source.

Section 6.11 **ERISA.** Throughout the term of the Loan: no Borrower will be (i) an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and no assets of Borrowers will constitute "plan assets" of one or more such employee benefit plans for purposes of Title I of ERISA; (ii) no Borrower will be a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Borrowers will not be subject to state statutes applicable to Borrowers regulating investments of, and fiduciary obligations with respect to, such governmental plans; and (iii) Borrowers shall have no employees.

Section 6.12 **Further Assurances.** Borrowers shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, (2) provide, and cause each Borrower Party to provide, Lender such additional information and documentation on Borrowers' and each Borrower Party's legal or beneficial ownership, policies, procedures and sources of funds as Lender deems necessary or prudent to enable Lender to comply with Anti-Money Laundering Laws as now in existence or hereafter amended, and (3) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Lender may request to further evidence and more fully describe the collateral for the Loan, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith. Borrowers shall preserve and protect the first lien and security interest status of the Security Instrument and the other Loan Documents. If any Lien other than the Permitted Encumbrances is asserted against the Collateral, Borrowers shall promptly, and at its expense, (a) give Lender a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in the same manner that Mechanic's Liens may be contested under **Section 6.10**. From time to time upon the written request of Lender, Borrowers shall deliver to Lender a schedule of the name, legal domicile address and jurisdiction of organization, if applicable, for each Borrower Party and each holder of a legal interest in Borrowers.

Section 6.13 **Estoppel Certificates.** Borrowers, within ten (10) days after request, shall furnish to Lender a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses

exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Lender may request.

Section 6.14 **Notice of Certain Events.** Borrowers shall promptly notify Lender of (1) any notice of default received by Borrowers or any Borrower Party under other obligations relating to the Project or otherwise material to Borrowers' business; and (2) any threatened in writing or pending legal, judicial or regulatory proceedings, including any dispute between Borrowers and any governmental authority, affecting Borrowers or the Project.

Section 6.15 **Indemnification.** Borrowers shall indemnify, defend and hold Lender and Servicer harmless from and against any and all out-of-pocket losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs and disbursements (including the reasonable fees and actual expenses of Lender's or Lender's counsel) actually incurred and of any kind or nature whatsoever, including those arising from the joint, concurrent, or comparative negligence of Lender, in connection with (1) Lender's or Servicer's exercise of its rights and remedies under the Security Instrument and other Loan Documents, (2) any lessor obligations or liabilities under any of the leases of the Collateral arising prior to Lender taking title to the Collateral, including any claim against Lender by reason of any alleged obligation, undertaking, action or inaction on its part to perform or discharge any terms, covenants or conditions of such leases or with respect to the rents and other sums payable thereunder, (3) any inspection, review or testing of or with respect to the Project, (4) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Lender is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loan) in any way related to (a) the execution, delivery or performance of any Loan Document, to (b) the Project, (c) Borrowers or its owners, (d) the entire course of dealing prior to the Closing Date between Lender and Borrowers or any Borrower Party with respect to the Loan or the transactions contemplated by the Loan Documents, or (e) any dealings between Borrowers or its owners and any third parties (including any and all reasonable costs and expenses actually incurred by Lender or Servicer in responding to any third-party subpoenas or other third-party discovery requests and defending any depositions of their respective directors, officers, employees, agents or attorneys), (5) any proceeding instituted by any Person claiming a Lien, and (6) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the Loan, the Project, or any of the transactions contemplated in the Loan Documents, except to the extent any of the foregoing is caused by (A) Lender's or Lender's agent's gross negligence or willful misconduct or illegal acts, or (B) any occurrence or non-occurrence that initially occurs after final completion of foreclosure or other taking of title to or possession of the Collateral by Lender or other third party. Any amount covered by this indemnity shall be payable within ten (10) days after written demand, and shall bear interest from ten (10) days after the date of demand until the same is paid by Borrowers to Lender at the Default Rate.

Section 6.16 **Restriction of Distributions.** Borrowers shall not make any dividend, distribution or disbursement to any of its direct or indirect owners or Affiliates, other than, so long as no Event of Default exists, amounts due under any Affiliate Agreement with Borrowers which has been approved by Lender in writing.

Section 6.17 **Other Agreements; Defaults.** Neither Borrowers nor any Borrower Party shall become party to any agreement or instrument, or subject to any court order, injunction, permit or restriction, which adversely affects the Collateral or the business, operations, or condition (financial or otherwise) of Borrowers or any Borrower Party. Neither Borrowers nor any Borrower Party shall violate any agreement in a manner which would have an adverse effect on the Collateral, Borrowers or any Borrower Party, or on Borrowers' or any Borrower Party's business, properties, or assets, operations or condition, financial or otherwise.

Section 6.18 **Leases.** Without the prior written consent of Lender in its sole discretion, Borrowers shall not enter into any lease, license or other agreement to occupy the Project or any portion thereof other than on Borrowers' standard form of lease which has been approved by Lender, or amend, modify or cancel any such agreement.

Section 6.19 **Performance of the Work at the Marketplace.**

(1) Borrowers shall promptly commence performance of the Work, shall diligently perform the Work, and shall fully complete the Work at the Marketplace in a good and workmanlike manner on or before December 31, 2018. The Work, or any item comprising the Work, shall be "complete", and "completion" shall have occurred when Lender has received a certification from an engineering consultant of Lender's choice as to the satisfactory completion of the Work, all sums due in connection with the Work have been paid in full, and Borrowers have obtained an unconditional waiver and release from any contractor under a Major Project Document (and a true copy of such waiver and release has been delivered to Lender).

(2) Unless the Work is completed (as described above), on or before December 21, 2018, Guarantor shall post an irrevocable direct pay letter of credit, issued by an Eligible Bank in favor of Lender, with a stated amount of \$753,331.00, with a term of six months (the "**Letter of Credit**"). If any expenses incurred in connection with the Work remain outstanding, or if any mechanic's lien or judgment lien is entered against the Project, Lender may draw upon the Letter of Credit and apply any sums drawn to the payment of such expenses and liens. If Lender has not received a certification from an engineering consultant of Lender's choice as to the satisfactory completion of the Work and copies of unconditional waivers and releases from applicable contractors by the date that is ten (10) Business Days prior to the expiration of the Letter of Credit, Lender may draw upon the Letter of Credit and hold such sums for the payment of Work-related expenses and liens, and may, upon the Maturity Date, apply any remaining such funds to payment of the Loan.

ARTICLE 7

FINANCIAL REPORTING

Section 7.1 **Financial Statements.**

(1) **Monthly Reports.** Within fifteen days after the end of each month, the Borrowers shall furnish to Lender an updated rent roll containing the names of all tenants, the term and expiration date of their respective Leases, the space occupied, the rents payable and the name of any Lease guarantor, along with a schedule of all of the security deposited under such Leases; a report of all aged receivables; if applicable, tenant sales reports; a report of all leasing activity at the Project during the prior month; and copies of the bank statements for the Borrowers' bank account(s) for the prior month (to the extent not required to be delivered to Lender under the Clearing Bank Agreement).

(2) **Quarterly Reports.** Within thirty (30) days after the end of each calendar quarter (including calendar quarter ending December 31), Borrowers shall furnish to Lender, as applicable, current (as of the calendar quarter just ended) balance sheets, detailed operating statements stating operating revenues, operating expenses and net cash flows for such calendar quarter, updated rent rolls, and, if requested by Lender, written

statements setting forth any variance from the annual budget, a general ledger, copies of bank statements and bank reconciliations and other documentation supporting the information disclosed in the most recent financial statements.

(3) **Annual Reports.** Within ninety (90) days after the end of each calendar year, Borrowers shall furnish to Lender current (as of the end of such year) balance sheets, detailed operating statements stating operating revenues, operating expenses and net cash flows for each of Borrowers and the Collateral.

(4) **Certification: Supporting Documentation.** Each such financial statement shall be in scope and detail satisfactory to Lender and certified by the chief financial representative of Borrowers.

(5) **Tax Returns.** Borrowers shall furnish to Lender copies of Borrowers' filed federal, state and local income tax returns for each taxable year (with all forms and supporting schedules attached) within thirty (30) days after filing. By executing this Agreement, Borrowers authorize Lender to obtain for information and verification purposes from the U.S. Internal Revenue Service (IRS) a transcript of any Form 1040, Form 1120, Form 1120S, Form 1165, Form W-2, Form 1099 or any other income tax form actually filed with the IRS with respect to such persons (or a report from the IRS that the form for a particular date was not filed), and agree to provide to Lender fully executed IRS Forms 1506-T for such purposes at any time upon request of Lender.

(6) **Failure to Provide.** In the event that Borrowers or any Guarantor fails to provide to Lender the financial statements required under this **Section 7.1** or under the Guaranty when due and such failure continues for a period of fifteen (15) days after notice from Lender, the Contract Rate shall be increased by two (2) percent per annum until such failure is cured. Nothing herein, however, shall waive Lender's right to declare an Event of Default if such failure continues for a period of fifteen (15) days after notice from Lender and charge Borrowers interest at the Default Rate.

Section 7.2 **Accounting Principles.** All financial statements shall be prepared in accordance with sound accounting principles (or such other accounting basis reasonably acceptable to Lender) consistently applied from year to year. If the financial statements are prepared on an accrual basis, such statements shall be accompanied by a reconciliation to cash basis accounting principles.

Section 7.3 **Other Information.** Borrowers shall deliver to Lender such additional information regarding Borrowers, its subsidiaries, its business, any Borrower Party, and the Project within thirty (30) days after Lender's reasonable request therefor.

Section 7.4 **Audits.** Lender and its agents and third-party consultants shall be entitled to perform such financial investigations and audits of Borrowers' books and records as such party shall deem necessary. Borrowers shall permit such parties to examine such records, books and papers of Borrowers which reflect upon its financial condition, the income and expenses relative to the Project and the representations set forth in **Article 8**. Borrowers authorize Lender to communicate directly with Borrowers' accountants, and authorize such accountants to disclose to Lender any and all financial statements and other supporting financial documents and schedules, including copies of any management letter, with respect to the business, financial condition and other affairs of Borrowers. Borrowers shall not be required to pay for more than one such audit or investigation during the initial term on the Loan, unless there has occurred and is continuing an Event of default, or an event which, with the passage of time, the giving of notice or both would be an Event of Default.

ARTICLE 8

ANTI-MONEY LAUNDERING AND INTERNATIONAL TRADE CONTROLS

Section 8.1 Compliance with International Trade Control Laws and OFAC Regulations: Borrowers' Funds. Borrowers represent, warrant and covenant to Lender that:

- (1) Borrowers Not a Prohibited Person. Neither Borrowers, nor any Borrower Party, nor any Person who owns a direct interest in Borrowers, is now nor shall be at any time until after the Loan is fully repaid a Person with whom a U.S. Person, including a Financial Institution, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under U.S. law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.
- (2) Verification of Funds. It has taken, and shall continue to take until after the Loan is fully repaid, such measures as are required by law to verify that the funds invested in Borrowers and funds used to make payments on the Loan (including operating revenues and funds used to repay the Loan, whether from a refinancing, asset sale or otherwise) are derived (a) from transactions that do not violate U.S. law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (b) from permissible sources under U.S. law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.
- (3) No Investigations or Penalties. To the best of Borrowers' Knowledge, neither Borrowers, nor any Borrower Party, nor any holder of a direct interest in Borrowers, nor any Person providing funds to Borrowers (a) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (b) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; and (c) has had any of its/his/her funds seized or forfeited in any action under any Anti-Money Laundering Laws.
- (4) Payments. Borrowers shall make payments on the Loan solely from funds invested in Borrowers, or operating revenues, unless otherwise agreed to by Lender.

ARTICLE 9

EVENTS OF DEFAULT AND CURE PERIODS

Each of the following shall constitute an "Event of Default":

Section 9.1 Events of Default Not Subject to Cure Periods.

- (1) Payment of Principal and/or Interest. Borrowers' failure to pay any regularly scheduled installment of principal or interest on the Loan when due.

- (2) **Payment at Maturity.** Borrowers' failure to pay the Loan and all amounts owing under the Loan Documents on the Maturity Date.
- (3) **Default Under Shoppes Loan.** An Event of Default shall have occurred under the documents evidencing and/or securing the Shoppes Loan.
- (4) **Insurance.** Borrowers' failure to maintain insurance as required under **Section 4.1** of this Agreement.
- (5) **Transfer.** Any Transfer occurs in violation of **Section 6.1** of this Agreement or any breach under **Section 6.3** of this Agreement.
- (6) **Article 8 Compliance.** Borrowers' failure to perform, observe or comply with any of the agreements, covenants or provisions contained in **Article 8**.
- (7) **Voluntary Petitions, Etc.** Commencement by any of the Borrowers or any Borrower Party (each, a "**Bankruptcy Party**") of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities, or seeking to consolidate its assets with the assets of any other Person, under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or its assets, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.
- (8) **Major Project Documents.** The default by Borrowers under any Major Project Document and Borrowers' failure to cure such default (or obtain a written waiver of such default) prior to the end of any applicable cure period set forth in such Major Project Document.
- (9) **Single Purpose Entity Covenants.** Borrowers' failure to perform, observe or comply with any of the agreements, covenants or provisions contained in **Section 6.7**.

Section 9.2 **Events of Default Subject to Specific Cure Periods.**

- (1) **Payments Prior to Maturity.** Borrowers' failure to pay any amount (other than as described in **Section 9.1(1) or (2)**) owing under the Loan Documents, within five (5) days of (and including) the date when due.
- (2) **Involuntary Bankruptcy or Other Proceeding.** Commencement of an involuntary case or other proceeding against any Bankruptcy Party, or against the assets of any Bankruptcy Party, which seeks liquidation, reorganization or other relief with respect to such Bankruptcy Party or its Debts or other liabilities, or seeks to consolidate the assets of such Bankruptcy Party with the assets of any other Person, under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property; and such involuntary case or other proceeding shall remain undismissed or un-stayed for a period of sixty (60) days; or an order for relief against a

Bankruptcy Party or its assets shall be entered in any such case under the Federal Bankruptcy Code.

(3) **Representations and Warranties.** If any representation or warranty made in any Loan Document proves to be untrue in any material respect as of the date the representation or warranty was made.

Section 9.3 **Other Events of Defaults.**

(1) **Specified Events of Default.** The occurrence of any specified "Event of Default" under this Agreement (other than this **Article 9**) or under any other Loan Document.

(2) **Specified Defaults Under Other Loan Documents.** If any term, covenant or provision set forth in the Loan Documents under which Borrowers or Guarantor is obligated expressly contains a specific grace or notice period, then Borrowers' or Guarantor's failure to perform, observe or comply with such term, covenant or condition after the expiration of such grace or notice period, as applicable.

(3) **Covenants Without Specific Grace Periods.** Borrowers or Guarantor shall continue to be in default under any of the other terms, covenants or provisions of this Agreement not specified in **Section 9.1**, **Section 9.2** or **Section 9.3(1) or (2)**, or under any of the terms, covenants or provisions contained in the other Loan Documents, for ten (10) days after receipt of notice of such default from Lender, in the case of any default which can be cured by the payment of a sum of money, or for thirty (30) days after receipt of notice of such default from Lender in the case of any other default; provided, however, that if (a) such non-monetary default is susceptible of cure but cannot reasonably be cured within such 30-day period, (b) the defaulting party shall have commenced to cure such default within such 30-day period and thereafter is diligently and expeditiously proceeding to cure such default, and (c) the defaulting party has provided Lender with security satisfactory to Lender against any interruption of payment or impairment of collateral as a result of such continuing default, then such 30-day period shall be extended for such additional time as is reasonably necessary for the defaulting party, exercising due diligence, to cure such default, provided further that in no event shall such additional period exceed thirty (30) days.

ARTICLE 10

LENDER'S REMEDIES

Section 10.1 **Remedies - Insolvency Events.** Upon the occurrence of any Event of Default described in **Section 9.1(6)** or **Section 9.2(2)**, the obligations of Lender to advance amounts hereunder shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrowers; however, if the Bankruptcy Party under **Section 9.1(6)** or **Section 9.2(2)** is other than Borrowers, then all amounts due under the Loan Documents shall become immediately due and payable at Lender's election, in Lender's sole discretion. Furthermore, BORROWERS AGREE THAT IN THE EVENT OF A VOLUNTARY OR INVOLUNTARY LIQUIDATION OR REORGANIZATION CASE BY OR AGAINST ANY BORROWER UNDER BANKRUPTCY, RECEIVERSHIP OR OTHER

INSOLVENCY LAW, LENDER SHALL BE FREE TO PURSUE FORECLOSURE AND OTHER REMEDIES WITH RESPECT TO THE COLLATERAL ENCUMBERED BY THE SECURITY INSTRUMENT, WITHOUT OPPOSITION OR INTERFERENCE BY BORROWERS, THAT LENDER SHALL BE ENTITLED TO SEEK AND OBTAIN RELIEF FROM THE AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE WITHOUT OBJECTION BY BORROWERS, AND THAT ANY RIGHTS TO STAY, ENJOIN, OR OTHERWISE DELAY OR IMPEDE LENDER'S REMEDIES AGAINST THE COLLATERAL, INCLUDING FORECLOSURE, WHICH MIGHT BE AVAILABLE TO BORROWERS, INCLUDING ANY RIGHTS UNDER SECTIONS 105 AND 262 OF THE BANKRUPTCY CODE, ARE HEREBY RELEASED AND WAIVED BY BORROWERS.

Section 10.2 **Remedies - Other Events.** Except as set forth in **Section 10.1** above, while any Event of Default exists, Lender may (1) by written notice to Borrowers, declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrowers, (2) terminate the obligation, if any, of Lender to advance amounts hereunder, and (3) in any order as Lender may desire, in its sole discretion, exercise all rights and remedies therefor under the Loan Documents and at law or in equity including, but not limited to, the right to foreclose on any mortgage(s) of real property securing the Loan.

Section 10.3 **Lender's Right to Perform the Obligations.** If Borrowers shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Borrowers and without waiving or releasing any other right, remedy or recourse Lender may have because of such Event of Default, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrowers, and shall have the right to enter upon the Collateral (or the Project to the extent of Borrowers' rights) for such purpose and to take all such action thereon and with respect to the Collateral (or the Project to the extent of Borrowers' rights) as it may deem necessary or appropriate. If Lender shall elect to pay any sum due from Borrowers with reference to the Collateral (or the Project to the extent of Borrowers' rights), Lender may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, Lien, claim or charge before making an advance for the purpose of preventing or removing the same. Borrowers shall indemnify, defend and hold Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees and disbursements, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this **Section 10.3**, including those arising from the joint, concurrent, or comparative negligence of Lender, except to the extent caused by (i) Lender's or Lender's agent's gross negligence or willful misconduct or any illegal act of Lender, or (ii) any such occurrence or non-occurrence that initially occurs after final completion of foreclosure or other taking of title to or possession of the Collateral by Lender or other third party. All sums paid by Lender pursuant to this **Section 10.3** and all other sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents and shall be paid by Borrowers to Lender upon demand.

ARTICLE 11

LIMITATION ON LIABILITY

Section 11.1 Limitation on Liability of Lender's and Lender's Officers, Employees, Etc.

Any obligation or liability whatsoever of Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Lender's or Lender's assets only, as applicable. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Lender's or Lender's respective shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

ARTICLE 12

MISCELLANEOUS

Section 12.1 Notices. All notices required or permitted to be given hereunder (each, a "Notice") shall be in writing addressed to the party to be so notified at its address set forth below, or at such other address as such party may specify by giving at least ten (10) days' prior written notice of such change of address, and (1) sent by electronic mail, in each case with a copy of the Notice sent concurrently by one of the means described in clauses (2), (3) or (4) below (provided that for electronic mail delivery, the beginning of the subject line in such electronic mail shall state, in capitalized letters and minimum 12 point font: "NOTICE PURSUANT TO LOAN AGREEMENT SECTION 12.1"), (2) sent by registered or certified mail, postage prepaid, return receipt requested, (3) delivered by hand, or (4) delivered by reputable overnight commercial courier. Notices shall be deemed to have been received: (a) if sent by electronic mail, upon the earlier of (i) the date that the sender receives a telephonic response from an employee or representative of the party receiving notice on behalf of such party, acknowledging receipt (which response shall not be a computer generated response) and (ii) the date of delivery on a Business Day (or the first attempted delivery if refused) of the copy of such Notice delivered in accordance with clause (2), (3) or (4) above, and (b) if delivered by hand, sent by registered or certified mail, or sent by overnight commercial courier, on the date of delivery on a Business Day (or the first attempted delivery of refused).

Addresses for Notices:

If to Borrowers:

c/o GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111
Attention: Gary Dragul
Telephone: (303) 221-5500
Email: gary@gdare.com

With a Copy to:

Moye White LLP
1400 16th Street, Suite 600
Denver, CO 80202
Attention: Trish Rogers
Telephone: (303) 292-7939

Email: trish.rogers@moyewhite.com

If to Lender:

AFF II Denver, LLC
2100 Powers Ferry Road, Suite 350
Atlanta, Georgia 30339
Attention: Dror Bezalel
Telephone: (770) 319-7408
Email: dbezalel@theardentcompanies.com

With a copy to:

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attention: Michael Baum
Telephone: (312) 456-8400
Email: baumm@gtlaw.com

Section 12.2 **Amendments, Waivers, References.** This Agreement and any other Loan Document may be amended, modified or supplemented only by a written instrument signed by Borrowers and Lender. No waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought provided that copies of original signature pages to the amendment, modification or supplement, including copies delivered by PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement. This Agreement and the other Loan Documents shall not be executed, entered into, altered, amended, or modified by electronic means. Without limiting the generality of the foregoing, Borrowers and Lender hereby agree that no exchange of electronic correspondence between the parties shall operate to amend, modify or waive any term or provision of any Loan Document. Any reference to a Loan Document, whether in this Agreement or in any other Loan Document, shall be deemed to be a reference to such Loan Document as it may hereafter from time to time be amended, modified, consolidated, replaced, severed, supplemented, extended and restated.

Section 12.3 **Limitation on Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrowers, Lender with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Lender or charged by Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law, then, notwithstanding anything to the contrary in the Loan Documents: (1) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Note by the holder thereof (or, if the Note has been paid in full, refunded to Borrowers); and (2) if maturity is accelerated by reason of an election by Lender, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized,

prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Note (or, if the Note has been paid in full, refunded to Borrowers). The terms and provisions of this Section 12.3 shall control and supersede every other provision of the Loan Documents.

Section 12.4 Invalid Provision. If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 12.5 Reimbursement of Expenses. Borrowers shall pay or reimburse Lender or Servicer, as applicable, on demand for (1) all actual out-of-pocket costs and expenses actually incurred by Lender in connection with the negotiation, documentation, closing, disbursement and administration of the Loan, including reasonable fees and expenses of Lender's or Servicer's attorneys and Lender's or Servicer's environmental, engineering, accounting, appraisal and other consultants; fees, charges and taxes for the recording or filing of Loan Documents; financial investigation, audit and inspection fees and costs; settlement of condemnation and casualty awards; title search costs, premiums for title insurance and endorsements thereto; fees and costs for lien and litigation searches and background checks; and costs and expenses of responding to third-party subpoenas; and (2) all amounts actually expended, advanced or incurred by Lender or Servicer to collect under the Notes, or to enforce the rights of Lender under this Agreement or any other Loan Document, to protect, defend or assert the rights, claims and actions of Lender under the Loan Documents or with respect to the Collateral (by litigation or other proceedings) or to defend any claims asserted against Lender by Borrowers or any Borrower Party with respect to the Loan, the Loan Documents, the Collateral or the transactions contemplated hereby, which amounts will include all transfer taxes payable upon foreclosure of any Collateral, court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be incurred by Lender in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to Lender. All amounts payable by Borrowers to Lender under this Section 12.5 shall constitute part of the Loan and shall be secured by the Loan Documents.

Section 12.6 Approvals; Third Parties; Conditions. All rights retained or exercised by Lender to review or approve leases, contracts, plans, studies and other matters, including Borrowers' and any other Person's compliance with the provisions of Article 8 and compliance with laws applicable to Borrowers, the Project or any other Person, are solely to facilitate Lender's credit underwriting and administration of the Loan, and shall not be deemed or construed as a determination that Lender has passed on the adequacy thereof for any other purpose and may not be relied upon by Borrowers or any other Person. This Agreement is for the sole and exclusive use of Lender and Borrowers and may not be enforced, nor relied upon, by any Person other than Lender and Borrowers. All conditions of the obligations of Lender hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Lender, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time in their sole discretion.

Section 12.7 **Lender Not in Control; No Partnership.**

(1) **Lender's Status.** None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Lender the right or power to exercise control over the affairs or management of Borrowers. The power of Lender is limited to the right to exercise the rights and remedies under the Loan Documents.

(2) **Relationship of Parties.** Borrowers and Lender agree that the relationship between Borrowers and Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall be deemed or construed, to create, and Lender and Borrowers disclaim any intention to create, a partnership, joint venture, agency or common interest in profits or income among Lender and Borrowers, or to create an equity in the Collateral in Lender, or any sharing of liabilities, losses, costs or expenses. Lender neither undertakes nor assumes any responsibility or duty to Borrowers, to any direct or indirect constituent partners, members, stockholders or investors in Borrowers (each, a "**Borrowers Investor**") or to any other Person with respect to the Collateral or the Loan, except as expressly provided in the Loan Documents. Notwithstanding any other provision of the Loan Documents: (a) Lender shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind in Borrowers or any Borrowers Investor or Borrower Party, and neither Lender nor Lender intends to ever assume such status; (b) Lender shall in no event be liable for any debts, expenses or losses incurred or sustained by Borrowers or any Borrowers Investor or Borrower Party; and (c) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrowers or any Borrowers Investor or Borrower Party.

Section 12.8 **Time of the Essence.** Time is of the essence with respect to this Agreement and the other Loan Documents.

Section 12.9 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Lender and Borrowers and their respective successors and permitted assigns, provided that neither Borrowers nor any Borrower Party shall, without the prior written consent of Lender, assign any rights, duties or obligations hereunder.

Section 12.10 **Renewal, Extension or Rearrangement.** Subject to **Section 12.9**, all provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loan.

Section 12.11 **Waivers.** No course of dealing on the part of Lender, its respective officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any right, power or privilege of Lender under any of the Loan Documents, shall operate as a waiver thereof. Any waiver of a Potential Default or an Event of Default shall not be construed to be a waiver of any subsequent occurrence of the same or any other Potential Default or Event of Default.

Section 12.12 **Cumulative Rights.** The rights, powers and remedies of Lender under the Loan Documents shall be cumulative and not exclusive of any right, power or remedy available at law or in equity or otherwise. The exercise or partial exercise of any such right, power or remedy shall not preclude the exercise of any other right, power or remedy, each of which may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion.

Section 12.13 **Promotional Material.** Borrowers authorizes Lender to issue press releases, advertisements and other promotional materials in connection with Lender's or Lender's own promotional and marketing activities, and describing the Loan in general terms or in detail and Lender's or Lender's participation in the Loan, provided that all references to Borrowers, any Borrower Party and/or the Collateral contained in any such press releases, advertisements or promotional materials shall be approved in writing by Borrowers in advance of issuance. All references to Lender contained in any press release, advertisement or promotional material issued by Borrowers shall be approved in writing by Lender in advance of issuance.

Section 12.14 **Survival.** All of the indemnities of Borrowers hereunder, and under the indemnification provisions of the other Loan Documents, shall survive the repayment in full of the Loan and the release of the Liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Collateral to any party, whether or not an Affiliate of Borrowers.

Section 12.15 **WAIVER OF JURY TRIAL.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOAN OR THE COLLATERAL (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS AGREEMENT.

Section 12.16 **Punitive or Consequential Damages; Waiver.** Lender shall not be responsible or liable to Borrowers, any Borrower Party or any Affiliate of any of them for any punitive, exemplary or consequential damages which may be alleged by Borrowers, any Borrower Party or any Affiliate of any of them as a result of the Loan or the transactions contemplated hereby, including any breach or other default by any party hereto. Borrowers represent and warrant to Lender that as of the Closing Date neither Borrowers nor any Borrower Party has any claims against Lender in connection with the Loan.

Section 12.17 **Governing Law; Jurisdiction and Venue.**

(1) **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF COLORADO (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW OTHER THAN THE CHOICE OF LAW RULES OF THE UNIFORM COMMERCIAL CODE OF SUCH STATE).

(2) **Jurisdiction and Venue.** Borrowers hereby agree that all actions or proceedings initiated by Borrowers and arising directly or indirectly out of the Loan shall be litigated in the federal or state courts located in the City and County of Denver, Colorado. Borrowers hereby expressly submit and consent in advance to such jurisdiction in any action or proceeding commenced by Lender in any of such courts, and hereby waive personal service of the summons and complaint, or other process or papers issued therein, and agree that service of such summons and complaint or other process or papers may be

made by registered or certified mail addressed to Borrowers at the address to which notices are to be sent pursuant to this Agreement. Borrowers waive any claim that such court of the State is an inconvenient forum or an improper forum based on lack of venue. Should Borrowers, after being so served, fail to appear or answer to any summons, complaint, process or papers so served within the number of days prescribed by law after the mailing thereof, Borrowers shall be deemed in default and an order and/or judgment may be entered by Lender against Borrowers as demanded or prayed for in such summons, complaint, process or papers. The exclusive choice of forum for Borrowers set forth in this section shall not be deemed to preclude the enforcement by Lender of any judgment obtained in any other forum or the taking by Lender of any action to enforce the same in any other jurisdiction, and Borrowers hereby waive the right, if any, to collaterally attack any such judgment or action.

Section 12.18 **Entire Agreement**. This Agreement and the other Loan Documents embody the entire agreement and understanding between Lender, on the one hand, and Borrowers, on the other hand, and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof, including any commitment letter (if any) issued by Lender with respect to the Loan and any confidentiality agreements previously executed by the parties with respect to the Loan. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between this Agreement and any of the other Loan Documents (other than the Hazardous Materials Indemnity Agreement), the terms of this Agreement shall control.

Section 12.19 **Counterparts**. This Agreement may be executed in multiple counterparts, any or all of which may contain the signatures of fewer than all of the parties, but all of which taken together shall constitute a single instrument. Copies of originals, including copies delivered by PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement.

Section 12.20 **Brokers**. Borrowers hereby represent to Lender that Borrowers have not dealt with any broker, underwriters, placement agent, or finder in connection with the transactions contemplated by this Agreement and the other Loan Documents. Borrowers hereby agree to indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrowers in connection with the transactions contemplated herein.

Section 12.21 **Claims Against Lender**. Lender shall not be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the default claimed by Borrowers shall have been given to Lender within six (6) months after Borrowers first had knowledge of the occurrence of the event which Borrowers alleges gave rise to such claimed default and Lender does not remedy or cure the default, if any default actually exists, promptly thereafter. Borrowers waives any claim, set-off or defense against Lender arising by reason of any alleged default by Lender as to which Borrowers does not give such notice timely as required by this **Section 12.21** and, in any event, within six (6) months after the Maturity Date or earlier repayment of the Loan. Borrowers acknowledges that such waiver is or may be essential to Lender's ability to enforce its remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Lender and Borrowers with regard to the Loan. No Borrower Party or tenant of the Project is intended to have any rights as a third-party beneficiary of the provisions of this **Section 12.21**.

Section 12.22 Assignments and Participations.

- (1) Assignments by Borrowers. Borrowers may not assign any of their rights or obligations hereunder or under the Note without the prior written consent of Lender.
- (2) Assignments by Lender. Lender may assign any or all of its portion of the Loan and the Note.
- (3) Participations. Lender may sell or agree to sell to one or more other Persons (each a "Participant") a participation in all or any part of the Loan.
- (4) Pledges. Lender may pledge all or any portion of its portion of the Loan and Note to any Person.
- (5) Provision of Information to Assignees, Participants and Pledges. Lender may furnish any information concerning Borrowers or any of its Affiliates in the possession of Lender from time to time to assignees and Participants (including prospective assignees and Participants).

Section 12.23 Joint and Several Liability. The liability of all persons and entities obligated in any manner under this Agreement or any of the Loan Documents, other than Lender, shall be joint and several.

Section 12.24 Joint Borrower Provisions.

(1) The Borrowers acknowledge and agree that they shall be jointly and severally liable for the Loan and all other obligations arising under this Agreement and/or any of the other Loan Documents. In furtherance thereof, the Borrowers acknowledge and agree as follows:

(a) For the purpose of implementing the joint borrower provisions of the Loan Documents, each of the Borrowers hereby irrevocably appoints the others as its agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

(b) To induce the Lender to make the Loan, and in consideration thereof, the Borrowers hereby agree to indemnify Lender against, and hold Lender harmless from, any and all liabilities, expenses, losses, damages and/or claims of damage or injury asserted against Lender by the Borrowers or by any other Person arising from or incurred by reason of (i) reliance by Lender on any requests or instructions from any Borrower, or (ii) any other action taken by Lender in good faith with respect to this Agreement or the other Loan Documents.

(c) The Borrowers acknowledge that the liens and security interests created or granted herein and by the other Loan Documents will secure obligations of the Borrowers under the Loan Documents and, in full recognition of that fact, the Borrowers consent and agree that Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or security hereof or of any other Loan Document:

(i) agree with any Borrower to supplement, modify, amend or waive, or enter into or give any agreement, approval or consent with respect to,

the obligations of any Borrower under this Agreement or any of the Loan Documents;

(ii) Upon the occurrence of and during the continuance of any Event of Default, Lender may enforce this Agreement and the other Loan Documents independently as to the Borrowers and independently of any other remedy or security Lender at any time may have or hold in connection with the obligations under this Agreement. Lender may file a separate action or actions against the Borrowers to enforce the obligations under this Agreement, whether action is brought or prosecuted with respect to any other security or against any other Person, or whether any other Person is joined in any such action or actions. .

(iii) The enforceability of this Agreement and the other Loan Documents at all times shall remain effective even though any or all obligations under this Agreement may be or hereafter may become invalid or otherwise unenforceable as against the Borrowers or any other Person and whether or not the Borrowers or any other Person shall have any personal liability with respect to such obligations

In connection with its joint and several obligations under the Loan Documents, each of the Borrowers waives: (i) any defense based upon any legal disability or other defense of the other party, or by reason of the cessation or limitation of the liability of the Borrowers from any cause other than full payment of all sums payable under the Note or any of the other Loan Documents; (ii) any and all rights and defenses arising out of an election of remedies by Lender; and (iii) any right of subrogation.

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IN WITNESS WHEREOF, the undersigned have executed this Loan Agreement as of the date first above written.

LENDER:

AFF II DENVER LLC,
a Delaware limited liability company

By: 

Name: Dror Bezalet

Title: Authorized Signatory

BORROWERS:

HAPPY CANYON BOX 17 A, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

By:  _____

Name: Gary J. Dragul

Title: President

HAPPY CANYON BOX 17 B, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

By:  _____

Name: Gary J. Dragul

Title: President

HAPPY CANYON BOX 17 C, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

By:  _____

Name: Gary J. Dragul

Title: President

SCHEDULE A

BORROWERS

Happy Canyon Box 17 A, LLC
Happy Canyon Box 17 B, LLC
Happy Canyon Box 17 C, LLC

EXHIBIT A

LEGAL DESCRIPTION OF PROJECTS

MARKETPLACE

PARCEL 1:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;
THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;
THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING,
CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL 2:

THOSE CERTAIN EASEMENTS AS SET FORTH IN "HAPPY CANYON SHOPPING CENTER AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS" RECORDED MARCH 3, 2017, AS RECEPTION NO. 2017029949 IN THE PUBLIC RECORDS OF DENVER COUNTY, COLORADO.

SCHEDULE 1.1

DEFINITIONS

As used in this Agreement, the following terms have the meanings indicated:

“Advance” means any disbursement of proceeds of the Loan from the Reserve.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person. A Person shall be deemed to **“Control”** another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, membership interests, by contract, or otherwise. Each Borrower Party shall be deemed to be an Affiliate of Borrowers.

“Agreement” means this Loan Agreement.

“Anti-Money Laundering Laws” means those laws, regulations and sanctions, state and federal, criminal and civil, that (a) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (b) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (c) require identification and documentation of the parties with whom a Financial Institution conducts business; or (d) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the Patriot Act, the Bank Secrecy Act, the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

“Bankruptcy Party” has the meaning assigned in Section 9.1(6).

“Bank Secrecy Act” means the Bank Secrecy Act, 31 U.S.C. Sections 5311 et seq.

“Borrowers” has the meaning assigned in the first paragraph of this Agreement.

“Borrowers Investor” has the meaning assigned in Section 12.7(2).

“Borrowers’ Knowledge” shall mean the actual knowledge of Gary Dragul, Aaron Metz, Elizabeth Gold and Susan Markusch.

“Borrower Parties” means Borrowers and Guarantor.

“Business Day” means a day other than a Saturday, a Sunday, or a legal holiday on which national banks located in the State are not open for general banking business.

“Cash Management Account” shall have the meaning set forth in Section 2.7(1).

“Clearing Account” shall have the meaning set forth in Section 2.7(4).

“Clearing Bank” shall mean any Eligible Bank approved or appointed by Lender.

“Clearing Bank Agreement” shall mean that certain Deposit Account Control Agreement by and among Borrowers, Lender and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to the operation and maintenance of the Clearing Account.

“Closing Advance” has the meaning assigned in **Section 2.1(1)**.

“Closing Date” means the date on which Lender makes the Advance.

“Collateral” means the Project and all other **“Mortgaged Property”** described in the Security Instrument, and any other property that at any time secures the Loan or any portion thereof. Without limiting the foregoing, “Collateral” shall mean and include all of the following personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of Borrowers, and regardless of where located (all capitalized terms having the meanings given to them in the Uniform Commercial Code of the State: Accounts; Chattel Paper (including, without limitation, all Tangible Chattel Paper and all Electronic Chattel Paper); Intellectual Property Collateral; Documents; Equipment; Fixtures; General Intangibles; Goods; Instruments; Inventory; letters of credit and Letter-of-Credit Rights; Commercial Tort Claims; Software and all recorded data of any kind or nature, regardless of the medium of recording; Contracts, together with all Contract Rights arising thereunder; other personal property not otherwise described above; Supporting Obligations; and accessions to, substitutions and replacements for and Proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

“Contract Rate” has the meaning assigned in **Section 2.2(1)**.

“Control Event” shall mean the occurrence of one or more of the following: (i) the occurrence of an Event of Default; or (ii) Happy Canyon Wine & Liquor either vacates or becomes the subject of a bankruptcy or other insolvency proceeding; or (iii) Happy Canyon Wine & Liquor fails to pay in full the cost of construction of the tenant fit-out work covered by that certain contract between Happy Canyon Wine & Liquor and Waner Construction Company, Inc.

“Debt” means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or any of its assets is liable or subject, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person or any of its assets would be liable or subject, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members or other equity holders, or as a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person or any of its assets is liable or subject, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person or any of its assets is liable or subject, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“Default Rate” means the lesser of (x) twenty-four percent (24%) per annum and (y) the highest interest rate permitted by applicable law.

“Development Budget” means a budget of the costs of tenant and capital improvements to be made to the Marketplace, approved by Lender and attached to this Agreement as **Schedule 3.3**.

“Development Reserve” has the meaning assigned in **Section 3.1(3)**.

“Dollars” and **“\$”** means lawful money of the United States of America.

“Eligible Bank” means a bank that insures the deposits hereunder through the Federal Deposit Insurance Corporation.

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

“Event of Default” has the meaning assigned in **Article 9**.

“Fixed Rate” has the meaning assigned in **Section 2.2(1)**.

“Financial Institution” means a United States Financial Institution as defined in 31 U.S.C. Section 5312, as periodically amended.

“Guarantor” means each Person(s) executing a Guaranty.

“Guaranty” means, the Guaranty of Payment, and each other guaranty now or hereafter delivered in respect of the Liabilities or any portion thereof.

“Guaranty of Payment” means that certain Guaranty of Payment from Guarantor in favor of Lender dated as of the date hereof.

“Hazardous Materials Indemnity Agreement” means the Hazardous Materials Indemnity Agreement executed by Borrowers and Guarantor in favor of Lender with respect to the Project.

“Independent Manager” means an individual who is not at the time of initial appointment and has not been at any time during the preceding five (5) years and shall not be at any time while serving as Independent Manager: (a) a stockholder, director, officer, employee, partner or member of any Borrower or any Borrower’s affiliates; (b) a customer, supplier or other person who derived more than 10% of its purchases or revenues from its activities with any Borrower or any of such Borrower’s affiliates of; (c) a person or other entity controlling or under common control with any such stockholder, director, officer, employee, partner, member, customer, supplier or other person; (d) a member of the immediate family of such stockholder, director, officer, employee, partner, member, customer, supplier or other person. (As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.)

“Interest Period” means the first (1st) day of the calendar month immediately following the previous Interest Period and shall end on (and include) the last calendar day of each such calendar month; provided however, (i) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (ii) no Interest Period shall extend beyond the Maturity Date of the Loan, and (iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the

last Business Day of the relevant calendar month at the end of such Interest Period. The first (1st) Interest Period hereunder shall be the period commencing on the date hereof and ending on (and including) the last day of the calendar month in which this Agreement is dated.

"Interest Reserve" has the meaning assigned in **Section 3.1(2)**.

"Key Employees" means the senior management of GDA Real Estate Services, LLC, consisting of Aaron Metz, (director of acquisitions), Elizabeth Gold (director of leasing) and Susan Markusch (controller).

"Land" means the real property legally described in **Exhibit A** hereto, together with the appurtenances and tenements thereof.

"Lender" has the meaning assigned in the first paragraph of this Agreement. Any action that may be taken by Lender pursuant to this Agreement or any other Loan Document (other than the obligation to advance on the Closing Date), and any right or remedy granted to Lender pursuant to this Agreement or any other Loan Documents may be exercised by Servicer on behalf of Lender.

"Letter of Credit" has the meaning given in **Section 6.19(2)**.

"Liabilities" means all principal, interest, cost, expenses and fees (including the Exit Fee and any Minimum Interest Amount) and all other amounts due and payable or to become due and payable to Lender under the Loan Documents, together with all other obligations of Borrowers under the Loan Documents.

"LIBOR" means the rate per annum determined by Lender in accordance with its usual procedures (which determination shall be conclusive) to be the rate in effect on the first day of each Interest Period for deposits of one month in United States dollars in amounts approximately equal to the outstanding balance of the Note, as published by the Wall Street Journal (or such other commercially available source providing quotations of LIBOR as designated by Lender from time to time) at approximately 11:00 A.M. (London time) on the second Business Day prior to each Interest Period.

"Lien" means any interest, or claim thereof, in the Collateral securing an obligation owed to, or a claim by, any Person other than the owner of the Collateral, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, hypothecation, preference, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term **"Lien"** shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Collateral.

"Loan" means the loan to be made by Lender to Borrowers under this Agreement and all other amounts evidenced or secured by the Loan Documents.

"Loan Documents" means: (a) this Agreement, (b) the Note, (c) the Security Instrument, (d) the Hazardous Materials Indemnity Agreement, (e) each Guaranty, (f) such pledges as may be required by Lender, (h) such assignments of contracts and other rights as may be required by Lender, and (g) all other agreements, documents, certificates and instruments evidencing, securing, governing or otherwise pertaining to the Loan.

"Lockbox" shall have the meaning set forth in **Section 2.7(2)**.

“Loss Proceeds” means amounts, awards or payments payable to Borrowers or Lender in respect of all or any portion of the Collateral in connection with a casualty or condemnation thereof (after the deduction therefrom and payment to Borrowers and Lender, respectively, of any and all reasonable out-of-pocket expenses incurred by Borrowers, Lender in the recovery thereof, including all reasonable attorneys’ fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to such casualty or condemnation) including proceeds from rental or business interruption insurance.

“Major Project Document” shall mean and include (i) construction or development agreement, (ii) any property management, asset management, construction management or development management agreement or broker agreement, and (iii) any other agreement which now exists or is hereafter entered into by the Borrowers the aggregate consideration for which is in excess of \$10,000.00.

“Marketplace” means the retail shopping center located at E. 4950 Hampden Avenue, Denver, CO., and known as the “Happy Canyon Market”.

“Borrowers” has the meaning assigned to such term on Schedule A.

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of Borrowers to perform its payment obligations under the Loan Documents to which it is a party, or to perform its obligations thereunder in respect of the maintenance or operation of the Project or the maintenance of insurance or the payment of Taxes and other charges in respect of the Project, (b) the validity or enforceability of (i) the material terms of the Loan Documents, (ii) the lien of the Mortgage or (iii) the material rights and remedies of Lender under any of the Loan Documents, including, without limitation, the rights and remedies set forth in Section 10; (c) the ability of Guarantor to perform its obligations under the respective Guaranties or (d) the Project or any other Collateral for the Loan, other than a material adverse effect on the Project (or such other Collateral for the Loan) resulting from changes in general economic, financial market and/or real estate market conditions.

“Maturity Date” means the earlier of (a) January 31, 2020, as the same may be extended in accordance with the terms of this Agreement, or (b) any earlier date on which the entire Loan is required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.

“Mechanic’s Lien” has the meaning assigned in Section 6.10.

“Net Cash Flow” means for any month, the actual gross revenues of the Project less the aggregate amount of money expended in such month by Borrowers in connection with the Project, on a cash basis, for ordinary and necessary expenses of Project operations, maintenance and preservation, made pursuant to arms-length transactions, all as reasonably approved by Lender.

“Note” means the promissory note of even date herewith as provided for in Section 2.1(3), and all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, replaced, severed, modified, amended or extended from time to time.

“OFAC” means the Office of Foreign Assets Control, Department of the Treasury, and any successor governmental authority.

“Operating Account” shall have the meaning set forth in Section 2.7(3).

“Organizational Documents” means, with respect to any entity, such entity’s filed document of formation, operating agreement, resolutions and good standing certificate, and the Tenancy-in-Common Agreement governing the ownership of such entity’s Project .

“Participant” has the meaning assigned in Section 12.22(3).

“Patriot Act” means the USA PATRIOT Act of 2001, Pub. L. No. 107-56, and any successor statute.

“Payment Date” has the meaning assigned in Section 2.3(1).

“Permitted Encumbrances” means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the Security Instrument, together with the liens and security interests in favor of Lender created by the Loan Documents and any liens for any unpaid taxes not yet delinquent, and any other matters approved by Lender in writing after the date hereof.

“Permitted Transfer” means any of the following:

(i) So long as no breach of Section 6.3 occurs, a Transfer by a natural Person who is a direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in a Borrower or any tier or level to a revocable inter vivos trust having such natural Person as both trustor and trustee of such trust and one or more immediate family members of such natural Person as the sole beneficiaries of such trust;

(ii) So long as no breach of Section 6.3 occurs, a Transfer by devise or descent or by operation of law upon the death of a natural Person who is a direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in a Borrower or any tier or level;

(iii) A Transfer of the ownership interests in Happy Canyon Box 17 A, LLC to an entity owned or Controlled by Guarantor, so long as (A) payment for such transfer is not made from the revenues of the Project, and (B) neither the Project nor any of the interests in the Borrowers is assigned, pledged or otherwise encumbered in connection with such Transfer.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

“Potential Default” means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“Project” means all related facilities, amenities, fixtures, and personal property and improvements now or hereafter located on the Land, consisting of the Marketplace.

“Property Taxes” means real estate taxes, assessments and similar charges related to the Collateral or which if unpaid could result in a lien on the Collateral.

“Requisition” means a requisition in the form of a spreadsheet containing the information set forth in Section 3.3(1), together with all invoices, bills of sale, schedules and other submissions required by Lender, including an updated Development Budget if any.

“Reserve” or Reserves has the meaning assigned in **Section 3.2**.

“Restricted Company” means (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) any entity that is subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

“Security Instrument” means the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing executed by Borrowers in favor of Lender, covering the **“Mortgaged Property”** described therein.

“Servicer” means Ardent Loan Servicing, LLC or any other entity or entities appointed by Lender from time to time to serve as servicer and/or special servicer of the Loan. If at any time no entity shall be so appointed, the term “Servicer” shall be deemed to refer to Lender.

“Shoppes Loan” means that certain loan made by Lender to HC Shoppes 18 A, LLC, HC Shoppes 18 B, LLC, and HC Shoppes 18 C, LLC, jointly and severally, in the original principal amount of \$19,500,000.00 pursuant to a Loan and Security Agreement dated as of July 27, 2018.

“Single Purpose Entity” means a Person (other than an individual, a government, or any agency or political subdivision thereof), which (a) is formed or organized solely for the purpose of owning the Collateral; (b) does not engage in any business other than the ownership, management and operation of the Collateral; (c) does not have any assets other than those related to its interest in the Collateral; (d) does not incur, create or assume any Debt other than the Loan and Debt permitted under **Section 6.9**; (e) does not guarantee, hold itself out to be responsible for, or otherwise become liable on or in connection with any Debt or other obligation of any other Person, and does not pledge its assets for the benefit of any other Person, (f) not enter into any contract or agreement with any stockholder, partner, principal, member or Affiliate of such Person or any Affiliate of any such stockholder, partner, principal, member or Affiliate except as may be permitted pursuant to **Section 6.8**, (g) does not make any loans or advances to any other Person (including any Affiliate), (h) conducts and operates its business in all material respects as presently conducted and operated, (i) maintains its books and records and bank accounts separately from those of its Affiliates, including its general partners or members, as may be applicable, (j) at all times holds itself out to the public as a legal entity separate and apart from any other Person (including any Affiliate), and promptly corrects any known misunderstandings regarding its separate identity, (k) files its own tax returns to the extent required by applicable law, (l) intends to maintain adequate capital for its normal obligations, reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided, however, that an entity shall not be required to make any capital calls or require any capital contributions to satisfy this requirement), (m) maintains its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person, (n) complies with all of the limitations on powers set forth in its organizational documentation as in effect on the Closing Date, (o) holds title to its assets in its own name, (p) utilizes its own letterhead, invoices and checks, (q) allocates fairly and reasonably any overhead expenses that are shared with any Affiliate including paying for office space and services performed by any employee of any Affiliate, (r) maintains a segregated operating account for the Collateral from which all operating expenses and debt service on the Loan is paid, and (s) requires the consent of an Independent Manager to place it or any entity in which it is manager into bankruptcy, insolvency or dissolution proceedings or to amend its or such entity’s separateness covenants.

"Specially National and Blocked Persons" means those Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC.

"State" means the State of Colorado.

"Taking" has the meaning assigned in **Section 4.3**.

"Tax and Insurance Reserve" has the meaning assigned in **Section 3.1(1)**.

"Tenant Direction Letter" shall have the meaning set forth in **Section 2.7(2)**.

"Title Company" means Alliant National Title Insurance Company.

"Transfer" means any sale (including any installment sale), conveyance, assignment, mortgage, pledge, lease (including any ground lease), encumbrance, alienation or grant of Lien (other than Permitted Encumbrances) on, grant of any option with respect to or grant of any other interest in the Collateral, any part thereof or any interest therein (including any direct or indirect legal, beneficial, economic or other direct or indirect ownership interest in Borrowers on every tier or level), directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record. For avoidance of doubt, Transfer shall also include the granting of any rights in, or restricting the use or development or zoning of, the Collateral.

"U.S. Person" means any United States citizen, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories.

"Variable Rate" has the meaning assigned in **Section 2.2.3(1)**.

"Work" means the performance of all work in connection with tenant fit-out and capital improvements at the Marketplace, as more fully described on **Schedule 3.3**. Work shall also include the tenant fit out Work being performed under that certain contract, in the amount of \$753,331.00, between Happy Canyon Wine & Liquor and Waner Construction Company, Inc.

SCHEDULE 2.1(2)

SOURCES AND USES

<u>Sources</u>	\$ Amount	% of Total
Debt	\$8,900,000	100%
Equity	0	0%
Total	\$8,900,000	100.0%

<u>Uses</u>	\$ Amount	% of Total
Refinance	\$1,700,000	19.1%
Development Reserve	6,438,500	72.3%
Interest Reserve	450,000	5.1%
Origination Fee	222,500	2.5%
Closing Cost	89,000	1.0%
Total	\$8,900,000	100.0%

SCHEDULE 2.7

ACCOUNTS

Operating Account: [post-closing]
Clearing Account: [post-closing]

SCHEDULE 3.3
DEVELOPMENT BUDGET

HAPPY CANYON MARKET - CONSTRUCTION BUDGET	
	BUDGET
Surveying	\$12,937.80
Asphalt Paving	\$7,880.00
Signage and Striping	\$3,734.00
Landscaping	\$35,685.00
Artificial Turf Allowance	\$11,150.00
Exterior Epat Seating	\$23,675.00
Fire Feature Allowance	\$25,000.00
TOTAL SITE WORK	\$120,061.80
Demolition	\$253,705.89
Earthwork	\$61,561.08
Concrete	\$262,808.11
Masonry	\$79,835.00
Structural Steel	\$366,759.00
Rough Carpentry	\$16,480.00
Millwork	\$18,693.00
Damp Proofing	\$513.00
Roofing	\$152,026.00
Sheet Metal	\$44,025.00
Prodema/Prodex Allowance	\$37,280.00
Joint Sealants	\$6,280.00
Doors, Frames & Hardware	\$16,723.00
Overhead Door Allowance	\$54,225.00
Storefront	\$95,467.00
Stucco	\$13,070.00
Gypsum Board System	\$62,031.00
Painting	\$71,930.00
Flooring Allowance	\$13,675.00
Awnings	\$15,485.00
Specialties	\$3,613.00
Fire Sprinkler System	\$90,000.00
Plumbing System	\$120,242.00
HVAC System	\$210,841.00
Electrical System	\$402,746.00

Schedule 3.3-1

Radio Frequency Booster Allowance	\$31,178.00
Static Exterior Monument Signage (Base Fee)	\$95,748.00
Digital Monument Sign Addition	\$58,199.00
Xcel Easement Relocation	\$14,283.76
Century Link Relocation	\$10,215.76
Loading Dock Door Replacement (Allowance)	\$5,000.00
TOTAL CORE/SHELL CONSTRUCTION	\$2,684,638.60
General Conditions	\$113,975.00
Winter Protection Allowance	\$10,000.00
Business Liability Insurance	\$19,855.60
Contractor's Fee (Overhead & Fee)	\$144,904.00
TOTAL INDIRECT CONSTRUCTION COSTS	\$288,734.60
CONTINGENCY	\$100,000.00
GRAND TOTAL CORE & SHELL	\$3,093,435.00
Hazardous Material Testing	\$4,000.00
Asbestos Testing	\$3,155.00
Soil Testing	\$3,000.00
Architect	\$390,510.00
Topographic Survey, Entitlement, Civil/Structural Engineering	\$59,300.00
Zoning and Permits	\$20,391.45
TOTAL SOFT COSTS	\$480,356.45
Happy Canyon Spirits	\$157,869.00
Tony's Meats	\$342,000.00
Pizza Garage	\$28,000.00
Bunches Flower Market	\$5,000.00
Eric's Quarter Cup	\$71,200.00
Silver Dollar Bar	\$84,900.00
Vendor #2 - (Sushi Sasa LOI)	\$121,050.00
Vendor #8 - (Gelato Boy LOI)	\$82,450.00
Vendor #9 - Not Yet Leased	\$45,100.00
Retail Space - Not Yet Leased	\$154,200.00
TOTAL TENANT IMPROVEMENT (TI)	\$1,091,769.00
Happy Canyon Spirits	\$62,761.00
Tony's Meats	\$43,639.00
Pizza Garage	\$11,455.00

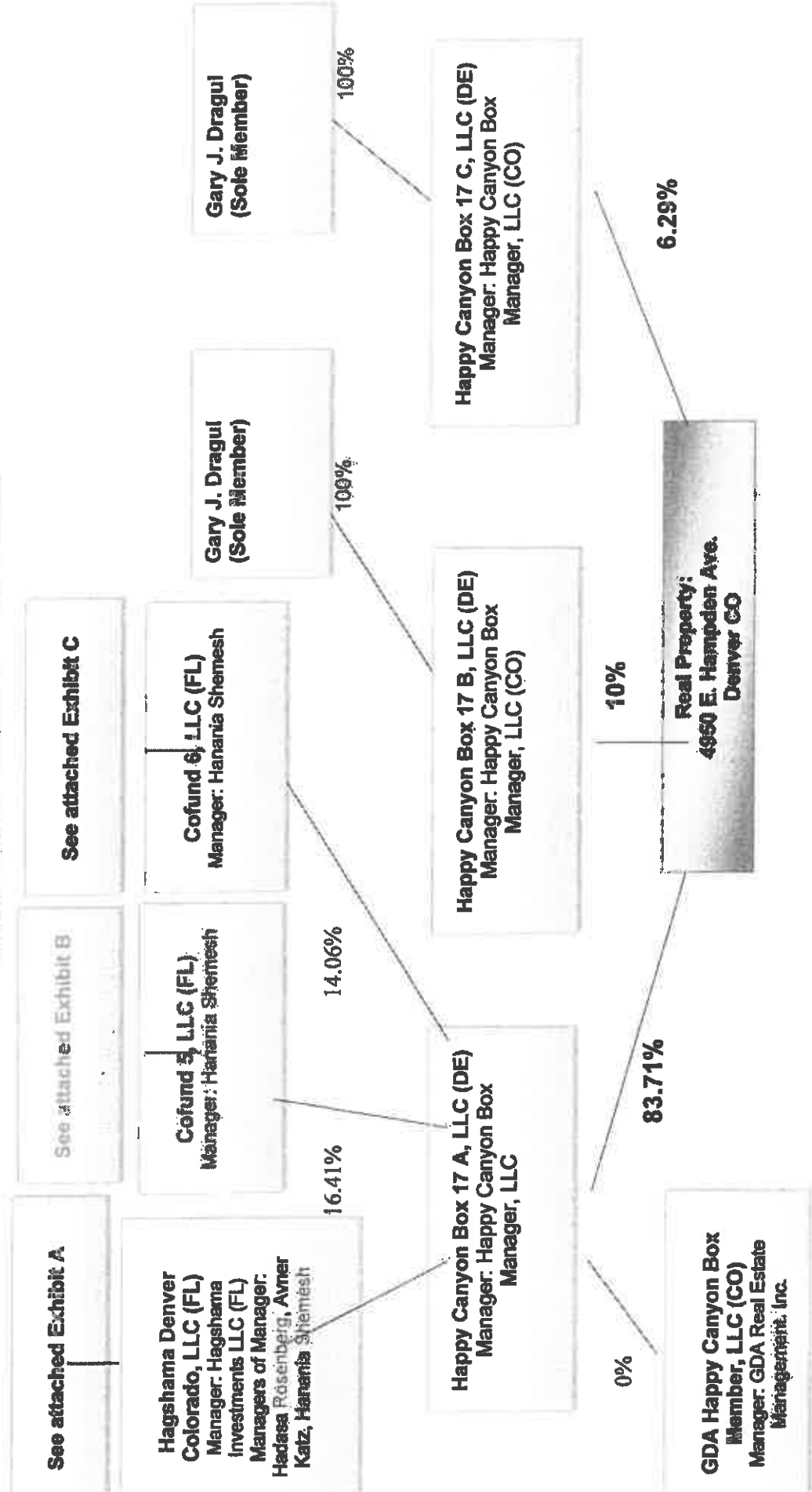
Schedule 3.3-2

Bunches Flower Market	\$10,831.00
Eric's Quarter Cup	\$11,704.00
Silver Dollar Bar	\$13,527.00
Vendor #2 - (Sushi Sasa LOI)	\$38,560.00
Vendor #8 - (Gelato Boy LOI)	\$26,264.00
Vendor #9 - Not Yet Leased	\$14,367.00
Retail Space - Not Yet Leased	\$37,008.00
TOTAL LEASING COMMISSION (L/C)	\$270,116.00
Wine Shop Construction	\$180,086.00
Valiant Fixtures	\$100,736.00
Low Voltage/Security Design & Install (Allowance)	\$15,000.00
Engineering for Coolers (Allowance)	\$3,000.00
Signage Taxes & Permits	\$3,000.00
Restroom Signs	\$3,752.00
Permits	\$1,789.50
AD Box (1)	\$3,600.00
Cabinet Unit Heaters	\$6,250.00
TOTAL LIQUOR STORE	\$317,213.50
Market Common Area Construction	\$793,218.00
Common Area Security (Allowance)	\$5,000.00
Signage Taxes & Permits	\$16,854.00
Restroom Signs	\$3,752.00
ID Signs	\$25,192.00
Mural (1)	\$22,000.00
Furniture/Millwork	\$37,869.00
East Patio Furniture	\$53,898.00
South Patio Furniture at Market Entry	\$16,537.00
Furniture Procurement, Tax & Shipping	\$32,112.00
Permits	\$1,919.50
Market Projector (Allowance)	\$1,500.00
AD Box (1)	\$3,600.00
Cabinet Unit Heaters	\$6,250.00
Tony's Security	\$23,000.00
Roll Up Windows at Market	\$12,000.00
TOTAL MARKET AREA	\$1,054,701.50
GRAND TOTAL BUDGET	\$6,307,591.45

Schedule 3.3-3

SCHEDULE 5.1

Happy Canyon Box: ORGANIZATIONAL CHART



Members of Hagshama Denver Colorado LLC

1	Tirod Llc	32-0090941	3.704%
2	Avinoam Haklai	057208852	3.704%
3	Ilana Teicher	55321970	3.704%
4	Eliyahu Braitbard	009799230	3.704%
5	Efi Frechtel	054862040	3.704%
6	Efraim Ron	053220117	3.704%
7	Erez Oved	034503722	3.704%
8	Boaz Tourgeman	050172980	3.704%
9	George Shalom Edri	063255830	3.704%
10	Gila Dar	029076239	7.407%
11	Dr. Nissim Geron Ltd	514251123	3.704%
12	Hanoch Itzhak Hendel	051927911	3.704%
13	Yaniv Edri	040536286	3.704%
14	Yitchak Angel	035781251	3.704%
15	Ishayahu Gross	0420505917	3.704%
16	Maya Barkay	017027814	3.704%
17	Micha Menko	012760419	3.704%
18	Mordecai Hirsch	10174381	3.704%
19	Moshe Yizchik Goldreich	028756021	3.704%
20	Niva Koren	055992440	3.704%
21	Neil Shochet	26036863	3.704%
22	Oded Kalmanovich	023817158	3.704%
23	Otzmot Shivukiot Ltd	513527804	3.704%
24	Roth Kark	003038999	3.704%
25	Rahamim Angel	000219246	3.704%
26	Rehev Amnor Ltd	510595408	3.704%

Exhibit B – List of Members of Cofund 5 LLC

1	Ofir Avraham Fried	066552621	2.61%
2	Eitan Davidy	064907637	2.61%
3	Efraim Debbi	050666114	2.61%
4	Erez Gibori	065659963	2.61%
5	Etgar Eitrog Investments	540272374	2.61%
6	Baha Eldeen Kassem	029770401	2.61%
7	Ben Zion Angel	51742229	2.61%
8	Bzalel Keren	50059161	4.35%
9	Geula Batsir	003281730	2.61%
10	Gili Gendelman	051884146	2.61%
11	Debi Bar Meir	015309628	2.61%
12	David Rozensten	030334320	2.61%
13	Dafna Magda Kalir	3765807	2.61%
14	Ziv Drori	022535751	2.61%
15	Tal Ron	066627787	4.35%
16	Yehuda Vered	054993910	2.61%
17	Yaakov Olshtain	066260993	2.61%
18	Jacob Schori	001142678	2.61%
19	Ron Yiftach	059859801	2.61%
20	Lior Almog	036840908	2.61%
21	Lior Matyas	027115997	4.35%
22	Liad Zimmerman	033864281	2.61%
23	Micha Lawrence	023912280	2.61%
24	Nir Bratman	300125937	2.61%
25	Ofer Josef Fabian	059623025	4.35%
26	Imanuel Yoetz	65388795	2.61%
27	Eran Ron	039905690	2.61%
28	Tzvi Yehuda Dikshteyn	061204327	2.61%
29	Revital Zeltzer	059220202	2.61%
30	Ron-El Sasson	205449903	2.61%

31	Ronen Cohen	028482420	2.61%
32	Shahar Yitshak Cohen	031936149	4.35%
33	Shafik Khomry	040476046	2.61%
34	Sharon Gabrielle Pasternak Nissen	013756853	2.61%
35	Sharon Yehudit Lazar	025013749	2.61%

Exhibit C – List of Members of Cofund 6 LLC

1	Illana Angel	51134617	2.56%
2	Itay Bechar	54225669	2.56%
3	Eliyahu Yaish Agency (2011) Ltd.	514628305	2.56%
4	Elad Raziell	029039427	2.56%
5	Ariel Guttman	052235553	2.56%
6	Ariel Catane	023872302	4.27%
7	Arie Halsband	001193895	2.56%
8	Gidon Shoval	55373344	2.56%
9	Guy Kurt	32193526	2.56%
10	Gitl Abeles	032457624	2.56%
11	David Lev	039065446	2.56%
12	Doron Dov Beer	058339136	2.56%
13	Dalit Babkoff	023621097	2.56%
14	Varda Kivelevich	053423497	2.56%
15	Hanna Azoulayh	52757937	2.56%
16	Yehuda Vered	054993910	2.56%
17	Yehuda Haim Manzur Za'afrani	059283796	2.56%
18	Yoav Buxsboim	023651367	2.56%
19	Yuri Gelman	310107537	4.27%
20	Yehezkel Kahane	301199915	4.27%
21	Yitzhak Angel	035712710	2.56%
22	Ieshayahu Gross	042505917	2.56%

23	Leora Adela Bar Sela	000168492	2.56%
24	M.L.H. Har-Tuv Ltd	515013340	2.56%
25	Meira Schori	001128180	5.13%
26	Merav Davdson	059833210	4.27%
27	Nathalie Bierenbaum	038269957	2.56%
28	Pinrose Llc	46- 3316836	2.56%
29	Zvi Kopelman	010601482	2.56%
30	Casharim Trading Ltd .	513617605	4.27%
31	Rostislav Barabash	306391202	2.56%
32	Ram Hayon	29291036	2.56%
33	Shai Even	22178214	2.56%
34	Tamar Cohen	058397274	4.27%

SCHEDULE 5.3(1)

LITIGATION

1. Southern Glazer's Wine and Spirits of Colorado, LLC v. MC Liquor 02, LLC dba Incredible Wine & Spirits, and Gary. J. Dragul, Adams County District Court, Case No. unknown.
 - a. Status: Negotiated resolution in process.
 - b. Description: Liquor store distribution payment dispute.
 - c. Amount Claimed: \$115,000.00

2. People of the State of Colorado v. Gary Jule Dragul, Arapahoe County District Court, 18CR1092.
 - a. Status: Action/resolution pending.
 - b. Description: State Securities Act enforcement action regarding alleged promissory note disclosure omissions.
 - c. Amount Claimed: N/A

3. Colorado Department of Public Health and Environment v. YM Retail 07 A, LLC, GDA Real Estate Management, Inc., GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz, Denver District Court, Case No. 2013CV33076.
 - a. Status: Ongoing receivership and court supervised environmental remediation efforts pursuant to Stipulation.
 - b. Description: Owner/operator environmental remediation liability claims. The property is overseen by a receiver, there is a foreclosure action, and ongoing remediation continues.
 - c. Amount Claimed: N/A

4. Christopher A. Helms v. GDA Real Estate Services, LLC and Gary J. Dragul, Arapahoe County District Court, Case No. 2018CV31358
 - a. Status: Responsive pleading deadline extended by party Stipulation pending workout and/or forbearance negotiations.
 - b. Description: Unsecured promissory note claim.
 - c. Amount Claimed: \$450,000.00

SCHEDULE 6.6

MAJOR PROJECT DOCUMENTS

Management Agreement, dated as of the Closing Date, by and among Happy Canyon Box 17 A, LLC, Happy Canyon Box 17 B, LLC, and Happy Canyon Box 17 C, LLC and GDA Management Services, LLC.

CONTRACTS		Date
505 Design	Design Vision Book	12/21/2016
505 Design	Architectural (Core&Shell and Wine Shop)	6/21/2017
505 Design	Retail Market	8/23/2017
505 Design	Vendor Upfits	12/4/2017
Waner Construction	AIA Contract	2/16/2018
Waner Construction	Change Order 2.28.18	2/28/2018
Waner Construction	Change Order 4.27.18	4/27/2018
Waner Construction	Change Order 6.21.18	6/21/2018
Waner Construction	Change Order 3.14.18	3/14/2018
Waner Construction	Change Order 4.2.18	4/2/2018
Waner Construction	Change Order 7.7.18	7/7/2018
Waner Construction	Pothole Foundation/pump interceptor	1/30/2018
Waner Construction	asbestos inspection	12/15/2017
Farnsworth	Master Agreement	6/28/2017
Farnsworth	Task Order 1	6/28/2017
Farnsworth	Task Order 2	10/16/2017
Hollingsworth	geotechnical engineering materials testing/special inspections	2/23/2018
Ground Engineering	Core & Shell commissioning	4/17/2018
Thompson Engineering		6/13/2018

SCHEDULE 6.6(3)

FORM OF CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT-CONTRACTOR

CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT

(CONTRACTOR)

THIS CERTIFICATE, CONSENT AND ACKNOWLEDGMENT (this "Certificate") is delivered by [_____] a [_____] ("Contractor") to AFF II DENVER, LLC, a Delaware limited liability company, as lender ("Secured Party") in accordance with the terms of that certain Loan Agreement dated July 24, 2018 (the "Loan Agreement"), between Secured Party and [BORROWER], a [_____] ("Assignor").

1. Certifications. Contractor hereby certifies to Secured Party as follows as follows:
 - (a) Reference is hereby made to that certain [_____] between Assignor and Contractor (including all general conditions, exhibits, schedules, addendums, plans, specifications and the like attached thereto or incorporated therein by reference or prepared in connection therewith, as amended, modified, supplemented and/or changed in accordance herewith, the "Contract"). A true, correct and complete copy of the Contract is attached hereto as Schedule 1. As of the date hereof, except as attached hereto in Schedule 1, no change orders or other amendments, modifications or supplements have been entered into or are pending.
 - (b) To the knowledge of Contractor, no matured default of any of Assignor's obligations under the Contract has occurred and no condition exists or event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default.
2. Assignment. Contractor hereby acknowledges and consents to the assignment of the Contract by Assignor in favor of Secured Party pursuant to the Loan Agreement.
3. Amendments, Modifications, Supplements, Change Orders, etc. Contractor agrees that it will not enter into any amendment, modification, supplement or change order to the Contract without the prior written consent of the Lender. Lender has agreed with Borrowers that it will not unreasonably withhold condition or delay such consent.
4. Default and Secured Party's Right To Cure. Contractor agrees that it will send to Secured Party copies of all default notices simultaneously with the sending of any such notices to Assignor. All notices shall be sent pursuant to the notice provisions in the Contract to Secured Party at 2100 Powers Ferry Road, Suite 350, Atlanta, Georgia 30339. Contractor further agrees that Secured Party is hereby granted the right (but not the obligation) to cure any defaults by Assignor within thirty (30) days after receipt of written notice by the undersigned of the Assignor's failure to cure any such default; provided, however, with respect to all non-monetary defaults said thirty (30) day period shall be extended so long as within said thirty (30) day period the Secured Party has commenced to cure and is proceeding with due diligence to cure said defaults.
5. Right To Performance. Contractor agrees to look solely to the Assignor for the performance of any of the obligations of the Assignor under the Contract. However, if Secured Party exercises, with respect to the Contract, any rights and privileges conferred upon it by the assignment of the Contract and asserts the present right to have the benefits of the Contract and to enforce the same against the Contractor in the place and stead of the Assignor, the Contractor agrees with respect to such

Contract (i) to perform for, and for the benefit of, Secured Party, all of the obligations of Contractor under and pursuant to the Contract if the balance then due under the Contract (being the portion of the total Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of the Contractor) has been paid or is then paid, and if Secured Party thereafter pays Contractor such amounts that become due under the Contract as such amounts become due, and (ii) Secured Party shall have no personal obligations or liabilities of any kind under the Contract.

The foregoing Certificate is furnished for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Contractor, and the Contractor understands and intends that Secured Party will disburse substantial sums in reliance on, and will otherwise rely on, the foregoing and that the Contractor will be legally bound by the foregoing.

This Certificate shall inure to the benefit of Secured Party and its successors and assigns (including any purchasers at a foreclosure sale or transferees who acquire the Project (or any portion thereof to which the Contract is applicable) by deed in lieu or otherwise and their respective successors and assigns).

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate, Consent and Acknowledgment as of [_____], pursuant to proper authority duly granted.

[_____] a [_____]

By: _____

Name: _____

Title: _____

SCHEDULE 1

[ATTACH CONTRACT]

SCHEDULE 2

LIST OF EXISTING CHANGE ORDERS

**FORM OF CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT-DESIGN
PROFESSIONAL**

CERTIFICATE, CONSENT AND ACKNOWLEDGEMENT

(DESIGN PROFESSIONAL)

THIS CERTIFICATE, CONSENT AND ACKNOWLEDGMENT (this "**Certificate**") is delivered by _____ a [_____] ("**Design Professional**") to [LENDER], a [Delaware] limited liability company, as lender ("**Secured Party**") in accordance with the terms of that certain Loan Agreement dated _____, 201__, between Secured Party and [BORROWER], a [_____] ("**Assignor**"), respecting the Project (the "**Loan Agreement**").

1. **Certifications.** Design Professional hereby certifies to Secured Party as follows:

(a) Reference is hereby made to [_____] (including all general conditions, exhibits, schedules, addendums, plans, specifications and the like attached thereto or incorporated therein by reference or prepared in connection therewith, as amended, modified, supplemented and/or changed, the "**Contract**"). A true, correct and complete copy of the Contract is attached hereto as **Schedule 1**. As of the date hereof, except as attached hereto in **Schedule 1**, no change orders or other amendments, modifications or supplements have been entered into or are pending.

(b) To the knowledge of Design Professional, no matured default of any of Assignor's obligations under the Contract has occurred and no condition exists or event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default.

2. **Assignment.** Design Professional hereby acknowledges receipt of a copy of, and consents to, the assignment of the Contract from Assignor in favor of Secured Party ("**Security Agreement and Assignment**").

3. **Amendments, Modifications, Supplements, Change Orders, etc.** Design Professional agrees that it will not enter into any amendment, modification, supplement or change order to the Contract without the prior written consent of the Lender. Lender has agreed with Borrowers that it will not unreasonably withhold, condition or delay such consent.

4. **Default and Secured Party's Right To Cure.** Design Professional agrees that it will send to Secured Party copies of all default notices simultaneously with the sending of any such notices to Assignor. All notices shall be sent pursuant to the notice provisions in the Contract to Secured Party at 2100 Powers Ferry Road, Suite 350, Atlanta, Georgia 30339. Design Professional further agrees that Secured Party is hereby granted the right (but not the obligation) to cure any defaults by Assignor within thirty (30) days after receipt of written notice by the undersigned of the Assignor's failure to cure any such default; provided, however, with respect to all non-monetary defaults said thirty (30) day period shall be extended so long as within said thirty (30) day period the Secured Party has commenced to cure and is proceeding with due diligence to cure said defaults.

5. **Right To Performance.** Design Professional agrees to look solely to the Assignor for the performance of any of the obligations of the Assignor under the Contract. However, if Secured Party exercises, with respect to the Contract, any rights and privileges conferred upon it by the assignment of the Contract and asserts the present right to have the benefits of the Contract and to enforce the same

against the Design Professional in the place and stead of the Assignor, the Design Professional agrees with respect to such Contract (i) to perform for, and for the benefit of, Secured Party, all of the obligations of Design Professional under and pursuant to the Contract if the balance then due under the Contract (being the portion of the total Contract which is then due and payable as provided therein, less the total of all portions thereof theretofore paid to or for the benefit of the Design Professional) has been paid or is then paid, and if Secured Party thereafter pays Design Professional such amounts that become due under the Contract as such amounts become due, and (ii) Secured Party shall have no personal obligations or liabilities of any kind under the Contract.

The foregoing Certificate is furnished for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Design Professional, and the Design Professional understands and intends that Secured Party will disburse substantial sums in reliance on, and will otherwise rely on, the foregoing and that the Design Professional will be legally bound by the foregoing.

This Certificate shall inure to the benefit of Secured Party and its successors and assigns (including any purchasers at a foreclosure sale or transferees who acquire the Project (or any portion thereof to which the Contract is applicable) by deed in lieu or otherwise and their respective successors and assigns).

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of _____, 20__, pursuant to proper authority duly granted.

[_____], a [_____]

By: _____
Name: _____
Title: _____

SCHEDULE 1
ATTACH CONTRACT

SCHEDULE 2

LIST OF EXISTING CHANGE ORDERS

SCHEDULE 6.8

APPROVED AFFILIATE AGREEMENTS

NONE

PROMISSORY NOTE

\$8,900,000.00

August 7, 2018

For value received, the entities signatory to this Promissory Note ("Borrowers"), promise and agree to pay to the order of AFF II Denver, LLC, a Delaware limited liability company ("Lender"), in lawful money of the United States of America, the principal sum of Eight Million Nine Hundred Thousand Dollars (\$8,900,000.00) or so much thereof as may be outstanding under the Loan and Security Agreement of even date herewith between Borrower and Lender (as modified, supplemented, extended and in effect from time to time, the "Loan Agreement"), with interest on the unpaid principal sum owing thereunder at the rate or rates or in the amounts computed in accordance with the Loan Agreement, together with all other amounts due Lender under the Loan Agreement, all payable in the manner and at the time or times provided in the Loan Agreement.

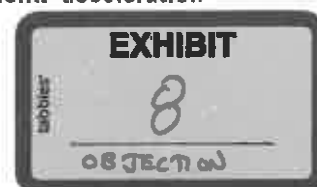
Capitalized terms used in this Note, but not defined, shall have the meanings assigned to them in the Loan Agreement.

If not sooner due and payable in accordance with the Loan Agreement, Borrowers shall pay to Lender all amounts due and unpaid under the Loan Agreement on January 31, 2020, as such date may possibly be extended as provided in Section 2.3(4) of the Loan Agreement, or on any earlier Maturity Date as set forth in the Loan Agreement. Every payment on this Note, whether such payment is a regular installment, prepayment or final payment, shall be made by wired federal funds, or other immediately available funds in accordance with such wire transfer instructions as Lender may from time to time provide. All payments to Lender shall be drawn on accounts owned by Borrowers or another Person approved in writing in advance by Lender and maintained at a banking institution organized under the laws of the United States or one of its constituent States, or at a federally-regulated securities broker-dealer.

This Note is the Note referred to in the Loan Agreement and evidences the Loan made by Lender thereunder.

Except as otherwise provided in the Loan Documents, Borrowers, co-makers, sureties, endorsers and guarantors expressly waive demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intent to accelerate the maturity hereof, notice of the acceleration of the maturity hereof, bringing of suit and diligence in taking any action to collect amounts called for under this Note and in the handling of securities at any time existing in connection with this Note; such parties are and shall be jointly, severally, directly and primarily liable for the payment of all sums owing and to be owing on this Note, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for under this Note or in connection with any right, lien, interest or property at any and all times had or existing as security for any amount called for under the Loan Documents, except as expressly provided for in any of the Loan Documents.

This Note evidences all advances made, interest due and all amounts otherwise owed to Lender under the Loan Agreement. This Note is executed in conjunction with the Loan Agreement and is secured by the liens and security interests created under the Loan Documents (including those arising under the Security Instrument). Reference is made to the Loan Agreement for provisions relating to repayment of the indebtedness evidenced by this Note, including mandatory repayment, acceleration



following default, late charges, default rate of interest, limitations on interest and restrictions on prepayment.

This Note shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to conflict of laws principles.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

HAPPY CANYON BOX 17 A, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

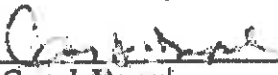
By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

By: 
Name: Gary J. Dragul
Title: President

HAPPY CANYON BOX 17 B, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

By: 
Name: Gary J. Dragul
Title: President

HAPPY CANYON BOX 17 C, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

By: 
Name: Gary J. Dragul
Title: President



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Page: 1 of 23

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City & County of Denver
Electronically Recorded

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After Recording Return to:

Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Attn: Rachel Kipnes, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND
FIXTURE FILING**

(Marketplace)

THIS DEED OF TRUST COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY. THE MAILING ADDRESSES OF THE SECURED PARTY/BENEFICIARY AND THE DEBTOR/TRUSTOR ARE WITHIN.

THIS DEED OF TRUST SECURES FUTURE ADVANCES UP TO THE MAXIMUM PRINCIPAL AMOUNT OF \$28,400,000.00 AS GOVERNED BY C.R.S. § 38-39-106.

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument" or "Deed of Trust") is executed as of July 24, 2018, by the undersigned entities listed on Schedule 1 attached hereto and incorporated herein by reference (collectively, "Trustor"), whose address for notice purposes hereunder is 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, in favor of the Public Trustee of the City and County of Denver, as trustee under this Deed of Trust (the "Trustee"), for the benefit of AFF II Denver, LLC, a Delaware limited liability company ("Beneficiary"), whose address is 2100 Powers Ferry Road, Suite 350, Atlanta, GA 30339.

ARTICLE 1

DEFINITIONS

Section 1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

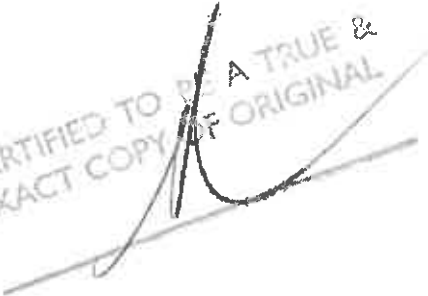
†



After Recording Return to:

Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Attn: Rachel Kipnes, Esq.

CERTIFIED TO BE A TRUE &
EXACT COPY OF ORIGINAL



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ARTICLE 1

DEFINITIONS

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"Indebtedness" means the sum of all (a) principal, interest and all other amounts due from Trustor under or secured by the Loan Documents, including, without limitation, the indebtedness evidenced by the Note, (b) principal, interest, and other amounts which may hereafter be loaned by Beneficiary, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (c) any and all additional advances made by Beneficiary to protect or preserve the Mortgaged Property or the lien hereof on the Mortgaged Property, or to pay taxes, to pay premiums or insurance on the Mortgaged Property or to repair or maintain the Mortgaged Property, or to complete improvements on the Mortgaged Property (whether or not the original Trustor remains the owner of the Mortgaged Property at the time of such advances and whether or not the original Beneficiary remains the owner of the Indebtedness and this Security Instrument), (d) the Exit Fee and the Minimum Interest Amount, if any, (e) any and all expenses incident to the collection of the Indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained and (f) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Trustor to Beneficiary under documents which recite that they are intended to be secured by this Security Instrument.

"Loan Documents" means (1) the Loan and Security Agreement of even date between Trustor and Beneficiary (the "**Loan Agreement**"), (2) the Promissory Note of even date, executed by Trustor, payable to the order of the Beneficiary or any one or more of them (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the "**Note**"), in the aggregate stated principal amount of EIGHT MILLION NINE HUNDRED THOUSAND AND NO/100 U.S. Dollars (\$8,900,000.00), which matures on January 31, 2020, the maturity of which may be extended for one (1) additional six-month period, as provided in the Loan Agreement, with all interest thereon and all late charges, loan fees, commitment fees, and prepayment premiums (if any), (3) the Promissory Note of even date, executed by the entities listed on Schedule 2 (collectively, the "**Shoppers Borrowers**"), payable to the order of the Beneficiary or any one or more of them (collectively, together with all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, severed, split, modified, amended or extended from time to time, the "**Crossed Note**"), in the aggregate stated principal amount of NINETEEN MILLION FIVE HUNDRED THOUSAND U.S. Dollars (\$19,500,000.00), which matures on January 31, 2020, the maturity of which may be extended for one (1) additional six-month period, as provided in the Loan Agreement, with all interest thereon and all late charges, loan fees, commitment fees, and prepayment premiums (if any), (4) this Security Instrument, (5) the Guaranty, (6) the Hazardous Materials Indemnity Agreement (7) all other documents now or hereafter executed by Trustor, Guarantor or any other person or entity to evidence, guaranty or secure the payment and performance of the Obligations and (8) all amendments, modifications, restatements, extensions, renewals and replacements of the foregoing.

"Mortgaged Property" or "Trust Property" means all estate, right, title, interest, claim and demand whatsoever which Trustor now has or hereafter acquires, either in law or in equity, in possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof (the "**Land**"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"), (3) all materials, supplies, appliances, equipment (as each such term is defined in the UCC), apparatus and other items of personal property now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"), (4) all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which

may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Trustor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Trustor with any governmental authorities, boards, corporations, providers of utility services, public or private, including all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Personalty"). Notwithstanding the foregoing, Personalty shall not include any property belonging to tenants under leases, Manager (as defined in those certain Management Agreements between HC Shoppes 18 A, LLC and GDA Management Services, LLC and Happy Canyon Box 17 A, LLC and GDA Management Services, LLC), guests or invitees of the Land and the Improvements, except to the extent that Trustor shall have any right or interest therein, (5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Trustor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Trustor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "Rents"), (9) all other agreements (to the extent assignable), such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Trustor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all present and future accessories, additions, attachments, replacements and substitutions of, for, or to any of the foregoing and all proceeds and products thereof, (12) subject to the terms of the Loan Agreement, all insurance policies (regardless of whether required by Beneficiary), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Trustor, (13) all mineral, water, oil and gas rights relating to all or any part of the Mortgaged Property, and (14) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Security Instrument, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, wherever located;

"Obligations" means, collectively, all (1) Indebtedness due under or secured by the Loan Documents and (2) covenants, agreements, conditions, warranties, representations and other obligations made or undertaken by Trustor to Beneficiary under the Loan Documents.

"UCC" means the Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the UCC is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article

or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

All other capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

ARTICLE 2

GRANT

Section 2.1 **Grant.** To secure the full and timely payment and performance of the Obligations, Trustor hereby GRANTS, TRANSFERS, BARGAINS, ASSIGNS, SELLS and CONVEYS to Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession, for the use and benefit of Beneficiary, the Trust Property, TO HAVE AND TO HOLD the Trust Property unto Trustee for the benefit of Beneficiary IN FEE SIMPLE FOREVER, with power of sale, and Trustor docs hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee and Beneficiary, subject only to the Permitted Encumbrances; provided, however, that if the Obligations shall be paid and performed in full in accordance with the terms of the Loan Documents, then this conveyance shall be null and void and may be canceled of record at the request and cost of Trustor.

Section 2.2 **Conveyance.** THIS CONVEYANCE is intended to operate and is to be construed as a deed of trust and is made under those provisions of the existing laws of the State of Colorado relating to deeds of trust to secure debt, and is given to secure the Obligations.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Trustor warrants, represents and covenants to Beneficiary as follows:

Section 3.1 **Cooperation.** Where any of the Mortgaged Property is in the possession of a third party, Trustor will join with Beneficiary in notifying the third party of Beneficiary's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Beneficiary. Trustor will cooperate with Beneficiary in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter-of-credit rights or electronic chattel paper.

Section 3.2 **Payment and Performance.** Trustor shall pay and perform, or cause to be paid or performed, the Obligations when due under the Loan Documents.

Section 3.3 **Replacement of Fixtures and Personalty.** Trustor shall not incorporate into the Mortgaged Property any item of Personalty, Fixtures or other property that is not owned by

Trustor free and clear of all liens or security interests except the liens and security interests in favor of Beneficiary created by the Loan Documents.

Section 3.4 **Beneficiary Approval of Restrictions**. Trustor shall not, without the prior consent of Beneficiary, create or make application for any new public restriction (including any zoning ordinance) or change to any existing public restriction (including any zoning ordinance), or create or modify any private restriction affecting the use of the Mortgaged Property.

Section 3.5 **Other Covenants**. All of the covenants in the Loan Agreement are incorporated herein by reference, and together with covenants in this Article 3, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property and against certain transfers of interests in Trustor or in entities owning interests in Trustor, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Beneficiary with respect to the Loan, (c) the right of Beneficiary to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Beneficiary may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (f) except as otherwise permitted under the Loan Agreement, the obligation of Trustor to obtain Beneficiary's consent prior to entering into, modifying or taking other actions with respect to Leases.

Section 3.6 **Condemnation Awards and Insurance Proceeds**. Trustor assigns to Beneficiary all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, and all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. All such awards, compensation and proceeds shall be governed by and subject to the provisions of the Loan Agreement governing the same.

ARTICLE 4

DEFAULT AND FORECLOSURE

Section 4.1 **Remedies**. If an Event of Default exists and is continuing, Beneficiary may, at Beneficiary's election, exercise any or all of the following rights, remedies and recourses as permitted by applicable legal requirements:

(a) **Acceleration**. Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Trustor to the extent permitted by applicable law), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property**. Enter the Mortgaged Property, subject to the rights of tenants under Leases, and take exclusive possession thereof and of all books, records and accounts relating thereto. If Trustor remains in possession of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Trustor.

(c) **Operation of Mortgaged Property**. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and

improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary in connection therewith in accordance with the provisions of Section 4.7.

(d) Foreclosure and Sale. Institute proceedings for the foreclosure of this Security Instrument (including judicial foreclosure and non-judicial foreclosure pursuant to or by the power of sale), in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Trustor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial or nonjudicial proceedings with respect to all or any of the Mortgaged Property or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Trustor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Trustor, including any and all right or equity of redemption. Beneficiary, at its option, may, including through Trustee or a receiver, sell the Mortgaged Property or any part of the Mortgaged Property at any judicial, nonjudicial or public sale or sales before the door of the courthouse of the county in which the Mortgaged Property or any part of the Mortgaged Property is situated, to the highest bidder for cash, in order to pay the Obligations and accrued interest thereon and insurance premiums, liens, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon, and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorneys' fees. At any such public sale, Beneficiary may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property in fee simple, with full warranties of title (or without warranties if Beneficiary shall so elect) and to this end, Trustor hereby constitutes and appoints Beneficiary, its successors and assigns, the agent and attorney-in-fact of Trustor to make such sale and conveyance, and thereby to divest Trustor of all right, title, interest, equity and equity of redemption that Trustor may have in and to the Mortgaged Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Trustor. The power of sale and agency hereby granted are coupled with an interest and are irrevocable by dissolution, insolvency or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Obligations secured hereby and shall not be exhausted by one exercise thereof but may be exercised until full payment of all Obligations secured hereby. In the event of any such foreclosure sale by Beneficiary, Trustor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over. Beneficiary may adjourn or postpone from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned. Any Person, including Trustor or Beneficiary, may be a purchaser at such sale. If Beneficiary is the highest bidder, Beneficiary may credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash. In connection with any foreclosure sale: (i) Beneficiary shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Trustor waives any right it may have to require Beneficiary to pursue any third party for any of the Obligations; (iii) Beneficiary may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property;

(iv) Beneficiary may specifically disclaim any warranties of title or the like; (v) [reserved]; and (vi) Beneficiary may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Beneficiary. Compliance by Beneficiary with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Trustor or regard to the adequacy of the Mortgaged Property for the Obligations secured thereby, the appointment of a receiver of the Mortgaged Property, and Trustor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent and collect rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of **Section 4.7**; *provided, however*, that notwithstanding the appointment of any receiver, Beneficiary shall be entitled to collect as pledgee to the possession and control of any cash, deposits, or instruments at the time held by or payable or deliverable under the terms of the Loan Agreement to Trustor.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Security Instrument).

Section 4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Beneficiary, in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Trustor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 **Release of and Resort to Collateral.** Subject to the terms and conditions of the Loan Agreement, Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment and performance of the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

Section 4.5 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Trustor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Trustor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or

providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Beneficiary's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 **Discontinuance of Proceedings.** If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Beneficiary shall be restored to its former position with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.7 **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of, the Mortgaged Property, shall be applied by Beneficiary (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and performing Trustor's obligations under the Loan Documents during the period of Trustor's ownership of the Mortgaged Property, including reasonable (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement, (5) utility costs and charges incurred during the Trustor's ownership of the Mortgaged Property, (6) insurance premiums incurred during Trustor's ownership of the Mortgaged Property, (7) costs and expenses with respect to any litigation affecting the Mortgaged Property as a result of any occurrence or non-occurrence occurring during Trustor's ownership of the Mortgaged Property, (8) wages and salaries of employees and commissions of agents, (9) all ground rent, real estate taxes and assessments incurred during Trustor's ownership of the Mortgaged Property, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold, and (10) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the foregoing that are incurred during Trustor's ownership of the Mortgaged Property.

(b) to the payment of all amounts (including interest thereon), other than the unpaid principal balance of the Note and accrued but unpaid interest thereon, which may be due to Beneficiary under the Loan Documents;

(c) to the payment and performance of the Obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.8 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to **Section 4.1(d)** shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9 Additional Advances and Disbursements: Costs of Enforcement.

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Trustor. All sums advanced and expenses incurred at any time by Beneficiary under this Section 4.9, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Security Instrument.

(b) Trustor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Security Instrument and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Security Instrument and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise. "Reasonable attorney fees" shall mean an amount actually charged by the attorneys (such to be based on time actually spent, at its usual hourly rates) retained by the Beneficiary in exercising its rights under this Security Instrument.

Section 4.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Beneficiary to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5

ASSIGNMENT OF RENTS AND LEASES

Section 5.1 Assignment. Trustor unconditionally and absolutely assigns to Beneficiary all of Trustor's right, title and interest in and to the Leases and Rents. This assignment is an absolute assignment to Beneficiary and not an assignment as security for the payment and performance of the Obligations.

Section 5.2 Rights of Beneficiary. Subject to the provisions of Section 5.5 below, Beneficiary (or its receiver) shall have the right, power and authority to: (a) notify any Person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, subject to the rights of tenants under Leases, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Trustor under the Leases and exercise any and all rights of Trustor therein contained to the full extent of Trustor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary's request, Trustor shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Mortgaged Property. Trustor irrevocably directs any tenant, manager, managing agent, or

operator of the Mortgaged Property, without any requirement for notice to or consent by Trustor, to comply with all demands of Beneficiary under this Agreement and to turn over to Beneficiary on demand all Rents which it receives.

Section 5.3 **No Obligation.** Notwithstanding Beneficiary's rights hereunder, Beneficiary shall not be obligated to perform, and Beneficiary does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Mortgaged Property on account of this Security Instrument. Beneficiary shall have no responsibility on account of this Security Instrument for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

Section 5.4 **Right to Apply Rents.** Beneficiary shall have the right, but not the obligation, to use and apply any Rents received hereunder in accordance with **Section 4.7** hereof.

Section 5.5 **Revocable License.** Notwithstanding that the assignment of the Rents and Leases under this **Article 5** is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Beneficiary grants to Trustor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Upon the occurrence and during the continuance of any Event of Default, such license may be revoked by Beneficiary, without notice to or demand (in accordance with applicable law) upon Trustor, and Beneficiary immediately shall be entitled to receive and apply all Rents, whether or not Beneficiary enters upon and takes control of the Mortgaged Property. Prior to such revocation, Trustor shall apply any Rents which it receives in accordance with the Loan Agreement.

Section 5.6 **Liability of Beneficiary.** Beneficiary shall not in any way be liable to Trustor for any action or inaction of Beneficiary, its employees or agents under this **Article 5**.

Section 5.7 **No Merger of Estates.** So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Trustor, Beneficiary, any lessee or any third party by purchase or otherwise.

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 **Security Interest.** This Security Instrument constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Trustor grants to Beneficiary, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Trustor at least ten (10) Business Days prior to any action under the UCC shall constitute reasonable notice to Trustor.

Section 6.2 **Financing Statements.** Trustor hereby irrevocably authorizes Beneficiary, at any time and from time to time, to file in any filing office in any UCC jurisdiction one or

more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Trustor where permitted by law. Trustor agrees to furnish Beneficiary, promptly upon request, with any information required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Trustor ratifies and confirms its authorization of all such filings. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary's prior written consent, subject to Trustor's rights under Section 9-509(d)(2) of the UCC. Trustor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 6.3 **Fixture Filing**. This Security Instrument shall also constitute a "fixture filing" under applicable law against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Trustor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Security Instrument. The name and address of the Debtor (Trustor) and Secured Party (Beneficiary) are as set forth in the first paragraph of this Security Instrument, the description of the collateral is included in the definition of Mortgaged Property set forth in **Article I** of this Security Instrument and the description of real estate to which the collateral is attached or upon which it is or will be located is described in **Exhibit A** attached hereto. **This Financing Statement covers the following types or items of property:** The Trust Property. This Deed of Trust covers goods or items of personal property which are or are to become fixtures upon the Land. The Trustor is the record owner of the Land.

ARTICLE 7

MISCELLANEOUS

Section 7.1 **Notices**. All Notices required or permitted to be given hereunder shall be in accordance with **Section 12.1** of the Loan Agreement.

Section 7.2 **Covenants Running with the Land**. All of the covenants in the Loan Agreement and in **Article 3** of this Security Instrument, and all other Obligations contained in this Security Instrument, are intended by Trustor and Beneficiary to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Trustor" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 7.3 **Attorney-in-Fact**. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns (including, without limitation, any receiver), as its attorney-in-fact, which agency is coupled with an interest, (a) while any Event of Default exists, to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Trustor shall fail to do so within ten (10) days after written request by

Beneficiary, (b) to execute any or all of the rights or powers described in Article 5 with the same force and effect as if executed by Trustor, and Trustor ratifies and confirms any and all acts done or omitted to be done by Beneficiary, its agents, servants, employees or attorneys in, to or about the Mortgaged Property, (c) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the Beneficiary of any such deed and as may be necessary or desirable for such purpose, (d) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Mortgaged Property, and (e) while any Event of Default exists, to perform any obligation of Trustor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Trustor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Trustor or any other Person for any failure to take any action which it is empowered to take under this Section.

Section 7.4 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Beneficiary and Trustor and their respective successors and assigns. Trustor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 7.5 No Waiver. Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Loan Agreement. If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern; provided, however, the terms and conditions of this Security Instrument shall continue to control and govern with respect to matters relating to the creation, perfection, priority and enforcement of the lien and security title of this Security Instrument.

Section 7.7 Release or Reconveyance. Upon full payment and performance of the Obligations, Beneficiary, at Trustor's expense, shall cancel and surrender of record this Security Instrument, and release the liens and security interests created by this Security Instrument or reconvey the Mortgaged Property.

Section 7.8 Waiver of Stay, Moratorium and Similar Rights. Trustor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisalment, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the Indebtedness secured hereby, or any agreement between Trustor and Beneficiary or any rights or remedies of Beneficiary, or any one or more of them.

Section 7.9 Obligations of Trustor, Joint and Several. If more than one Person or entity has executed this Security Instrument as "Trustor," the obligations of all such Persons hereunder shall be joint and several, and all such persons hereby waive any and all rights and remedies accorded by applicable law to sureties or guarantors, including the benefit of C.R.S. § 13-50-101 through C.R.S. § 13-50-103 inclusively.

Section 7.10 **Governing Law.** THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF COLORADO (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW OTHER THAN THE CHOICE OF LAW RULES OF THE UNIFORM COMMERCIAL CODE OF SUCH STATE).

Section 7.11 **Interpretation.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections. When used in this Security Instrument, "include(s)" shall mean "include(s), without limitation," and "including" shall mean "including, but not limited to."

Section 7.12 **Counterparts.** This Security Instrument may be executed in any number of identical counterparts, any of which may contain the signatures of fewer than all of the parties, but all of which together shall constitute a single instrument. Copies of originals, including copies delivered by facsimile, PDF or other electronic means, shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Security Instrument. For purposes of recordation, original, executed counterpart signature pages shall be attached to one copy of this Security Instrument to form one document.

Section 7.13 **Entire Agreement.** This Security Instrument and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Trustor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.14 **Future Advances.** This Security Instrument is given to secure not only existing Indebtedness (including, without limitation, any existing obligations incurred or any advances made at or prior to the recording of this Security Instrument), but also future advances and/or future obligations made pursuant to or as provided in the Loan Documents and any other documents from time to time evidencing any of the advances or obligations secured hereby, to the same extent as if such future advances and/or future obligations were made on the date of recording hereof, and although there may be no Indebtedness outstanding at the time any advance is made or obligation incurred. To the fullest extent permitted by law, the lien of this Security Instrument shall be valid as to all such Indebtedness, including, without limitation, all revolving credit and future advances and other future obligations, from the time this Security Instrument is recorded. The maximum principal amount that may be secured by this Security Instrument at any one time is TWENTY-EIGHT MILLION FOUR HUNDRED THOUSAND and No/00 Dollars (\$28,400,000.00). The period in which future obligations may be incurred and secured by this Security Instrument is the period between the date hereof and that date which is the earlier of (i) the stated maturity date of the Note or (ii) fifteen (15) years from the date hereof.

Section 7.15 **WAIVER OF TRUSTOR'S RIGHTS.** BY EXECUTION OF THIS SECURITY INSTRUMENT, TRUSTOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE OBLIGATIONS AND THE POWER OF ATTORNEY GIVEN HEREIN TO BENEFICIARY TO SELL THE MORTGAGED PROPERTY BY NON-JUDICIAL FORECLOSURE UPON DEFAULT BY TRUSTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE (EXCEPT AS OTHERWISE PROVIDED HEREIN); (B) EXCEPT TO THE EXTENT PROVIDED OTHERWISE HEREIN, WAIVES ANY AND ALL RIGHTS WHICH TRUSTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER

APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY; (C) ACKNOWLEDGES THAT TRUSTOR HAS READ THIS SECURITY DEED AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO TRUSTOR AND TRUSTOR HAS CONSULTED WITH COUNSEL OF TRUSTOR'S CHOICE PRIOR TO EXECUTING THIS SECURITY DEED; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF TRUSTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY TRUSTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

ARTICLE 8

CROSS-DEFAULT/CROSS-COLLATERALIZATION

Section 8.1 Related Loan. As of the date hereof, in addition to the Obligations, Beneficiary is the holder of a loan in the amount of NINETEEN MILLION FIVE HUNDRED THOUSAND and No/100 Dollars (\$19,500,000.00) (the "Crossed Loan"), which is secured by property located at 4992-5082 E. Hampden Avenue, Denver, CO and known as the Happy Canyon Center and further described on Exhibit B attached hereto and incorporated by reference (the "Crossed Property"). In connection with the Crossed Loan, the Shoppes Borrowers executed the Crossed Note. The Crossed Note is secured by a Deed of Trust, Assignment of Rents and Leases Security Agreement and Fixture Filing (Shoppes) on the Crossed Property as amended by that First Amendment to Deed of Trust, Assignment of Rents and Leases Security Agreement and Fixture Filing (collectively, the "Crossed Deed of Trust"). The Crossed Note, the Crossed Deed of Trust, and any and all other documents executed as security for, or in connection with the Crossed Loan shall sometimes be collectively referred to herein as the "Crossed Loan Documents").

Section 8.2 Cross-Default. Trustor covenants and agrees for the benefit of Beneficiary that an Event of Default under any of the Crossed Loan Documents shall also constitute an Event of Default hereunder and shall entitle Beneficiary to exercise any and all rights provided herein or otherwise available at law or in equity. Should an Event of Default occur under any of the Loan Documents or the Crossed Loan Documents, Beneficiary may, at its option, foreclose any or all of this Deed of Trust or the Crossed Deed of Trust. If Beneficiary shall foreclose any of this Deed of Trust or the Crossed Deed of Trust, then the sale by Beneficiary of the property secured thereby shall not exhaust Beneficiary's foreclosure rights and remedies as to the other such properties, and Beneficiary is specifically allowed to have successive sales conducted under applicable foreclosure provisions until all of the properties (the Mortgaged Property and the Crossed Property) shall be sold or the entire indebtedness of the Loan and the Crossed Loan, shall be extinguished.

Section 8.3 Cross-Collateralization. The Loan and the Crossed Loan are cross-collateralized; specifically, Trustor covenants and agrees that, in the event that any of this Deed of Trust, or the Crossed Deed of Trust are foreclosed, and the proceeds of such foreclosure exceeds the primary indebtedness secured thereby (the Crossed Loan being the primary indebtedness secured by the Crossed Deed of Trust), the excess proceeds shall be retained by Beneficiary and applied to the outstanding indebtedness in such order and manner as Beneficiary shall determine in its sole discretion. Beneficiary shall be entitled to retain all proceeds of any

foreclosure sale until all indebtedness secured by this Deed of Trust and the Crossed Deed of Trust shall have been paid in full.

Section 8.4 Effect of Cross-Default/Cross-Collateralization. Except as set forth within the Note and/or the Crossed Note, Trustor covenants and agrees that none of the Loan or the Crossed Loan may be prepaid except with simultaneous prepayment of the Note and the Crossed Note, respectively, and in strict accordance with the terms of the Note and the Crossed Note.

[Remainder of page intentionally left blank.]

EXECUTED under seal as of the date first above written.

HAPPY CANYON BOX 17 A, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

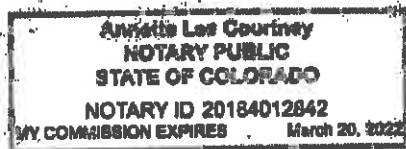
By: Gary J. Dragul
Name: Gary J. Dragul
Title: President

ACKNOWLEDGMENT

STATE OF Colorado
County of Arapahoe) ss.

The foregoing instrument was acknowledged before me this 7 day of ~~July~~ ^{AUGUST}, 2018, by Gary J. Dragul, as President of GDA Real Estate Management, Inc., a Colorado corporation, as the manager of Happy Canyon Box Manager, LLC, a Colorado limited liability company, as the manager of Happy Canyon Box 17 A, LLC, a Delaware limited liability company on behalf of Happy Canyon Box 17 A, LLC.

Annette Lee Courtney
Notary Public



WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: March 20, 2022

EXECUTED under seal as of the date first above written,

HAPPY CANYON BOX 17 B, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company; its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

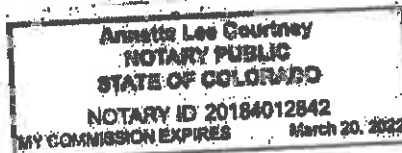
By: [Signature]
Name: Gary J. Dragul
Title: President

ACKNOWLEDGMENT

STATE OF Colorado
County of Arapahoe) ss.

The foregoing instrument was acknowledged before me this 7 day of ^{AUGUST} ~~July~~, 2018, by Gary J. Dragul, as President of GDA Real Estate Management, Inc., a Colorado corporation, as the manager of Happy Canyon Box Manager, LLC, a Colorado limited liability company, as the manager of Happy Canyon Box 17 B, LLC, a Delaware limited liability company on behalf of Happy Canyon Box 17 B, LLC.

[Signature]
Notary Public



WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires; March 20, 2022

HAPPY CANYON BOX 17 C, LLC, a Delaware limited liability company

By: Happy Canyon Box Manager, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

By: Gary J. Dragul
Name: Gary J. Dragul
Title: President

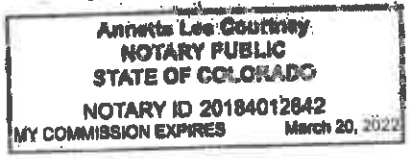
ACKNOWLEDGMENT

STATE OF Colorado
County of Arapahoe) ss.

The foregoing instrument was acknowledged before me this 7 day of ~~July~~ ^{August}, 2018, by Gary J. Dragul, as President of GDA Real Estate Management, Inc., a Colorado corporation, as the manager of Happy Canyon Box Manager, LLC, a Colorado limited liability company, as the manager of Happy Canyon Box 17 C, LLC, a Delaware limited liability company on behalf of Happy Canyon Box 17 C, LLC.

Annette Lee Courtney

Notary Public



WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: March 20, 2022

SCHEDULE 1

TRUSTOR

Happy Canyon Box 17 A, LLC, a Delaware limited liability company

Happy Canyon Box 17 B, LLC, a Delaware limited liability company

Happy Canyon Box 17 C, LLC, a Delaware limited liability company

SCHEDULE 2

Shoppes Borrowers

HC Shoppes 18 A, LLC, a Delaware limited liability company

HC Shoppes 18 B, LLC, a Delaware limited liability company

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

MARKETPLACE

PARCEL 1.

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;
THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;
THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING,
CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL 2:

THOSE CERTAIN EASEMENTS AS SET FORTH IN "HAPPY CANYON SHOPPING CENTER AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS" RECORDED MARCH 3, 2017, AS RECEPTION NO. 2017029949 IN THE PUBLIC RECORDS OF DENVER COUNTY, COLORADO.

EXHIBIT B

CROSSED PROPERTY LEGAL DESCRIPTION

PARCEL ONE:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 264.79 FEET;
THENCE SOUTH A DISTANCE OF 64.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1984 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, COLORADO, BEING THE TRUE POINT OF BEGINNING;

THENCE EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 346.18 FEET TO A POINT ON THE WEST LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET;
THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 104.00 FEET;
THENCE NORTH ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 200.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 419.17 FEET TO THE NORTHWEST CORNER OF TRACT "A", BELMONT HEIGHTS SUBDIVISION FILING NO. 2, AS RECORDED IN BOOK 23 AT PAGE 18, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID TRACT "A" A DISTANCE OF 350.00 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF SAID SUBDIVISION;
THENCE SOUTH 44 DEGREES 31 MINUTES 32 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID SUBDIVISION, A DISTANCE OF 495.81 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET, AS MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1 IN BOOK 23 AT PAGE 10 IN THE OFFICES OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 742.06 FEET;
THENCE NORTH 00 DEGREES 03 MINUTES 55 SECONDS WEST ALONG THE EAST LINE OF STANDARD SERVICE STATION TRACT AS RECORDED IN BOOK 9476 AT PAGE 276 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, A DISTANCE OF 161.56 FEET TO THE TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM THE FOLLOWING PROPERTY:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A

POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;

THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;

THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;

THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;

THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING,

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL TWO:

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 6;
THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 6 A DISTANCE OF 265.00 FEET;
THENCE SOUTH TO A POINT ON THE CENTERLINE OF HAPPY CANYON ROAD;
THENCE NORTHWESTERLY ALONG THE CENTERLINE OF HAPPY CANYON ROAD TO THE POINT OF BEGINNING,

EXCEPT EXISTING RIGHTS OF WAY FOR PUBLIC ROADS,
EXCEPT THAT PORTION AS CONVEYED TO THE CITY AND COUNTY OF DENVER IN WARRANTY DEED RECORDED JUNE 22, 2015 AT RECEPTION NO. 2015082302,

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR ACCESS, PARKING, UTILITIES AND DRAINAGE CONTAINED IN THAT CERTAIN AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED MARCH 3, 2017 AT RECEPTION NO. 2017029949.

GUARANTY OF PAYMENT

GUARANTY OF PAYMENT (as the same may be amended, supplemented or otherwise modified from time to time, this "**Guaranty**") is made as of August 7, 2018, by GARY DRAGUL, an individual (the "**Guarantor**") for the benefit of AFF II DENVER, LLC, a Delaware limited liability company (together with its successors and assigns, "**Lender**").

WITNESSETH:

WHEREAS, pursuant to that certain Loan and Security Agreement (together with all renewals, amendments, modifications, increases and extensions thereof, the "**Loan Agreement**") dated as of the date of this Guaranty between Lender and the borrowers listed on Schedule 1 (collectively, the "**Borrower**"), Lender has agreed to make a loan to Borrower in the aggregate maximum principal amount of \$8,900,000.00 (the "**Loan**"). The Loan is evidenced by that certain Promissory Note (as the same may be renewed, amended, modified, increased or extended from time to time, the "**Note**") executed by Borrower in favor of Lender, in the aggregate principal amount of the Loan.

WHEREAS, the Loan is secured by, among other things, that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing executed by Borrower in favor of Lender, covering the Collateral (together with all renewals, modifications, increases and extensions thereof, the "**Security Instrument**"), which grants to Lender, among other things, a first priority lien on and security interest in the "Mortgaged Property" described therein. The Loan Agreement, the Note, the Security Instrument, and each of the other documents evidencing, securing or guaranteeing the Loan from time to time, as the same may be amended, modified, restated or supplemented, are hereinafter referred to collectively as the "**Loan Documents**."

WHEREAS, Lender is not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment and performance to Lender of the Guaranteed Obligations (as herein defined); and

WHEREAS, Guarantor is the owner of direct or indirect interests or has a financial interest in Borrower, and Guarantor will directly benefit from Lender's making the Loan to Borrower.

NOW, THEREFORE, as an inducement to Lender to enter into the Loan Agreement and make the Loan to Borrower and to extend such additional credit as Lender may from time to time agree to extend under the Loan Documents, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor does hereby agree as follows:



ARTICLE 1
DEFINED TERMS

Section 1.1 **Defined Terms.** Capitalized terms used in this Guaranty and not specifically defined in this Guaranty have the meaning provided in the Loan Agreement. In addition, the term "**Liabilities**" means all principal, interest, cost, expenses and fees (including the Exit Fee and any Minimum Interest Amount) and all other amounts due and payable or to become due and payable to Lender under the Loan Documents (including under the Hazardous Materials Indemnity Agreement), together with all other obligations of Borrower under the Loan Documents (including under the Hazardous Materials Indemnity Agreement). If any of the Liabilities are reduced, discharged or released pursuant to the United States Bankruptcy Code or similar state insolvency laws or by reason of any case or action brought thereunder or in connection therewith, the term "Liabilities" for purposes of this Guaranty shall mean the Liabilities without giving effect to such reduction, discharge or release.

ARTICLE 2
NATURE AND SCOPE OF GUARANTY

Section 2.1 **Guaranty.** Guarantor hereby irrevocably and unconditionally guarantees to Lender the payment and performance of the Guaranteed Obligations (as hereinafter defined) as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary obligor.

Section 2.2 **Definition of Guaranteed Obligations.** As used herein, the term "**Guaranteed Obligations**" means all of the Liabilities.

Section 2.3 **Last Dollar.**

(a) This Guaranty is a "last dollar" guaranty, and accordingly, all amounts paid by Borrower or any other Person under the Loan Documents (other than a payment received by Lender from Guarantor in accordance with **Section 2.3(b)** below) shall be deemed applied first to obligations not hereby guaranteed.

(b) Any payment by Guarantor to Lender under this Guaranty shall be from Guarantor's personal funds and shall specify that it is a payment under this Guaranty, and no payment made by Guarantor under any other Loan Document, including, without limitation, any other Guaranty, shall be deemed a payment by Guarantor hereunder.

ARTICLE 3
GENERAL TERMS AND CONDITIONS

Section 3.1 **Nature of Guaranty.** This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance, and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to all Guaranteed Obligations existing from time to time (i) notwithstanding any attempted revocation and (ii) with respect to any Guarantor that is a natural person, after such Guarantor's death (in which event such deceased Guarantor's obligations under this Guaranty shall be binding upon such Guarantor's estate and such Guarantor's legal representatives and heirs).

Section 3.2 **Guaranteed Obligations Not Reduced by Offset.** The Guaranteed Obligations shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or

defense of Borrower or any other Person (as defined below) against Lender or against payment of the Guaranteed Obligations, whether such offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.

Section 3.3 ~~No Duty To Pursue Others.~~ Lender has the right to require Guarantor to pay, comply with and satisfy the Guaranteed Obligations under this Guaranty, and shall have the right to proceed immediately against such Guarantor with respect thereto. Without limitation of the generality of the foregoing, it shall not be necessary for Lender (and Guarantor hereby waives any rights which such Guarantor may have to require Lender), in order to enforce the Guaranteed Obligations against Guarantor, first to (i) institute a suit or exhaust its remedies against Borrower or others liable on the Loan or the Guaranteed Obligations or any other person or any of the collateral for the Loan, (ii) enforce Lender's rights against any of the collateral for the Loan, (iii) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, (iv) demonstrate that the collateral for the Loan provides inadequate security for the Loan, or (v) resort to any other means of obtaining payment of the Guaranteed Obligations.

Section 3.4 ~~Payments; Interest on Amounts Payable Hereunder.~~ If all or any part of the Guaranteed Obligations shall not be punctually paid when due (taking into account any cure periods provided under the Loan Documents), whether on demand, maturity, acceleration or otherwise, Guarantor shall be liable to pay to Lender, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, or notice of acceleration of the maturity, in immediately available lawful money of the United States of America, as an addition to the Guaranteed Obligations, interest on the Guaranteed Obligations (to the extent not paid when due) at the Default Rate until paid in full. Lender may apply all money received by Lender from Guarantor to any of the Guaranteed Obligations, interest thereon as herein provided, and Enforcement Costs (as defined below), in such priority and proportions, and at such time or times as Lender may elect in its sole discretion.

Section 3.5 ~~Enforcement Costs.~~ Guarantor hereby agrees to pay, on written demand by Lender, all reasonable costs actually incurred by Lender in collecting any amount payable under this Guaranty or enforcing or protecting its rights under the Loan Documents, in each case whether or not legal proceedings are commenced (the "~~Enforcement Costs~~"). Such fees and expenses shall be in addition to the Guaranteed Obligations and shall include, without limitation, costs and expenses of both in-house and outside counsel, paralegals and other hired professionals, special servicing fees (including portfolio management fees), court fees, costs incurred in connection with pre-trial, trial and appellate level proceedings (including discovery and expert witnesses), costs incurred in post-judgment collection efforts or in any bankruptcy proceeding to the extent such costs relate to the Guaranteed Obligations or the enforcement of this Guaranty. Amounts incurred by Lender shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full upon Lender's written demand for payment. This ~~Section 3.5~~ shall survive the payment in full of the Note.

Section 3.6 ~~Cumulative Remedies.~~ Guarantor acknowledges that, following an Event of Default, Lender is entitled to accelerate the Loan and exercise all other rights and remedies as have been provided to Lender under the Loan Documents and by law or in equity, including, without limitation, enforcement of this Guaranty. All rights and remedies of Lender are cumulative and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right or remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Guarantor in any instance will not entitle Guarantor to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance

without notice or demand. Lender may release other security for the Loan, may release any party liable for the Loan, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Loan, in each case without prejudice to its rights under this Guaranty and without such action being deemed an accord and satisfaction or a reinstatement of the Loan. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies.

Section 3.7 Unimpaired Liability. Guarantor acknowledges and agrees that all obligations hereunder are and shall be absolute and unconditional under any and all circumstances without regard to the validity, regularity or enforceability of any or all of the Loan Documents or the existence of any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. Without limiting the foregoing, Guarantor acknowledges and agrees that its liability hereunder shall in no way be released, terminated, discharged, limited or impaired by reason of any of the following (whether or not Guarantor has any knowledge or notice thereof):

(a) Borrower's or any other Person's lack of authority or lawful right to enter into any of the Loan Documents or any officers' or representatives' lack of authority or right to enter into Loan Documents on its behalf, or the obligations thereunder being ultra vires;

(b) any modification, supplement, extension, consolidation, restatement, waiver or consent provided by Lender with respect to any of the Loan Documents including, without limitation, the grant of extensions of time for payment or performance;

(c) the failure to record any Loan Document or to perfect any security interest intended to be provided by the Loan Documents;

(d) the release, surrender, exchange, subordination, deterioration, waste, loss, impairment or substitution, in whole or in part, of any collateral for the Loan, the failure to protect, secure or insure such collateral, the acceptance of additional collateral for the Loan or the failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral for the Loan;

(e) Lender's failure to exercise, or delay in exercising, any rights or remedies Lender may have under the Loan Documents or under this Guaranty or otherwise available at law or in equity, including but not limited to any neglect, delay, omission, failure or refusal of Lender (i) to take or prosecute any action for the collection of all or any part of the Guaranteed Obligations, or (ii) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon any collateral for the Loan, or (iii) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Obligations;

(f) the release of any Person from performance, in whole or in part, under this Guaranty or the release of Borrower or any other Person now or hereafter party to a Loan Document from performance, in whole or in part, under any of Loan Document to which each is a party, in each case whether by operation of law, Lender's voluntary act, or otherwise, and Guarantor expressly waives the benefit of C.R.S. §§ 13-50-101 through 13-50-103, inclusive;

(g) any bankruptcy, insolvency, reorganization, adjustment, dissolution, liquidation or other like proceeding involving or affecting Borrower or any other Person;

(h) the termination or discharge of the Security Instrument or any other Loan Document or the exercise of any power of sale or any foreclosure (judicial or otherwise) or delivery or acceptance of a deed-in-lieu of foreclosure;

(i) the existence of any claim, setoff, counterclaim, defense or other rights which Guarantor may have against Borrower, Lender or any other Person, whether in connection with the Loan or any other transaction;

(j) the accuracy or inaccuracy of the representations and warranties made by Borrower or any other Person in any of the Loan Documents;

(k) any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to Borrower or any other Person;

(l) any sale, lease or transfer of any or all of the assets of Borrower or any other Person;

(m) the Guaranteed Obligations, or any part thereof, exceeding the maximum amount permitted by law or violating any usury law;

(n) any valid defenses, claims or offsets (whether at law, in equity or by agreement) by Borrower which render the Guaranteed Obligations wholly or partially uncollectible from Borrower, whether arising in connection with the Loan Documents or otherwise.

(o) the illegality or unenforceability of, or the inability to collect, the Guaranteed Obligations;

(p) any of the Loan Documents being irregular or not genuine or authentic; or

(q) any changes (whether directly or indirectly) in the shareholders, partners or members of Borrower or the reorganization, merger or consolidation of Borrower into or with any other Person.

Section 3.8 **Waivers.** Guarantor hereby waives and relinquishes, to the fullest extent permitted by law: (a) all rights or claims of right to cause a marshalling of assets or to cause Lender to proceed against any of the collateral for the Loan before proceeding under this Guaranty against Guarantor or any other guarantor or indemnitor under the Loan; (b) all rights and remedies accorded by applicable law to sureties or Guarantor, except any rights of subrogation and contribution (the exercise of which are subject to the terms of this Guaranty); (c) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought by or against Guarantor; (d) notice of acceptance of this Guaranty and of any action taken or omitted in reliance hereon; (e) presentment for payment, demand, protest, notice of nonpayment or failure to perform or observe, or any other proof, notice or demand to which Guarantor might otherwise be entitled with respect to the Guaranteed Obligations; (f) all homestead or exemption rights against the Guaranteed Obligations and the benefits of any statutes of limitation or repose; and (g) any defense based upon an election of remedies by Lender, including any election to proceed by judicial or non-judicial foreclosure of such collateral, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable or any election of remedies, including remedies relating to real property or personal property security, which destroys or otherwise impairs the subrogation rights of Guarantor or the rights of Guarantor to proceed against Borrower or any other guarantor for reimbursement, contribution, or both.

Section 3.9 **Waivers of Notice.** Guarantor agrees to the provisions of the Loan Documents and hereby waives notice of (a) any disbursements thereunder made by Lender to Borrower, (b) any amendment or extension of the Loan Documents, (c) the execution and delivery by Borrower and Lender of any other loan or credit agreement or of Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Project, (d) the occurrence of any Event of Default, (e) Lender's transfer or disposition of the Guaranteed Obligations, or any part thereof, (f) the sale or foreclosure (or posting or advertising for sale or foreclosure) of the Project, (g) any default by Borrower under or with respect to the Loan Documents, or (h) any other action at any time taken or omitted by Lender and, generally, all demands and notices of every kind in connection with this Guaranty and the other Loan Documents.

Section 3.10 **Guarantor Bound by Judgment Against Borrower.** Guarantor agrees that it shall be bound conclusively, in any jurisdiction, by the judgment in any action by Lender against Borrower in connection with the Loan Documents (wherever instituted) as if Guarantor were a party to such action even if not so joined as a party.

Section 3.11 **Certain Consequences of Borrower's Bankruptcy.**

(a) Any payment made on the Guaranteed Obligations, whether made by Borrower or Guarantor or any other Person, that is required to be refunded or recovered from Lender as a preference or a fraudulent transfer or is otherwise set-aside pursuant to 11 U.S.C. § 101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**"), or a voluntary petition, complaint or application under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (together with the Bankruptcy Code, the "**Debtor Relief Laws**") shall not be considered as a payment made on the Guaranteed Obligations or under this Guaranty. Guarantor's liability under this Guaranty shall continue with respect to any such payment, or be deemed reinstated, with the same effect as if such payment had not been received by Lender, notwithstanding any notice of revocation of this Guaranty prior to such avoidance or recovery or payment in full of the Loan, until such time as all periods have expired within which Lender could be required to return any amount paid at any time on account of the Guaranteed Obligations.

(b) Until repayment in full of the Liabilities, including interest accruing after the commencement of a proceeding by or against Borrower under the Bankruptcy Code or any other Debtor Relief Law ("**Post-Petition Interest**"), which interest the parties agree remains a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under any applicable Debtor Relief Law generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right (but not the obligation) to file proof of claim and to vote in any other bankruptcy or insolvency action, including the right to vote on any plan of reorganization, liquidation or other proposal for debt adjustment under federal or state law.

Section 3.12 **Subrogation and Contribution.** Guarantor agrees that no payment by Guarantor under this Guaranty shall give rise to, and Guarantor hereby unconditionally and irrevocably waives, releases and abrogates any and all rights Guarantor may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating Guarantor to the rights of Lender) to assert, (a) any rights of subrogation against Borrower or the collateral for the Loan, or (b) any rights of contribution against any other guarantor of the Loan or any other Person, in each case unless and until Lender have received full and indefeasible payment of the Liabilities. If the deferral of such rights shall be unenforceable for any reason, Guarantor agrees that (x) Guarantor's rights of

subrogation shall be junior and subordinate to Lender's rights against Borrower and the collateral for the Loan, and (y) Guarantor's rights of contribution against any other Person liable for the Loan or any Guaranteed Obligations shall be junior and subordinate to Lender's rights against such other Person.

Section 3.13 Subordination by Guarantor.

(a) Guarantor agrees that any indebtedness of Borrower to Guarantor, whether now or hereafter existing, whether direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities be evidenced by note, contract, open account or otherwise, and irrespective of the person or persons in whose favor such debts or liabilities may, at their inception, have been or may hereafter be created, or the manner in which they have been or may hereafter be acquired by Guarantor, including, without limitation, all rights and claims of Guarantor against Borrower (arising as a result of subrogation or otherwise) as a result of Guarantor's payment of all or a portion of the Guaranteed Obligations, together with any interest thereon (collectively, "Guarantor Claims"), shall be and hereby is deferred, postponed and subordinated to the prior payment in full of the Liabilities. Further, until payment in full of the Liabilities, Guarantor agrees that should Guarantor receive any payment, satisfaction or security for any Guarantor Claim, the same shall be delivered to Lender in the form received (endorsed or assigned as may be appropriate) for application on account of, or as security for, the Loan and until so delivered to Lender, shall be held in trust for Lender as security for the Loan.

(b) In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving Guarantor as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims for application against any due and payable Guaranteed Obligations. Guarantor hereby assigns such dividends and payments to Lender. Should Lender receive, for application against the Guaranteed Obligations, any such dividends or payments which is otherwise payable to Guarantor and which, as between Borrower and Guarantor, shall constitute a credit against the Guarantor Claims, then, upon payment to Lender in full of the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Lender to the extent that such payments to Lender on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that portion of the Guaranteed Obligations which would have been unpaid if Lender had not received dividends or payments upon the Guarantor Claims.

(c) Guarantor agrees that any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor presently exist or are hereafter created or attach. Without the prior written consent of Lender, Guarantor shall not (i) exercise or enforce any creditor's right Guarantor may have against Borrower, or (ii) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including without limitation the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgage, deeds of trust, security interests, collateral rights, judgments or other encumbrances held by Guarantor on assets of Borrower.

Section 3.14 Lender Transferees; Secondary Market Activities; No Transfer by Guarantor. Guarantor acknowledges and agrees that Lender, without notice to Guarantor or Guarantor's

consent, may assign all or any portion of its rights hereunder in connection with any sale or assignment of the Loan or servicing rights related to the Loan, grant participations in the Loan, transfer the Loan as part of a securitization in which Lender or assigns its rights to a securitization trustee, or contract for the servicing of the Loan, and that each such assignee, participant or servicer shall be entitled to exercise all of Lender's rights and remedies hereunder. Guarantor further acknowledges that Lender or may provide third parties with an existing or prospective interest in the servicing, enforcement, ownership, purchase, participation or securitization of the Loan, including, without limitation, any rating agency rating the securities issued in respect of a securitization or participation of the Loan, and any entity maintaining databases on the underwriting and performance of commercial mortgage loans, any and all information which Lender now have or may hereafter acquire relating to the Loan, the Project or with respect to Borrower or Guarantor, as Lender determine necessary or desirable. Guarantor irrevocably waives all rights Guarantor may have under applicable laws, if any, to prohibit such disclosure, including, without limitation, any right of privacy. Guarantor may not assign any of its rights, powers, duties and obligations hereunder, or substitute other Persons in lieu of itself as the obligor hereunder.

Section 3.15 **Financial Statements**. Guarantor represents and warrants to Lender that (i) the financial statements of Guarantor previously submitted to Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities, and fairly present the financial condition of Guarantor, and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Guaranty, and (ii) no material adverse change has occurred in the financial statements from the dates thereof until the date hereof. Guarantor shall furnish to Lender:

(a) If Guarantor is not a natural Person (other than a trust established for estate planning purposes), as soon as available and in no event later than sixty (90) days after the close of each calendar year: (A) a balance sheet for Guarantor as of the end of each calendar year and a statement of profit and loss for Guarantor and for Guarantor's operations for such calendar year, together with all supporting schedules certified by Guarantor as true, complete and correct; and stating that such materials (1) were prepared in accordance with in accordance with sound accounting principles (or such other accounting basis reasonably acceptable to Lender) consistently applied from year to year, (2) fairly present Guarantor's financial condition, (3) show all material liabilities, direct and contingent, (4) fairly present the results of Guarantor's operations, (5) disclose the existence of any hedge and/or off-balance sheet transactions; and as soon as available and in no event later than forty-five (45) days after the close of each calendar quarter and (6) contain a statement of net worth and liquidity: (A) a balance sheet for Guarantor as of the end of each calendar quarter and a statement of profit and loss for Guarantor and for Guarantor' operations for each calendar quarter, together with all supporting schedules certified by Guarantor as true, complete and correct in all material respects.

(b) If Guarantor is a natural Person or a trust established for estate planning purposes, deliver to Lender as soon as available and in no event later than forty-five (45) days of the end of each calendar quarter, a financial statement certified by Guarantor as (1) true, complete and correct, (2) fairly presenting Guarantor's financial condition, (3) containing a statement of net worth and liquidity, (4) identifying all of Guarantor's assets and liabilities. (including contingent liabilities), sources of income, and a schedule of real estate reflecting percentage ownership, estimated fair market value and current mortgage indebtedness, and (5) otherwise in a form substantially similar to the form of financial statements previously submitted to Lender by Guarantor, unless otherwise approved by Lender in writing; and

(c) within thirty (30) days after filing, a copy of the federal and each state income tax return filed for Guarantor for the prior calendar in each case certified by Guarantor as being a true, complete and correct copy of such tax return as filed. Guarantor authorizes Lender to obtain

for information and verification purposes from the U.S. Internal Revenue Service (IRS) a transcript of any Form 1040, Form 1120, Form 1120S, Form 1165, Form W-2, Form 1099 or any other income tax form actually filed with the IRS with respect to such persons (or a report from the IRS that the form for a particular date was not filed), and agree to provide to Lender fully executed IRS Forms 4506-T for such purposes at any time upon request of Lender.

Section 3.16 **No Reliance.** Guarantor agrees and acknowledges that (a) Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, ability to collect, or value of the collateral for the Loan; (b) Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party, and (c) Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other parties will be liable to pay the Guaranteed Obligations, or that Lender will look to other parties to pay or perform the Guaranteed Obligations.

Section 3.17 **Termination.** This Guaranty shall be automatically discharged as of the date on which the Liabilities have been indefeasibly paid in full.

Section 3.18 **Transfers; Sales, Etc.** For a Guarantor who is not a natural Person (i) Guarantor shall not sell, lease, transfer, convey or assign any of its assets, unless such sale, lease, transfer, conveyance or assignment, is performed in the ordinary course of its business consistent with past practices, and will not have a material adverse effect on the business or financial condition of Guarantor or its ability to perform its obligations hereunder; and (ii) Guarantor further covenants and agrees that it shall not become a party to any merger or consolidation, or, except in the ordinary course of its business consistent with past practices, acquire all or substantially all of the assets of, a controlling interest in the stock of, or a partnership or joint venture interest in, any other entity, in each case without the prior written consent of Lender. For a Guarantor who is a natural Person, Guarantor shall not sell, lease, transfer, convey or assign any of Guarantor's assets, unless such sale, lease, transfer, conveyance or assignment will not have a material adverse effect on the financial condition of Guarantor.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

Section 4.1 **Guarantor Due Diligence and Benefit.** Guarantor represents and warrants to Lender that (a) the Loan and this Guaranty are for commercial purposes, (b) Guarantor has had adequate opportunity to review the Loan Documents, (c) Guarantor is fully aware of obligations of Borrower thereunder and of the financial condition, assets and prospects of Borrower, and (d) Guarantor is executing and delivering this Guaranty based solely upon Guarantor's own independent investigation of the matters contemplated by clauses (a) through (c) of this Section 4.1 and in no part upon any representation, warranty or statement of Lender with respect thereto.

Section 4.2 **General.** Guarantor represents and warrants to Lender that:

(a) **Authority.** If Guarantor is a natural Person, Guarantor has the requisite legal and mental capacity to execute and deliver this Guaranty and perform Guarantor's obligations hereunder. If Guarantor is not a natural Person, Guarantor has all requisite authority to execute and deliver this Guaranty and perform Guarantor's obligations hereunder.

(b) **Valid and Binding Obligation.** This Guaranty constitutes Guarantor's legal, valid and binding obligation, enforceable against Guarantor in accordance with its terms, except to the extent enforceability may be limited under applicable bankruptcy and insolvency laws and similar laws affecting creditors' rights generally and to general principles of equity.

(c) **No Conflict with Other Agreement.** Guarantor's execution, delivery and performance of this Guaranty will not (i) if Guarantor is not a natural Person, violate any of the organizational documents of Guarantor, (ii) result in the breach of, or conflict with, or result in the acceleration of, any obligation under any guaranty, indenture, credit facility or other instrument to which Guarantor or any of its assets may be subject, or (iii) violate any order, judgment or decree to which Guarantor or any of its assets is subject.

(d) **No Pending Litigation.** No action, suit, proceeding or investigation, judicial, administrative or otherwise (including without limitation any reorganization, bankruptcy, insolvency or similar proceeding), currently is pending or, to the best of Guarantor's knowledge, threatened against Guarantor which, either in any one instance or in the aggregate, may have a material, adverse effect on Guarantor's ability to perform Guarantor's obligations under this Guaranty, other than those disclosed in Schedule 5.3(1) of the Loan Agreement.

(e) **Consideration.** Guarantor owns a direct or indirect interest or has a financial interest in Borrower and will derive substantial benefit from the making of the Loan to Borrower.

(f) **Financial Condition.** Guarantor currently is solvent and will not be rendered insolvent by providing this Guaranty. No adverse change has occurred in the financial condition of Guarantor since the date of Guarantor's most recent financial statements submitted to Lender, other than such changes that has been disclosed in writing to Lender and acknowledged by Lender.

ARTICLE 5 MISCELLANEOUS

Section 5.1 **Notices.** All notices required or permitted to be given hereunder (each, a "**Notice**") shall be in writing addressed to the party to be so notified at its address set forth below, or at such other address as such party may specify by giving at least ten (10) days' prior written notice of such change of address, and (1) sent by electronic mail, in each case with a copy of the Notice sent concurrently by one of the means described in clauses (2), (3) or (4) below (provided that for electronic mail delivery, the beginning of the subject line in such electronic mail shall state, in capitalized letters and minimum 12 point font: "NOTICE PURSUANT TO GUARANTY SECTION 5.1"), (2) sent by registered or certified mail, postage prepaid, return receipt requested, (3) delivered by hand, or (4) delivered by reputable overnight commercial courier. Notices shall be deemed to have been received: (a) if sent by electronic mail, upon the earlier of (i) the date that the sender receives a telephonic response from an employee or representative of the party receiving notice on behalf of such party, acknowledging receipt (which response shall not be a computer generated response) and (ii) the date of delivery on a Business Day (or the first attempted delivery if refused) of the copy of such Notice delivered in accordance with clause (2), (3) or (4) above, and (b) if delivered by hand, sent by registered or certified mail, or sent by overnight commercial courier, on the date of delivery on a Business Day (or the first attempted delivery of refused).

Addresses for Notices:

To Lender:

AFF II DENVER, LLC
2100 Powers Ferry Road, Suite 350
Atlanta, Georgia 30339
Attn: Dror Bezalel

Telephone: (770) 319-7408
Fax: (770) 217-6889
Email: dbezalel@theardentcompanies.com

With copy to:

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attn: Michael Baum
Telephone: (312) 456-8400
Fax: (312) 456-8435
Email: baumm@gtlaw.com

To Guarantor:

Gary Dragul
10 Cherry Lane Drive
Englewood, CO 80113
Email: gary@gdare.com

With copy to:

Moye White
16 Market Square, 6th Floor
1400 16th Street
Denver, CO 80111
Attn: Trish J. Rogers
Telephone: 302-292-7939
Email: trish.rogers@moye.white.com

Section 5.2 **Invalid Provisions.** If any provision of this Guaranty is held to be illegal, invalid or unenforceable in whole or in part, such provision shall be fully severable; this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision (or portion thereof) had never comprised a part hereof; the remaining provisions hereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Guaranty a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 5.3 **Time of the Essence.** Time is of the essence with respect to this Guaranty and the performance and observance by Guarantor of each covenant, agreement, provision and term of this Guaranty.

Section 5.4 **Successors and Assigns.** This Guaranty shall be binding upon and shall inure to the benefit of the Lender, and its successors and assigns, except that (a) Guarantor may not assign or transfer rights hereunder or any interest herein or delegate Guarantor's duties, obligations and liabilities hereunder, and (b) Lender shall have the right to assign its rights hereunder in accordance with the Loan Agreement.

Section 5.5 **JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GUARANTOR, AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR**

OTHERWISE) BETWEEN OR AMONG GUARANTOR AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN GUARANTOR AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

Section 5.6 Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to conflict of laws principles.

Section 5.7 JURISDICTION AND VENUE. GUARANTOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY GUARANTOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS GUARANTY SHALL BE LITIGATED IN THE STATE OR FEDERAL COURTS LOCATED IN THE CITY AND COUNTY OF DENVER, COLORADO. GUARANTOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVE PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREE THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO GUARANTOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS GUARANTY. GUARANTOR WAIVES ANY CLAIM THAT SUCH COURT IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD GUARANTOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, GUARANTOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST GUARANTOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR GUARANTOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER JURISDICTION, AND GUARANTOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

Section 5.8 Entire Agreement. This Guaranty embodies the entire agreement and understanding between Lender and Guarantor with respect to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to the subject matter hereof. Accordingly, this Guaranty may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 5.9 Phrases. When used in this Guaranty, the phrase "including" (or a word of similar import) shall mean "including, but not limited to," the phrase "satisfactory to Lender shall mean "in form and substance satisfactory to Lender in all respects," the phrase "with Lender's consent" or "with Lender's approval" shall mean such consent or approval at Lender's discretion, and the phrase "acceptable to Lender" shall mean "acceptable to Lender at Lender's discretion", except as provided otherwise herein. Wherever the context of this Guaranty may so require, the gender shall include the masculine, feminine and neuter, and the singular shall include the plural and vice versa. This Guaranty shall be construed as though drafted by all of the parties hereto and shall not be construed against or in favor of any party.

Section 5.10 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Guaranty or the exhibits hereto are only for the

convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between Guarantor and Lender.

Section 5.11 **Survival.** All of the representations, warranties, covenants, and indemnities hereunder, and any modification or amendment hereof, shall survive the closing and funding of the Loan, shall not be deemed to have merged herein, and shall (except to the extent expressly provided for herein) remain as continuing representations, warranties, covenants and indemnities so long as any Liabilities are outstanding.

Section 5.12 **Representation by Legal Counsel.** Guarantor acknowledges that Guarantor has been advised by Lender to seek the advice of legal counsel in connection with the negotiation and preparation of this Guaranty. If Guarantor has chosen not to obtain legal representation, whether due to cost considerations or for other reasons, the lack of such representation shall not furnish Guarantor with any defense to the enforcement of Lender's rights hereunder.

Section 5.13 **Injunctive Relief.** Guarantor recognizes that in the event Guarantor fails to perform, observe or discharge any of Guarantor's obligations hereunder, no remedy of law will provide adequate relief to Lender, and agrees that Lender shall be entitled to pursue temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 5.14 **Modification.** This Guaranty shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

Section 5.15 **Duplicate Originals; Counterparts.** This Guaranty may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Guaranty (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Guaranty even though all signatures do not appear on the same document. Receipt of an executed signature page to this Guaranty by facsimile or other electronic transmission shall constitute effective delivery thereof.

Section 5.16 **Recitals.** The recital and introductory paragraphs hereof are a part hereof, form a basis for this Guaranty and shall be considered prima facie evidence of the facts and documents referred to therein.

Section 5.17 **Joint and Several Obligations.** If more than one Person is a Guarantor hereunder, each such Guarantor shall have joint and several liability for the Guaranteed Obligations hereunder. If any Guarantor is a general partnership, the obligations of such Guarantor under this Guaranty are also the joint and several obligations of each such general partner thereof.

Section 5.18 **Reliance.** Lender would not make the Loan to the Borrower without this Guaranty. Accordingly, Guarantor intentionally and unconditionally enters into the covenants and agreements herein and understand that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

Section 5.19 **Waiver of Bankruptcy Stay.** Guarantor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Guarantor or Borrower, Guarantor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. §105 or any

other provision of the Bankruptcy Code or any other Debtor Relief Law, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Guarantor or Borrower under this Guaranty or otherwise.

Section 5.20 **Further Assurances**: Guarantor shall, upon reasonable request by Lender, execute, with acknowledgment or affidavit if required, and deliver, any and all documents and instruments required to effectuate the provisions hereof and of any other Loan Document.

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IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date first above written.

GUARANTOR:



Gary Dragut

SCHEDULE 1

BORROWERS

Happy Canyon Box 17 A, LLC, a Delaware limited liability company
Happy Canyon Box 17 B, LLC, a Delaware limited liability company
Happy Canyon Box 17 C, LLC, a Delaware limited liability company

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this "Agreement") is made and entered into effective as of October 1, 2018 (the "Effective Date"), by and between HARVEY SENDER having an address at Sender & Smiley, LLC, 600 17th Street, Suite 2800, Denver, Colorado 80202 (the "Receiver"), as receiver for Gary Dragul and all entities formerly under the control of Gary Dragul, EACH OF THE ENTITIES LISTED ON SCHEDULE 1 (collectively, the "Borrowers"), GARY DRAGUL (the "Guarantor") and AFF II DENVER, LLC, a Delaware limited liability company (the "Lender").

RECITALS:

WHEREAS, the Borrowers are the makers of and borrowers under, and the Guarantor is the guarantor under, certain loans and loan documents set forth on Schedules 2 and 3 attached hereto (collectively, the "Loan" and such loan documents, together with this Agreement and any other amendments, modifications or supplements of this Agreement or to the Loan Documents hereafter entered into being collectively hereinafter referred to as the "Loan Documents"). Capitalized terms used but not defined herein have the meaning ascribed in the Loan Documents listed on Schedule 2;

WHEREAS, the Borrowers and the Guarantor are sometimes referred to in this Agreement collectively as the "Borrower Parties".

WHEREAS, the Loan is secured by the deed(s) of trust, pledges, security agreements, financing statements and other security documents described on Schedule 2 as the same have been affected by any recorded amendments or modifications (collectively, the "Security Documents"; the Security Documents form a part of the Loan Documents for all purposes hereunder), encumbering real property located in Colorado and described on Exhibit A attached hereto (collectively, the "Real Properties", each a Real Property) and other collateral (all such collateral, with the Real Properties, collectively, the "Property").

WHEREAS, in response to certain defaults under the Loan Documents, including the judicial appointment of the Receiver for Guarantor and all entities formerly under the control of Guarantor, including, without limitation, the Borrowers, pursuant to that Stipulated Order Appointing Receiver (the "Appointment Order") also filed on behalf of Defendants Gary Dragul and GDA Real Estate Service, and GDA Real Estate Management LLC, Case Number 2018CV33011 (the "Receivership Action") filed August 30, 2018 at 8:27 AM in the District Court of Denver County, Colorado ("State Court") (collectively, the "Existing Defaults"), the Loan is currently in default, and Lender has the right to foreclose on the Property;

WHEREAS, Lender delivered written notices of default of the Loan to Receiver and the Borrower Parties (the "Default Notices"), and the Loan has been accruing interest at the default rate under the Loan Documents ("Default Interest") since August 31, 2018;



WHEREAS, Lender has agreed to forbear from exercising certain rights and remedies under the Loan Documents for a limited period of time subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants, conditions, and undertakings hereinafter set forth, and the incorporation of the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Receiver, the Borrower Parties and the Lender, intending to be legally bound, do hereby agree as follows:

A G R E E M E N T S:

1. **Recitals.** The foregoing Recitals are true and correct and are hereby adopted by the parties and incorporated herein and made a part of this Agreement.

2. **Acknowledgments.** The Receiver and the Borrower Parties acknowledge and agree with the Lender that:

2.1 The Borrower Parties are indebted to the Lender in the amount set forth in **Schedule 3** of this Agreement, plus any additional expenses, including legal fees and costs, incurred by the Lender (the "**Debt**"), and the Debt is now due and payable without offset, defense or counterclaim of any kind;

2.2 The existence of the Existing Defaults entitles the Lender to exercise and enforce any and all rights and remedies that the Lender may have under the Loan Documents, in respect of the Enforcement Action and/or under applicable law;

2.3 Partial releases of portions of the Property granted by the Lender from time to time during the existence of any default, among other things, do not constitute a waiver of any such default;

2.4 The Borrower Parties have entered into certain binding leases at the Property, as described on ~~Schedule 4-A~~, pursuant to which Borrower Parties have committed to the tenants thereunder, and to Lender, to complete certain tenant fit-out and capital improvements work required by such Leases and the Loan Agreements (the "**Work**"). Borrower Parties and the Receiver have requested that Lender, and Lender hereby agrees, provided that no Forbearance Termination Event has occurred, and the Funding Conditions (defined below) have been satisfied, to release funds deposited into the Development Reserves for all or a portion of the Work. The current budget for the Work (the "**Budget**") is attached to this Agreement as Schedule 4-B;

2.5 Lender holds a valid, perfected, first priority security interest, lien and mortgage against the Property;

2.6 Receiver shall not issue any Receiver's Certificates secured by the Property;

2.7 Receiver shall seek approval by the State Court of this Agreement within five (5) days after the Effective Date and shall obtain entry of an order by the State Court approving this Agreement, in a form acceptable to Lender, within fifteen (15) days after the Effective Date;

2.8 The Default Notices were properly delivered to Receiver and Borrower Parties;

2.9 As of August 31, 2018, the Loan has been accruing Default Interest and such Default Interest of fifteen (15%) per annum continues to accrue. In addition, Default Interest of fifteen (15%) per annum will accrue on any additional Advances under the Loan Documents, including with respect to the Work and the Budget. Notwithstanding the foregoing to the contrary, unless and until a Forbearance Termination Event occurs, such Default Interest shall be payable to Lender as follows: (i) Default Rate Interest at the rate of eight percent (8%) per annum (the "**Current Pay Default Interest**") shall be currently due and payable on each monthly Payment Date, and (ii) an additional Default Rate Interest at the rate of seven percent (7%) per annum (the "**Deferred Default Interest**") shall accrue and be added to the Debt and payable upon repayment of the Debt as and when the Transaction (as defined below) is closed;

2.10 To the extent that net cash flow from the Properties is insufficient to pay (or Lender does not receive) monthly interest at the Current Pay Default Rate to Lender, Lender shall continue to have the right to withdraw funds from the Interest Reserve to pay itself amounts due and owing under the Loan Documents pursuant to the terms and conditions in the Loan Documents, which amounts shall be added to the outstanding balance of the Loan and accrue interest in accordance with the Loan Documents and this Forbearance Agreement;

2.11 Receiver shall be entitled to collect and receive all rent payments from Tenants from the period relating to October 1, 2018 through and including November 30, 2018 relating to time periods prior to November 30, 2018 (the "**Receiver Rent Collection Period**"). From and after December 1, 2018 (the "**Lender Rent Collection Period**"), Lender shall be entitled to collect and apply such rents as set forth in Section 3.1 below. During the Receiver Rent Collection Period, (i) interest at the Default Rate (i.e. the current pay 8%) shall be paid to Lender by Receiver, to the extent of available cash flow the Properties after payment of operating expenses and the Receiver's Management Fee of four (4%), and (ii) Receiver shall send to Lender monthly written reconciliation reports with respect to rent collections and operating expenses relating to the Properties. During the Lender Rent Collection Period, Receiver shall deliver monthly written reconciliation reports to Lender, together with written draw requests to pay operating expenses (including the Receiver's Management Fee of four (4%)) and Lender shall remit funds to Receiver to pay such amounts after payment to Lender of then-due debt service at the Current Pay Default Rate;

2.12 So long as funds remain in the Development Reserve, such funds shall bear interest at a fixed rate of interest equal to three percent (3%), as set forth in the Loan Agreement;

2.13 Lender shall disburse funds from the Development Reserve to Receiver to pay for the Work, provided, that as a condition precedent to such funding (which funding will be made as soon as the Work commences), Receiver shall provide Lender executed amendments (which are in form and substance reasonably acceptable to Lender) to each of the Leases extending the completion/termination dates for completion of the Work by the landlord thereunder;

2.14 Lender will waive the collection of the Minimum Interest Amount. The unpaid portion of the Exit Fee, however, will continue to be due and owing as set forth in the Loan Agreement and will be part of the Debt; and

2.15 Paragraph 16 of the Appointment Order shall not be binding on Lender.

2.16 It shall be a material condition precedent to Lender's obligation to fund any future Advances as provided in Section 2.4 above, or otherwise, that the following requirements have been satisfied and remain in full force and effect without further modification unless consented to by Lender in writing (collectively, "**Funding Conditions**"):

(i) Borrowers (or the Receiver on its behalf) shall have entered into an amendment or modification to the Lease by and among Borrowers as Landlord and Tony's Meats Inc., a Colorado corporation, dated November 15, 2017 (the "**Tony's Meats Lease**") to confirm that the Tony's Meats Lease remains in full force and effect and which lease contain such terms and conditions acceptable to Lender, in its sole discretion, or in the alternative, Borrowers (or the Receiver on its behalf) shall have enter into a binding lease with replacement tenant(s) at the Property for the space currently encumbered by the Tony's Meats Lease on such terms and conditions acceptable to Lender, in its sole discretion;

(ii) the general contractor providing services to complete the Landlord Work has agreed in writing to re-mobilize at the Property and is otherwise ready to commence work at the Property pursuant to the general construction contract, to Lender's satisfaction in its sole discretion; and

(iii) all required permits and licenses necessary for construction of the Landlord Work shall not have lapsed, terminated, or been withdrawn, as determined in Lender's sole discretion.

3. **Agreements Concerning Lender's Actions.** The Receiver and the Borrower Parties agree that the Lender may take the following actions:

3.1 Notify all tenants of the Property to send their rent payments and other obligations relating to periods from and after December 1, 2018, directly to an account designated by, and controlled by, the Lender pursuant to the Tenant Direction Lender attached hereto as Schedule 5 and to collect such rents and payments, and to collect and apply such funds as set forth in Section 2.11 above;

3.2 Fund Advances (as defined in the Loan Documents) directly to contractors performing the Work; and

3.3 Hire and employ a construction consultant of Lender's choosing to monitor the progress of the Work.

The Receiver and the Borrower Parties further agree that so long as there are no material changes to the plans and/or construction contracts and/or Budget, neither the Receiver's nor any of the Borrower Parties' approval of any Advance shall be required, and neither the Receiver nor any of the Borrower Parties will prevent or otherwise adversely impact the pursuit of timely completion of the Work pursuant to the Budget, and/or Lender's continued funding of the Work. All Advances when made shall be deemed to be part of the Debt and continue to be secured by the Loan Documents.

4. **Agreements Concerning Receiver's and Borrower Parties' Actions.** The Receiver and the Borrower Parties agree that the Receiver and/or the Borrower Parties, as applicable, shall, no later than April 15, 2019, enter into a binding listing agreement for the Property for sale and/or refinance with an institutional sale or financing broker, the identity of whom, and the terms of such engagement being subject to the written approval of Lender. The Receiver and the Borrower Parties agree that the Receiver and/or the Borrower Parties, as applicable, shall, no later than August 30, 2019, (a) enter into a binding agreement to sell and/or refinance the Property, in a form acceptable to Lender, and with a buyer or lender who is acceptable to Lender which will yield net sale proceeds or net refinance proceeds, as the case may be, sufficient to repay the Debt in full (the "Transaction"), (b) obtain an order from the State Court approving such Transaction and (c) close such Transaction.

5. **Forbearances by the Lender.** Subject to the Receiver's and the Borrower Parties' compliance with the terms and conditions of this Agreement, the Lender agrees with the Receiver and the Borrower Parties as follows:

5.1 During the Forbearance Period, the Lender shall forbear from taking any action to consummate the exercise any remedies available to the Lender (each, an "Enforcement Action") based on the Existing Defaults. As used herein, the term "Forbearance Period" means the period commencing on the Effective Date and expiring on the earlier of (i) August 30, 2019 (the "Forbearance Outside Date") or (ii) the occurrence of any Forbearance Termination Event (hereinafter defined). Upon expiration or earlier termination of the Forbearance Period, the Lender shall have no further obligation to forbear from taking any Enforcement Action to collect the entire unpaid balance of the Debt and any unpaid interest, default interest, Deferred Default Interest, fees, charges, advances and expenses owing under the Loan Documents accruing from and after the

original date of the Existing Defaults or to otherwise pursue its rights and remedies under the Loan Documents. For the avoidance of doubt and without limitation, an Enforcement Action shall include a foreclosure sale.

5.2 The foregoing forbearances by the Lender shall not (i) apply to any other default by the Borrower Parties of any of their respective obligations under the Loan Documents other than the Existing Defaults, or (ii) prohibit the Lender from taking any necessary or appropriate actions, as determined by the Lender in its sole and absolute discretion, to preserve its rights or maintain its ability to exercise any available remedies in connection with the Existing Defaults under the Loan Documents, in respect of the Enforcement Action and/or under applicable law, including, without limitation, filing motions, pleadings or other documents to maintain the pending status of the Enforcement Action.

6. **Forbearance Termination Events.** The occurrence of any of the following events shall constitute a **"Forbearance Termination Event"** hereunder:

6.1 A breach or default by the Receiver or the Borrower Parties under any provision of this Agreement that is not cured within the applicable grace or cure period therefor, if any, including without limitation, the agreements and acknowledgements set forth in Sections 2,3, 4, 7, 8 and 9 of this Agreement;

6.2 Any of the Borrower Parties becomes the subject of a Bankruptcy Action (as defined below) other than the Receivership Action; and

6.3 Any of the Receiver or the Borrower Parties breach or default under any term or condition set forth in the Loan Documents (other than the express Existing Defaults for which this forbearance agreement relates).

6.4 The Funding Conditions, defined below, have not been fulfilled by January 15, 2019.

For purposes of this Agreement, the term **"Bankruptcy Action"** shall mean with respect to any Person (as hereinafter defined): (i) the commencement of any case, proceeding or other action on behalf of a Person under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (ii) the institution of proceedings to have a Person adjudicated as bankrupt or insolvent; (iii) consenting to the institution of bankruptcy or insolvency proceedings against a Person; (iv) the filing of a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of a Person of its debts under any federal or state law relating to bankruptcy or reorganization; (v) the seeking of or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or similar official for a Person or a substantial portion of its properties; or (vi) the making of any assignment for the benefit of a Person's creditors; or (vii) admitting in writing such Person's inability to pay its debts generally as they become due. The term **"Person"** shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Federal, state, county or municipal

government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

7. **Ongoing Property Obligations.** From and after the date of this Agreement, the Receiver or the Borrower Parties, as applicable, shall promptly and diligently operate the Property, maintain all insurance coverages required under the Loan Documents, and pay, or shall cause to be paid, the ad valorem property taxes due in respect of its Real Property for the 2018 calendar year and subsequent calendar years as and when due and shall promptly furnish the Lender with evidence of such payments, and shall otherwise comply with all of the terms and conditions of the Loan Documents. In order to facilitate payment of such operating expenses, insurance premiums and/or ad valorem property taxes for the Property, upon request from Receiver, together with evidence satisfactory to Lender of the applicable invoices to be paid, Lender shall agree to release such required funds to Receiver to the extent available from rents or other income received by Lender from tenants at the Property.

8. **Assurance of Future Non-Impairment and Protections in the Event of Any Future Bankruptcy Action.** The Receiver and Borrower Parties hereby further acknowledges, stipulates and agrees that in the event of any future Bankruptcy Action:

8.1.1 The Lender is under no obligation to consent to the use of cash collateral or to provide any additional credit support to the Borrower Parties or the Property, including with respect to advances for Work. Furthermore, the Lender shall be entitled to relief from the automatic stay of Section 362 of the Bankruptcy Code, which will not be opposed by the Receiver or Borrower Parties, and shall be entitled to exercise all of its available rights and remedies under the Loan Documents, including, without limitation, foreclosing on the Property; and

8.1.2 The Lender has no obligation to, and does not intend to agree to, accept any subsequent restructuring proposal or make any subsequent loans or other financial accommodations to any of the Borrower Parties. Each of the Borrower Parties acknowledges and agrees that the Lender's present objectives and goals may include, without limitation, insistence upon the full, timely and strict compliance with all terms and conditions of this Agreement and other Loan Documents, and a refusal to consider or accept any subsequent proposals for restructuring or further modifications of this Agreement or any of the other Loan Documents.

9. **Additional Agreements.**

9.1 Neither Receiver nor Borrower Parties shall contest any claim or assertion by the Lender that (a) the Loan Documents are enforceable, (b) the Loan is binding on the Borrower Parties and the Receiver, (c) valuable consideration has been received by the Borrower Parties and the Receiver for the Loan and the matters contemplated by the Loan Documents or (d) the Lender has enforceable, valid, first priority security interests, liens or mortgages against the Property.

9.2 Neither Receiver nor Borrower Parties shall, under any circumstances, resist, hinder or delay the Lender's enforcement of any rights and remedies the Lender may have under this Agreement and/or the other Loan Documents, including, without limitation, seeking in any state or federal court or any foreign tribunal an injunction or order that may stay or limit the Lender's enforcement of such rights and remedies.

9.3 Upon the Forbearance Outside Date, or early occurrence of a Forbearance Termination Event, the Lender, in consideration of its forbearance hereunder, shall be entitled to immediate relief from any stay or injunction under the Appointment Order, including Paragraph 26 of the Appointment Order, any other orders entered in connection with the Receivership Action or applicable law without the need for further order of the State Court and shall be entitled to immediately enforce any and all rights or remedies under the Loan Documents or applicable law without the need for further order of the State Court. Neither Receiver nor Borrower Parties shall contest any such automatic relief from any such stays or injunctions, neither Receiver nor Borrower Parties shall contest the Lender's exercise of such rights or remedies under the Loan Documents or applicable law, and neither Receiver nor Borrower Parties shall contest the extent, validity or priority of the Lender's security interests, liens or mortgages against the Property.

10. **Changes in Writing.** Neither this Agreement nor any of the provisions of this Agreement can be changed, waived, discharged, or terminated, except by an instrument in writing and signed by the parties.

11. **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be hand-delivered or mailed by certified or registered mail, postage prepaid, to the addresses set forth below. Any party may notify the other parties of a change of address by written notice thereof given in conformity with the provisions of this Section 19, at least ten (10) days prior to the effective date of such change. Any notice by certified or registered mail shall be deemed to have been given on the date of certification or registration thereof.

If to the Receiver:

Harvey Sender
Sender & Smiley, LLC
600 17th Street, Suite 2800 South
Denver, CO 80202
hsender@sendersmiley.com
303-454-0525

With a copy to:

Michael T. Gilbert
Attorney At Law
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202
mgilbert@allen-vellone.com
(720) 245-2406 | Direct
(303) 893-8332 | Fax

If to Lender:

AFF II Denver, LLC
2100 Powers Ferry Road, Suite 350
Atlanta, Georgia 30339
Attention: Dror Bezalel
Telephone: (770) 319-7408
Email: dbezalel@theardentcompanies.com

With a copy to:

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attention: Michael Baum
Telephone: (312) 456-8400
Email: baumm@gtlaw.com

If to the Borrower Parties:

Gary Dragul
c/o GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111
Attention: Gary Dragul
Telephone: (303) 221-5500
Email: gary@gdare.com

12. Miscellaneous.

12.1 Applicable Law. This Agreement shall be governed and interpreted under and construed according to the laws of the State of Colorado.

12.2 Legal Fees and Costs. In the event that it becomes necessary for the Lender to enforce any terms of this Agreement or in the event of any Enforcement Action with respect to the Loan, the Lender shall be entitled to reasonable attorneys' fees, costs, and any other reasonable costs incurred in connection therewith.

12.3 No Third Party Beneficiary. The provisions of this Agreement are intended to be solely for the benefit of the parties hereto, and are not intended to be, nor shall they be construed to be, for the benefit of any third party, except for the Lender's successors and assigns.

12.4 Entire Agreement. Along with the Loan Documents, this Agreement constitutes the entire agreement and understanding of the parties and their representatives, if any, with respect to the transactions contemplated hereby.

12.5 Schedules and Exhibits Incorporated. The Schedules and Exhibits attached hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body of this Agreement.

12.6 Successors and Assigns. All the terms, provisions, conditions, covenants, warranties, recitals, and statements of intention in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Lender's and the Borrower Parties' successors and assigns as their interests may appear, and to the Receiver and his legally appointed successors and assigns.

12.7 Severability and Construction. If any one or more of the provisions of this Agreement, or the application of any such provision to any person, entity, or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent at any time, the remainder of this Agreement, and the application of such provision to persons, entities, or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected, and shall continue to be enforceable to the fullest extent permitted by law. Any invalid, unlawful, or unenforceable provision of this Agreement shall be reformed to the extent necessary to render it valid, lawful, and enforceable in a manner consistent with the intentions of the parties hereto regarding such provision. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting or causing any instrument to be drafted. As used herein, the singular shall include the plural, unless the context otherwise requires.

12.8 Counterparts. This Agreement may be executed in counterparts and provided that each and every counterpart required to be joined to make a complete original is combined with all applicable counterparts, the combined counterparts shall constitute the original and, taken together, shall constitute one agreement of the parties.

12.9 No Waiver of Rights. No delay or omission by the Lender in exercising any right or power arising as a result of any default shall impair or restrict the Lender from subsequently proceeding, or be considered a waiver of any such right or remedy.

12.10 No Novation. This Agreement is not a novation or new extension of credit.

12.11 Statutes of Limitation. All applicable statutes of limitation or laches shall be tolled and shall not begin running until expiration or termination of the Forbearance Period.

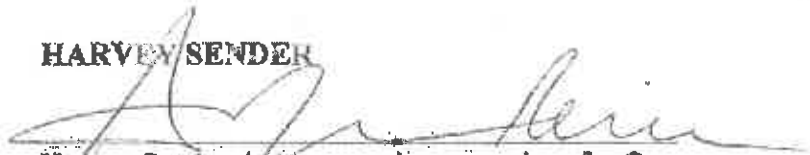
12.12 Capitalized Terms. Any reference to any capitalized terms to the extent not defined herein will have the meaning as set forth in the Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates set forth below.

[COUNTERPART SIGNATURE PAGES FOLLOW]

RECEIVER:

HARVEY SENDER



Harvey Sender, in his capacity as receiver for Gary Dragul and all entities formerly under the control of Gary Dragul, including the Borrowers

ACKNOWLEDGMENT
STATE OF Colorado

) ss.

County of: Denver

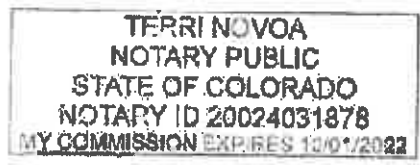
The foregoing instrument was acknowledged before me this 19 day of November, 2018, by Harvey Sender, in his capacity as receiver for Gary Dragul and all entities formerly under the control of Gary Dragul, including the Borrowers.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: Terrina

Printed name: Terri Novda

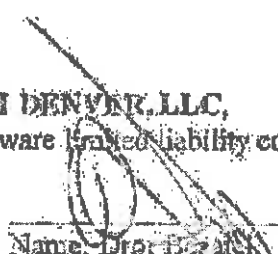
My commission expires: 10-01-2022



LENDER:

AFF II DENVER, LLC,
a Delaware limited liability company

By:


Name: Dror Bezael
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF Georgia)

) ss.

County of Colo)

The foregoing instrument was acknowledged before me this 10th day of November, 2018, by Dror Bezael, the Authorized Signatory of AFF II DENVER, LLC., a Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: 

Printed name: Sheri Walton

My commission expires: 3-21-21



Signature pages to Forbearance Agreement and Reaffirmation of Loan and Security Interests

BORROWER:

HAPPY CANYON BOX 17A, LLC,
a Delaware limited liability company

By:

Name:
Title:

Harvey Sanders
Receiver

ACKNOWLEDGMENT

STATE OF Colorado

) ss.

County of Denver

The foregoing instrument was acknowledged before me this 19 day of November, 2018,
by Harvey Sanders Receiver of HAPPY CANYON BOX 17A, LLC, a
Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: *TERRI NOVOA*

Printed name: TERRI NOVOA


My commission expires: 10.01.2022

TERRI NOVOA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID: 20024031878
MY COMMISSION EXPIRES 10/01/2022

BORROWER:

HAPPY CANYON BOX 17B, LLC,
a Delaware limited liability company

By:


Name: HARVEY SENDER
Title: RECEIVER

ACKNOWLEDGMENT

STATE OF Colorado

) ss.

County of Denver

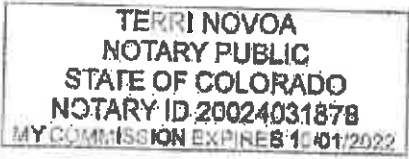
The foregoing instrument was acknowledged before me this 19 day of November, 2018,
by Harvey Sender, the Receiver of HAPPY CANYON BOX 17B, LLC., a
Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: TERRI NOVOA

Printed name: TERRI NOVOA

My commission expires: 10-01-2022



BORROWER:

HAPPY CANYON BOX 17C, LLC,
a Delaware limited liability company

By:

Name: Harvey Sender

Title: Receiver

ACKNOWLEDGMENT

STATE OF Colorado

) ss.

County of Denver

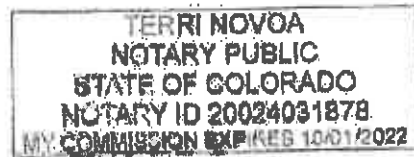
The foregoing instrument was acknowledged before me this 19 day of November, 2018,
by Harvey Sender the Receiver of HAPPY CANYON BOX 17C, LLC., a
Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: [Signature]

Printed name: Terri Novoa

My commission expires: 10.01.2022



Signature pages to Forbearance Agreement and Reaffirmation of Loan and Security Interests

BORROWER:

HC SHOPPES 18A, LLC,
a Delaware limited liability company

By:

Name:

Harley Sender

Title:

Receiver

ACKNOWLEDGMENT

STATE OF Colorado

) ss.

County of Denver

The foregoing instrument was acknowledged before me this 19 day of November, 2018, by Harley Sender the Receiver of HC SHOPPES 18A, LLC., a Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public:

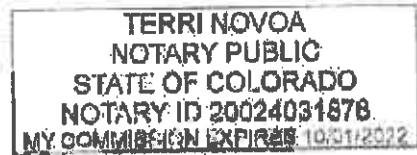
Terra Nova

Printed name:

Terra Nova

My commission expires:

10.01.2022



BORROWER:

HC SHOPPES 18B, LLC,
a Delaware limited liability company

By:

Name: HARVEY SENDAK
Title: RECEIVER

ACKNOWLEDGMENT

STATE OF Colorado

) ss.

County of Denver

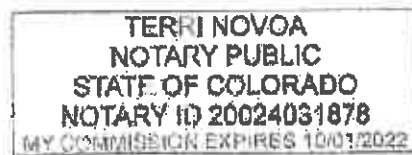
The foregoing instrument was acknowledged before me this 19 day of November, 2018, by Harvey Sendak the Receiver of HC SHOPPES 18B, LLC., a Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: [Signature]

Printed name: Terri Novoa

My commission expires: 10.01.2022



Signature pages to Forbearance Agreement and Reaffirmation of Loan and Security Interests

GUARANTOR:

GARY DRAGUL



ACKNOWLEDGMENT

STATE OF Colorado)

) ss.

County of Denver)

The foregoing instrument was acknowledged before me this 19 day of November, 2018, by ~~GARY DRAGUL~~ Harvey Sender as Receiver.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: 

Printed name: Terri Novoa

My commission expires: 10.01.2022

TERRI NOVOA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024031878
MY COMMISSION EXPIRES 10/01/2022

EXHIBIT A

REAL PROPERTY

MARKETPLACE

PARCEL 1:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;

THENCE SOUTH A DISTANCE OF 50.00 FEET;

THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;

THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;

THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;

THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;

THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING,
CITY AND COUNTY OF DENVER,

STATE OF COLORADO.

PARCEL 2:

THOSE CERTAIN EASEMENTS AS SET FORTH IN "HAPPY CANYON SHOPPING CENTER AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS" RECORDED MARCH 3, 2017, AS RECEPTION NO. 2017029949 IN THE PUBLIC RECORDS OF DENVER COUNTY, COLORADO.

THE SHOPPES

PARCEL ONE:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 264.79 FEET;
THENCE SOUTH A DISTANCE OF 64.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1984 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, COLORADO, BEING THE TRUE POINT OF BEGINNING;

THENCE EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 346.18 FEET TO A POINT ON THE WEST LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET;
THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 104.00 FEET;
THENCE NORTH ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 200.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 419.17 FEET TO THE NORTHWEST CORNER OF TRACT "A", BELMONT HEIGHTS SUBDIVISION FILING NO. 2, AS RECORDED IN BOOK 23 AT PAGE 18, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID TRACT "A" A DISTANCE OF 350.00 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF SAID SUBDIVISION;
THENCE SOUTH 44 DEGREES 31 MINUTES 32 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID SUBDIVISION, A DISTANCE OF 495.81 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET, AS MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1 IN BOOK 23 AT PAGE 10 IN THE OFFICES OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 742.06 FEET;
THENCE NORTH 00 DEGREES 03 MINUTES 55 SECONDS WEST ALONG THE EAST LINE OF STANDARD SERVICE STATION TRACT AS RECORDED IN BOOK 9476 AT PAGE 276 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, A DISTANCE OF 161.36 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING PROPERTY:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A

POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;

THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 350.00 FEET;

THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;

THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET,

THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;

THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING.

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL TWO:

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 6;

THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 6 A DISTANCE OF 265.00 FEET;

THENCE SOUTH TO A POINT ON THE CENTERLINE OF HAPPY CANYON ROAD;

THENCE NORTHWESTERLY ALONG THE CENTERLINE OF HAPPY CANYON ROAD TO THE POINT OF BEGINNING.

EXCEPT EXISTING RIGHTS OF WAY FOR PUBLIC ROADS,

EXCEPT THAT PORTION AS CONVEYED TO THE CITY AND COUNTY OF DENVER IN WARRANTY DEED RECORDED JUNE 22, 2015 AT RECEPTION NO. 2015022302.

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR ACCESS, PARKING, UTILITIES AND DRAINAGE CONTAINED IN THAT CERTAIN AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED MARCH 3, 2017 AT RECEPTION NO. 2017029949.

SCHEDULE 1

BORROWERS

BORROWERS (MARKETPLACE LOAN):

Happy Canyon Box 17 A, LLC, a Delaware limited liability company
Happy Canyon Box 17 B, LLC, a Delaware limited liability company
Happy Canyon Box 17 C, LLC, a Delaware limited liability company

BORROWERS (SHOPPES LOAN):

HC Shoppes 18 A, LLC, a Delaware limited liability company
HC Shoppes 18 B, LLC, a Delaware limited liability company

SCHEDULE 2

LOAN DOCUMENTS (INCLUDING SECURITY DOCUMENTS)

(NOTE: The inadvertent omission of any Loan Document from this Schedule is not intended as a release, discharge or satisfaction of such Loan Document. Loan Documents are released, discharged or satisfied ONLY by written instruments executed by the Lender, or by the predecessor holder thereof, identifying the particular Loan Document that is subject to the written instrument.)

MARKETPLACE LOAN Each are dated as of August 7, 2018, unless otherwise indicated:

1. Loan and Security Agreement by and among Borrowers and Lender
2. Promissory Note in the original principal amount of \$8,900,000.00
3. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, for the benefit of Lender
4. Guaranty of Payment from Gary Dragul for the benefit of Lender
5. Collateral Assignment of Project Documents
6. Subordination of Property Management Agreement
7. Hazardous Material Indemnity Agreement from Borrowers and Guarantor for the benefit of Lender
8. Post-Closing Letter
9. UCC-1 Financing Statements

Schedule 1 – Loan Documents

SHOPPES LOAN: *Each are dated as of July 27, 2018, unless otherwise indicated*

1. Loan and Security Agreement by and among Borrowers and Lender, as amended by First Amendment dated August 7, 2018
2. Promissory Note in the original principal amount of \$19,500,000.00
3. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, for the benefit of Lender, as amended by First Amendment to Deed of Trust dated August 7, 2018
4. Guaranty of Payment from Gary Dragul for the benefit of Lender
5. Collateral Assignment of Project Documents
6. Subordination of Property Management Agreement
7. Hazardous Material Indemnity Agreement from Borrowers and Guarantor for the benefit of Lender
8. Post-Closing Letter
9. UCC-1 Financing Statements

SCHEDULE 3

THE DEBT

As of September 15, 2018, the following is the outstanding debt owed by the Borrower Parties under the Marketplace Loan:

I. MARKETPLACE LOAN:

HAPPY CANYON BOX 17 A, LLC, a Delaware limited liability company
HAPPY CANYON BOX 17 B, LLC, a Delaware limited liability company
HAPPY CANYON BOX 17 C, LLC, a Delaware limited liability company

Marketplace:

Principal: \$4,031,331.00

Regular Interest: \$ 27,254.71

Default Interest: \$26,875.54

Plus Lender's Fees, expenses, enforcements costs and other charges and costs of Lender as permitted under the Loan Documents

II. SHOPPES LOAN:

As of September 15, 2018, the following is the outstanding debt owed by the Borrower Parties under the Shoppes Loan:

HC SHOPPES 18 A, LLC, a Delaware limited liability company
HC SHOPPES 18 B, LLC, a Delaware limited liability company

Principal - \$18,370,000

Interest - \$191,936.90

Default Interest \$122,466,67

Plus Lender's Fees, expenses, enforcements costs and other charges and costs of Lender as permitted under the Loan Documents

SCHEDULE 4-A

Pending/Executed Leases; Budget

1. Lease dated November __, 2017 by and between Happy Canyon Box 17A, LLC, Happy Canyon Box 17B, LLC and Happy Canyon Box 17C, LLC, as landlord, and DNVR Collective, as tenant with respect to a portion of the building located at 4960 East Hamden Avenue, Denver, CO;
2. Lease dated November __, 2017 by and between Happy Canyon Box 17A, LLC, Happy Canyon Box 17B, LLC and Happy Canyon Box 17C, LLC, as landlord, and Tony's Meats, Inc., as tenant with respect to a portion of the building located at 4960 East Hamden Avenue, Denver, CO, as amended by First Amendment to Lease dated May 1, 2018; and
3. Lease dated November __, 2017 by and between Happy Canyon Box 17A, LLC, Happy Canyon Box 17B, LLC and Happy Canyon Box 17C, LLC, as landlord, and A Jackson Enterprises, Inc. as tenant with respect to a portion of the building located at 4960 East Hamden Avenue, Denver, CO

SCHEDULE 4-B
Construction Budget

HAPPY CANYON MARKET - CONSTRUCTION BUDGET 10.15.18

Item	Quantity	Unit Price	Total Price	Notes
12" x 12" x 8' PA	127	\$ 7,860.00	\$ 1,000,260.00	
7,860.00			7,860.00	
3,734.00			3,734.00	
35,085.00			35,085.00	
11,150.00			11,150.00	
23,875.00			23,875.00	
25,000.00			25,000.00	
TOTAL PAID WORK	0	\$ 330,061.00	\$ 330,061.00	
231,703.89	\$	83,075.00	137,945.00	12,665.20
81,061.00			30,780.54	30,780.54
162,808.11			131,404.06	131,404.06
79,835.00				79,835.00
386,739.00		84,425.00		382,314.00
18,480.00		1,000.00		15,480.00
18,693.00		2,768.00		15,925.00
513.00				513.00
152,056.00				152,056.00
44,025.00				44,025.00
37,280.00				37,280.00
6,780.00				6,780.00
16,723.00				16,723.00
84,225.00				84,225.00
95,487.00				95,487.00
13,070.00				13,070.00
62,091.00				62,091.00
71,890.00				71,890.00
12,875.00				12,875.00
15,485.00				15,485.00
3,613.00				3,613.00
80,000.00		10,000.00		80,000.00
170,242.00			114,728.80	80,012.10
230,841.00			8,000.00	202,841.00
402,748.00	\$	4,325.00	81,808.00	314,421.00
51,178.00				31,178.00
89,748.00				89,748.00
58,199.00				58,199.00
14,283.76	\$	14,283.76		
10,215.76	\$	10,215.76		
5,000.00				5,000.00
TOTAL CORNER/CELL CONSTRUCTION	0	\$ 1,684,038.00	\$ 1,684,038.00	
119,975.00	\$	24,816.30	40,582.42	40,866.28
10,000.00				10,000.00
18,928.00		16,304.75	3,550.85	
144,904.00	\$	6,021.81	38,470.33	80,061.65
988,734.88	\$	48,448.87	182,819.00	118,997.98
TOTAL SIGNAGE	0	\$ 388,000.00	\$ 0	\$ 288,000.00
TOTAL SIGNAGE & PAID WORK	0	\$ 1,314,888.00	\$ 278,800.00	\$ 1,036,088.00
4,000.00				4,000.00
3,155.00				3,155.00
8,000.00		1,000.00		7,000.00
292,810.00		195,491.00	100,000.00	87,319.00
59,300.00		23,951.85		35,348.15
20,891.45		20,091.45	300.00	
TOTAL SIGNAGE & PAID WORK	0	\$ 482,000.00	\$ 182,000.00	\$ 300,000.00
242,000.00	\$	51,000.00	42,000.00	248,000.00
28,000.00				28,000.00
5,000.00				5,000.00
77,000.00				77,000.00
84,800.00				84,800.00
121,080.00				121,080.00
82,450.00				82,450.00
46,100.00				46,100.00
154,200.00				154,200.00
TOTAL SIGNAGE & PAID WORK	0	\$ 815,000.00	\$ 51,000.00	\$ 764,000.00
43,639.00			31,983.87	11,655.13
11,459.00				11,459.00
10,811.00				10,811.00
11,701.00				11,701.00
11,827.00				11,827.00
38,880.00				38,880.00
26,264.00				26,264.00
14,367.00				14,367.00
37,008.00				37,008.00
TOTAL SIGNAGE & PAID WORK	0	\$ 227,388.87	\$ 31,983.87	\$ 195,405.00
793,218.00				793,218.00
5,000.00				5,000.00
16,854.00				16,854.00
8,783.00				8,783.00
25,192.00				25,192.00
23,000.00				23,000.00
37,869.00				37,869.00
58,898.00				58,898.00
16,937.00				16,937.00
32,112.00				32,112.00
1,818.50				1,818.50
1,800.00				1,800.00
3,800.00				3,800.00
6,250.00				6,250.00
23,000.00				23,000.00
12,000.00				12,000.00
TOTAL SIGNAGE & PAID WORK	0	\$ 1,044,783.87	\$ 83,967.87	\$ 960,816.00
TOTAL BUDGET	0	\$ 1,314,888.00	\$ 278,800.00	\$ 1,036,088.00

HAPPY CANYON MARKET - CONSTRUCTION BUDGET 10.15.18

	11/27/18	11/27/18	11/27/18	11/27/18
Surfing	\$ 7,800.00	\$ 7,800.00	\$ 7,800.00	\$ 7,800.00
Amphib Paving	\$ 3,784.00	\$ 3,784.00	\$ 3,784.00	\$ 3,784.00
Concrete	\$ 35,685.00	\$ 35,685.00	\$ 35,685.00	\$ 35,685.00
Paint	\$ 11,190.00	\$ 11,190.00	\$ 11,190.00	\$ 11,190.00
Fire Alarm	\$ 28,875.00	\$ 28,875.00	\$ 28,875.00	\$ 28,875.00
Fire Alarm Allowance	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00
TOTAL DIRECT COSTS	\$ 120,041.80	\$ 120,041.80	\$ 120,041.80	\$ 120,041.80
Construction	\$ 252,705.89	\$ 81,075.00	\$ 187,945.89	\$ 13,885.29
Construction	\$ 81,561.08	\$ 30,780.34	\$ 50,780.74	\$ 30,780.34
Construction	\$ 262,808.11	\$ 321,404.05	\$ 181,404.05	\$ 181,404.05
Construction	\$ 79,839.00	\$ 79,839.00	\$ 79,839.00	\$ 79,839.00
Construction	\$ 988,759.00	\$ 84,415.00	\$ 804,344.00	\$ 144,415.00
Construction	\$ 18,480.00	\$ 2,000.00	\$ 16,480.00	\$ 2,000.00
Construction	\$ 18,480.00	\$ 2,788.00	\$ 15,692.00	\$ 2,788.00
Construction	\$ 818.00	\$ 818.00	\$ 818.00	\$ 818.00
Construction	\$ 152,026.00	\$ 152,026.00	\$ 152,026.00	\$ 152,026.00
Construction	\$ 44,025.00	\$ 44,025.00	\$ 44,025.00	\$ 44,025.00
Construction	\$ 37,280.00	\$ 37,280.00	\$ 37,280.00	\$ 37,280.00
Construction	\$ 4,280.00	\$ 4,280.00	\$ 4,280.00	\$ 4,280.00
Construction	\$ 18,728.00	\$ 18,728.00	\$ 18,728.00	\$ 18,728.00
Construction	\$ 54,223.00	\$ 54,223.00	\$ 54,223.00	\$ 54,223.00
Construction	\$ 59,487.00	\$ 59,487.00	\$ 59,487.00	\$ 59,487.00
Construction	\$ 18,070.00	\$ 18,070.00	\$ 18,070.00	\$ 18,070.00
Construction	\$ 62,051.00	\$ 62,051.00	\$ 62,051.00	\$ 62,051.00
Construction	\$ 71,850.00	\$ 71,850.00	\$ 71,850.00	\$ 71,850.00
Construction	\$ 18,875.00	\$ 18,875.00	\$ 18,875.00	\$ 18,875.00
Construction	\$ 18,485.00	\$ 18,485.00	\$ 18,485.00	\$ 18,485.00
Construction	\$ 3,618.00	\$ 3,618.00	\$ 3,618.00	\$ 3,618.00
Construction	\$ 90,000.00	\$ 10,000.00	\$ 80,000.00	\$ 10,000.00
Construction	\$ 230,245.00	\$ 114,238.80	\$ 116,006.20	\$ 114,238.80
Construction	\$ 210,845.00	\$ 8,000.00	\$ 202,845.00	\$ 8,000.00
Construction	\$ 401,748.00	\$ 6,523.00	\$ 395,225.00	\$ 6,523.00
Construction	\$ 31,378.00	\$ 31,378.00	\$ 31,378.00	\$ 31,378.00
Construction	\$ 95,748.00	\$ 95,748.00	\$ 95,748.00	\$ 95,748.00
Construction	\$ 58,195.00	\$ 58,195.00	\$ 58,195.00	\$ 58,195.00
Construction	\$ 14,285.76	\$ 14,285.76	\$ 14,285.76	\$ 14,285.76
Construction	\$ 10,215.76	\$ 10,215.76	\$ 10,215.76	\$ 10,215.76
Construction	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
TOTAL INDIRECT COSTS	\$ 2,484,888.68	\$ 154,089.32	\$ 2,330,799.36	\$ 154,089.32
GRAND TOTAL BUDGET	\$ 4,684,930.48	\$ 174,131.12	\$ 4,510,799.36	\$ 264,174.62
Construction	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
Construction	\$ 3,155.00	\$ 3,155.00	\$ 3,155.00	\$ 3,155.00
Construction	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
Construction	\$ 380,810.00	\$ 189,401.00	\$ 191,409.00	\$ 189,401.00
Construction	\$ 28,300.00	\$ 28,300.00	\$ 28,300.00	\$ 28,300.00
Construction	\$ 20,892.48	\$ 20,892.48	\$ 20,892.48	\$ 20,892.48
TOTAL DIRECT COSTS	\$ 409,258.48	\$ 242,844.88	\$ 166,201.48	\$ 242,844.88
Construction	\$ 342,000.00	\$ 31,000.00	\$ 311,000.00	\$ 31,000.00
Construction	\$ 28,000.00	\$ 28,000.00	\$ 28,000.00	\$ 28,000.00
Construction	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Construction	\$ 71,830.00	\$ 71,830.00	\$ 71,830.00	\$ 71,830.00
Construction	\$ 84,800.00	\$ 84,800.00	\$ 84,800.00	\$ 84,800.00
Construction	\$ 121,000.00	\$ 121,000.00	\$ 121,000.00	\$ 121,000.00
Construction	\$ 82,480.00	\$ 82,480.00	\$ 82,480.00	\$ 82,480.00
Construction	\$ 45,100.00	\$ 45,100.00	\$ 45,100.00	\$ 45,100.00
Construction	\$ 154,200.00	\$ 154,200.00	\$ 154,200.00	\$ 154,200.00
TOTAL DIRECT COSTS	\$ 988,330.00	\$ 81,000.00	\$ 907,330.00	\$ 81,000.00
Construction	\$ 43,838.00	\$ 43,838.00	\$ 43,838.00	\$ 43,838.00
Construction	\$ 11,455.00	\$ 11,455.00	\$ 11,455.00	\$ 11,455.00
Construction	\$ 10,831.00	\$ 10,831.00	\$ 10,831.00	\$ 10,831.00
Construction	\$ 11,704.00	\$ 11,704.00	\$ 11,704.00	\$ 11,704.00
Construction	\$ 18,327.00	\$ 18,327.00	\$ 18,327.00	\$ 18,327.00
Construction	\$ 88,580.00	\$ 88,580.00	\$ 88,580.00	\$ 88,580.00
Construction	\$ 28,284.00	\$ 28,284.00	\$ 28,284.00	\$ 28,284.00
Construction	\$ 14,887.00	\$ 14,887.00	\$ 14,887.00	\$ 14,887.00
Construction	\$ 37,808.00	\$ 37,808.00	\$ 37,808.00	\$ 37,808.00
TOTAL DIRECT COSTS	\$ 279,288.00	\$ 279,288.00	\$ 279,288.00	\$ 279,288.00
Construction	\$ 792,218.00	\$ 792,218.00	\$ 792,218.00	\$ 792,218.00
Construction	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
Construction	\$ 16,834.00	\$ 16,834.00	\$ 16,834.00	\$ 16,834.00
Construction	\$ 3,732.00	\$ 3,732.00	\$ 3,732.00	\$ 3,732.00
Construction	\$ 25,182.00	\$ 25,182.00	\$ 25,182.00	\$ 25,182.00
Construction	\$ 22,000.00	\$ 22,000.00	\$ 22,000.00	\$ 22,000.00
Construction	\$ 37,889.00	\$ 37,889.00	\$ 37,889.00	\$ 37,889.00
Construction	\$ 53,888.00	\$ 53,888.00	\$ 53,888.00	\$ 53,888.00
Construction	\$ 16,587.00	\$ 16,587.00	\$ 16,587.00	\$ 16,587.00
Construction	\$ 22,112.00	\$ 22,112.00	\$ 22,112.00	\$ 22,112.00
Construction	\$ 1,819.50	\$ 1,819.50	\$ 1,819.50	\$ 1,819.50
Construction	\$ 1,300.00	\$ 1,300.00	\$ 1,300.00	\$ 1,300.00
Construction	\$ 3,800.00	\$ 3,800.00	\$ 3,800.00	\$ 3,800.00
Construction	\$ 28,000.00	\$ 28,000.00	\$ 28,000.00	\$ 28,000.00
Construction	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00
TOTAL DIRECT COSTS	\$ 1,084,701.80	\$ 1,084,701.80	\$ 1,084,701.80	\$ 1,084,701.80
GRAND TOTAL BUDGET	\$ 5,769,632.28	\$ 447,264.92	\$ 5,322,367.36	\$ 447,264.92

Happy Canyon Market	\$ 911,200.00
Leasing Construction	\$ 62,781.00
Other Construction	\$ 249,140.25
Total Construction	\$ 1,223,121.25

Schedule 5
FORM OF TENANT DIRECTION LETTER

[RECEIVER'S LETTERHEAD]

Notice to Tenants

_____, 2018

[Tenants under Leases]

Re: Lease dated _____ between Happy Canyon Box 17 A, LLC, Happy Canyon Box 17 B, LLC and Happy Canyon Box 17 C, LLC, as Landlord, and _____, as Tenant, concerning premises known as _____, Denver, Colorado.

Ladies and Gentlemen:

This letter shall constitute notice to you that the Landlord has granted a security interest in the captioned lease and all rents, additional rent and all other monetary obligations to landlord thereunder (collectively, "Rent") to **AFF II Denver, LLC**, a Delaware limited liability company, as lender ("Lender"), to secure certain of the undersigned's obligations to Lender.

The undersigned has been appointed Receiver for the Landlord pursuant to a that Stipulated Order Appointing Receiver filed on behalf of Defendants Gary Dragul and GDA Real Estate Service and GDA Real Estate Management LLC, Case Number 2018CV33011 filed August 30, 2018 in the District Court of Denver County, Colorado.

The undersigned hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with Rent and hereafter to deliver all Rent to the following address:

AFF II Denver, LLC-Rent
2100 Powers Ferry Road
Suite 350
Atlanta, GA 30339

Account #: 1000258846
Routing #: 061104123

Bank:
State Bank & Trust Company
415 East Paces Ferry Road
Atlanta, GA 30305

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to you rescind the instructions contained herein.

Should you have any questions or concerns regarding this direction letter, or the appointment of the undersigned as Receiver for the Properties, please do not hesitate to contact the undersigned, c/o Sender & Smiley, Attn.: Harvey Sender @ 303-454-0525.

Sincerely,

[RECEIVER]

By: _____

The undersigned hereby acknowledges and consents to the foregoing tenant direction letters:

[NTD: insert proper borrower]

BORROWER: HAPPY CANYON BOX 17A, LLC,
a Delaware limited liability company

By:
Name:
Title: