**INTEREST RATE CAP RESERVE AND SECURITY AGREEMENT**

**(Full Term Cap)**

**(Co-Tenants – Single Cap Purchaser)**

This INTEREST RATE CAP RESERVE AND SECURITY AGREEMENT (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is by and among (a) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (individually and collectively, “**Borrower**”) **[DRAFTING NOTE: INSERT ALL BORROWERS]**, (b) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Grantor**”), and (c)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

**RECITALS:**

1. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower in the original principal amount of $\_\_\_\_\_\_\_\_\_ (the “**Mortgage Loan**”), as evidenced by, among other things, that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”).
2. In addition to the Loan Agreement, the Mortgage Loan and the Note are also secured by a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”), dated as of even date herewith, granting a lien on certain real property located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Mortgaged** **Property**”).
3. Lender requires and Grantor has agreed on behalf of Borrower to acquire, maintain and pledge to Lender an Interest Rate Cap (as defined below), pursuant to an interest rate cap agreement, in order to provide additional support and collateral for Borrower’s obligations to Lender under the Loan Agreement and other Loan Documents (as defined in the Loan Agreement).
4. Borrower is comprised of, and the Mortgaged Property is owned by, \_\_\_\_\_\_\_\_\_ (\_\_\_) **[DRAFTING NOTE: INSERT NUMBER OF CO-TENANTS]** Co-Tenants. All references to Borrower hereunder shall be deemed to mean all Co-Tenants.
5. Grantor is one of the Co-Tenants comprising Borrower under the Mortgage Loan and is the Co-Tenant Representative (as defined in the Loan Agreement) with respect to the Mortgage Loan.
6. Grantor, Borrower, and Lender are entering into this Agreement to (i) evidence Borrower’s obligation to maintain an Interest Rate Cap for the entire term of the Mortgage Loan and (ii) provide further security for Borrower’s obligations under the Loan Documents.

NOW, THEREFORE, in consideration of the above and the mutual promises contained in this Agreement and for other valuable consideration, including Lender’s making the Mortgage Loan to Borrower, the receipt and sufficiency of which are acknowledged, Borrower, Grantor, and Lender agree as follows:

# DEFINITIONS; RULES OF CONSTRUCTION

## Recitals.

The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Agreement.

## Defined Terms.

Capitalized terms used and not specifically defined herein shall have the meanings given to such terms in the Loan Agreement. Unless otherwise defined in this Agreement, terms used in this Agreement that are defined in the UCC shall have the meaning given those terms in the UCC. The following terms in this Agreement shall have the following meanings:

“**Actual Purchased Strike Rate**” means the actual strike rate for the Interest Rate Cap required pursuant to this Agreement which must not exceed the Required Strike Rate.

“**Collateral**” means the items listed in Section 3.01(a) through Section 3.01(g) of this Agreement.

“**Collateral Liens**” means any lien, security interest, option or other charge or encumbrance.

“**Counterparty**” means (a) an interest rate cap provider acceptable to Lender under the Interest Rate Cap Documents, or (b) a counterparty on any list of acceptable counterparties for interest rate caps of the type required by this Agreement maintained by Lender, as any such list may be modified by Lender from time to time.

“**Event of Default**” has the meaning set forth in Section 6.01 of this Agreement.

“**Interest Rate Cap**” means the interest rate cap purchased by Grantor and pledged to Lender as collateral support for the Mortgage Loan.

“**Interest Rate Cap Term**” means the period during which the Interest Rate Cap shall be in effect, beginning on or prior to the Effective Date and terminating not earlier than the Maturity Date.

“**Interest Rate Cap Documents**” means the rate cap agreements and related documentation in form and content acceptable to Lender.

“**Payments**” means any and all moneys payable to Borrower or Grantor, from time to time, pursuant to the Interest Rate Cap Documents by the Counterparty, held in the course of payment or collection by Lender, or otherwise.

“**Required** **Strike Rate**” means \_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_%). [**DRAFTING NOTE: FOR A MORTGAGE LOAN WITH A PARTIAL INTEREST-ONLY TERM THE AMORTIZING STRIKE RATE MUST BE USED**]

“**UCC**” means the applicable Uniform Commercial Code.

# TERMS OF INTEREST RATE CAP

## General Terms.

To protect against fluctuations in interest rates during the term of the Mortgage Loan, Grantor or Borrower shall make arrangements for an Interest Rate Cap to be in place and maintained at all times with respect to the Mortgage Loan in accordance with the following terms and conditions:

* + 1. **Term.**

The Interest Rate Cap shall be in effect for the Interest Rate Cap Term.

* + 1. **Notional Amount.**

The notional amount of the Interest Rate Cap shall be equal to the original principal balance of the Mortgage Loan for the entire term of the Interest Rate Cap. Unless otherwise agreed by Lender, the notional amount of the Interest Rate Cap shall not amortize over its term.

* + 1. **Strike Rate.**

The Actual Purchased Strike Rate for the Interest Rate Cap shall be equal to or less than the Required Strike Rate.

* + 1. **Interest Rate Cap Documents and Counterparty.**

The Interest Rate Cap shall be evidenced, governed and secured on terms and conditions pursuant to Interest Rate Cap Documents between Grantor and the Counterparty.

## Payments Made under Interest Rate Cap.

The Interest Rate Cap Documents shall require the Counterparty to make all payments due under the Interest Rate Cap directly to Lender for so long as the Interest Rate Cap is subject to the pledge established hereunder. Such payments will be paid over to Borrower or Grantor only if  there is no Event of Default, and  Lender has received payment in full for all amounts due on the Mortgage Loan as required by the Loan Documents.

## Rights and Remedies under Interest Rate Cap Documents.

For so long as the Interest Rate Cap is pledged as collateral for the Mortgage Loan pursuant to the terms of this Agreement, Grantor or Borrower shall not exercise any right or remedy under any Interest Rate Cap Documents without Lender’s prior written consent and shall exercise its rights and remedies under the Interest Rate Cap Documents as directed by Lender in writing. Rights and remedies under the Interest Rate Cap Documents include, but are not limited to, any right to designate an “Early Termination Date” or otherwise terminate the Interest Rate Cap due to the occurrence of a “Termination Event,” an “Additional Termination Event” or an “Event of Default.” All capitalized terms appearing in this Section 2.03 in quotation marks are used as defined in the Interest Rate Cap Documents.

## Termination of Interest Rate Cap.

Grantor or Borrower shall not terminate, transfer or consent to any transfer of any existing Interest Rate Cap without Lender’s prior written consent; provided, however, that if, and at such time as any amounts due and owing on the Mortgage Loan as required by the Loan Documents are paid in full or if the Mortgage Loan is converted to a fixed rate of interest, Grantor or Borrower shall have the right to terminate the existing Interest Rate Cap in accordance with Section 7.02 of this Agreement. If the Interest Rate Cap unexpectedly and unavoidably **terminates or terminates for any reason on a date other than its scheduled expiration date without the prior written consent of Lender, Grantor or Borrower shall, within ten (10) Business Days of such termination, obtain a replacement Interest Rate Cap satisfying the requirements of this Agreement. Any failure to obtain such replacement Interest Rate Cap within such ten (10) Business Day period shall be an Event of Default under Section 14.01(a) of the Loan Agreement.**

# SECURITY INTEREST IN COLLATERAL; FURTHER ASSURANCES

## Security Interest in Collateral.

As security for the Indebtedness, Grantor or Borrower (as applicable) hereby grants to Lender, its successors and assigns, a lien and continuing security interest in all of Grantor’s or Borrower’s (as applicable) right, title and interest in and to the following Collateral whether now owned or hereafter acquired:

* + 1. the Interest Rate Cap and the Interest Rate Cap Documents representing the Interest Rate Cap;
		2. any and all Payments;
		3. all rights, liens and security interests or guarantees now existing or hereafter granted by the Counterparty or any other person to secure or guaranty payment of the Payments due pursuant to the Interest Rate Cap Documents;
		4. all rights of Grantor or Borrower under any of the foregoing, including all rights of Grantor or Borrower to the Payments, contract rights and general intangibles now existing or hereafter arising with respect to any or all of the foregoing;
		5. all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter arising;
		6. all extensions, renewals and replacements of the foregoing; and
		7. all cash and non‑cash proceeds and products of any of the foregoing, including, without limitation, interest, dividends, cash, instruments, proceeds of any insurance, and other property from time to time received, receivable or otherwise distributed or distributable in respect of or in exchange for any or all of the foregoing.

TO HAVE AND TO HOLD the Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto Lender, its successors and assigns, forever, subject, however, to the terms, covenants and conditions herein set forth. Borrower and Grantor hereby authorize Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest in the Collateral and Borrower and Grantor agree, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require.

## Further Assurances.

At any time and from time to time, at the expense of Borrower, Grantor or Borrower shall promptly give, execute, deliver, file and record any notice, statement, instrument, document, agreement or other paper and do such other acts and things that may be necessary, or that Lender may request, in order to perfect, continue and protect any security interest granted or purported to be granted by this Agreement or to enable Lender to exercise and enforce its rights and remedies under this Agreement.

## Competing Security Arrangements.

Grantor and Borrower shall not execute, file, permit to be filed or suffer to remain on file in any jurisdiction any security agreement, financing statement or like agreement or instrument with respect to the Collateral, or any part of the Collateral, naming anyone other than Lender as the secured party. Grantor and Borrower shall not sell, exchange or transfer or otherwise dispose of any of the Collateral, or any interest in the Collateral, other than any security interest or other lien in favor of Lender.

## No Change.

Neither Grantor nor Borrower will voluntarily or involuntarily change its principal place of business, chief executive office, name or identity, without at least thirty (30) days prior written notice to Lender, except in the event of a change in principal place of business or chief executive office necessitated by fire, flood or other calamity, in which case such notice shall be provided as soon as practicable.

## Defense of Collateral.

Grantor and Borrower will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest in the Collateral.

# DELIVERY OF INTEREST RATE CAP DOCUMENTS

## Acquisition of Interest Rate Cap; Delivery of Interest Rate Cap Documents.

Grantor or Borrower, as applicable, has, on or before the date of this Agreement, executed and delivered the Interest Rate Cap Documents representing the Interest Rate Cap to the Counterparty and has delivered to Lender fully executed originals of such Interest Rate Cap Documents.

## Obligations Remain Absolute.

Nothing contained herein shall relieve Borrower of its primary obligation to pay all amounts due in respect of its obligations on the Mortgage Loan as required by the Loan Documents.

## Consent to Co-Tenant Representative; Replacement Grantor.

* + 1. Each other Co-Tenant hereby authorizes Co-Tenant Representative to enter into this Agreement and any Supplemental Agreement on behalf of all Co-Tenants comprising Borrower.
		2. No Co-Tenant shall dispute the authorization, execution, or enforceability of this Agreement or any replacement interest rate cap reserve and security agreement or Supplemental Agreement executed by the Co-Tenant Representative on behalf of all Co-Tenants pursuant to the Tenancy-in-Common Agreement or this Agreement.
		3. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, Lender shall have the right to approve any replacement Grantor under this Agreement. In addition, it shall be a condition precedent to any Transfer by the Grantor (as Co-Tenant Representative) of all of its interests in the Mortgaged Property or any other replacement of Grantor by another Co-Tenant that such Grantor (as Co-Tenant Representative) shall appoint a replacement Co-Tenant Representative in accordance with the Tenancy in Common Agreement, and the Co-Tenant Representative shall assume the existing Interest Rate Cap and this Agreement or purchase a replacement Interest Rate Cap and execute and deliver a replacement Interest Rate Cap Documents and a new Interest Rate Cap Reserve and Security Agreement, each in a form acceptable to Lender.

# REPRESENTATIONS AND WARRANTIES; covenants

## Representations and Warranties of Grantor and Borrower.

Grantor and Borrower each represents and warrants to Lender that:

* + 1. Grantor has paid to the Counterparty the entire cost of the Interest Rate Cap;
		2. the individuals who are signing and delivering this Agreement on behalf of Grantor or Borrower have been duly authorized to do so in accordance with the documents and instruments pursuant to which Grantor or Borrower is organized and which govern the conduct of Grantor’s or Borrower’s business;
		3. no consent of any other person or entity and no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required or will be required  for the pledge by Grantor or Borrower of the Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Grantor or Borrower (other than the consent of the Counterparty where such consent has been obtained),  for the perfection or maintenance of the security interest created hereby (including the first priority nature of such security interest) other than the filing of any financing statement as may be required by the UCC, or  for the execution, delivery or performance of this Agreement by Grantor or Borrower;
		4. there are no conditions precedent to the effectiveness of this Agreement or the effectiveness of the Interest Rate Cap that have not been satisfied or waived;
		5. the execution and delivery of this Agreement, the performance by Grantor or Borrower of its obligations under this Agreement, and the consummation of the transactions contemplated by this Agreement, do not  conflict with any provision of the organizational documents of Grantor or Borrower,  conflict with, result in a breach of, or constitute a default (or an event which would, with the passage of time or the giving of notice or both, constitute a default) under, or give rise to a right to terminate, amend, modify, abandon or accelerate, any contract, agreement, promissory note, lease, indenture, instrument or license to which Grantor or Borrower is a party or by which Grantor’s or Borrower’s assets or properties may be bound or affected,  violate or conflict with any federal, state or local law, statute, ordinance, rule, regulation, order, judgment, decree or arbitration award which is either applicable to, binding upon or enforceable against Grantor or Borrower,  result in or require the creation or imposition of any Collateral Liens upon or with respect to the Collateral, other than Collateral Liens in favor of Lender,  violate any legally protected right of any Person or give to any Person a right or claim against Grantor or Borrower, or  require the consent, approval, order or authorization of, or the registration, declaration or filing (except to the extent that the filing of financing statements may be applicable) with, any federal, state or local government entity;
		6. the Counterparty has consented to Borrower’s (or Grantor’s, as applicable) pledge of its rights and interests in the Interest Rate Cap to Lender as security for the Mortgage Loan;
		7. Grantor or Borrower, as applicable, is the sole legal and beneficial owner of, and has and will have good and marketable title to (and has full right and authority to pledge and assign), the Collateral, free and clear of all Collateral Liens (other than in favor of Lender), all fiduciary obligations of any kind and any adverse claim of title thereto and the Collateral is not subject to any offset, right of redemption, defense or counterclaim of a third party;
		8. there is no additional security for or any other arrangements or agreements relating to the Interest Rate Cap Documents representing the Interest Rate Cap, except as may have been disclosed to Lender in writing;
		9. the security interest of Lender in the Collateral is, or when it attaches shall be, a first priority and perfected security interest. No financing statement covering the Collateral, or any part of the Collateral (other than any financing statement naming only Lender as the secured party), is outstanding or is on file in any public office for indebtedness or other obligation that has not been fully repaid and satisfied and for which the secured party listed therein has any claim to or lien on the Collateral;
		10. each of Grantor and Borrower is qualified to transact business and is in good standing in the state in which it is formed or organized, the Property Jurisdiction (with respect to Borrower) and in each other jurisdiction that qualification or standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to be so qualified or in good standing would adversely affect Borrower’s operation of the Mortgaged Property or the validity, enforceability or the ability of Grantor or Borrower to perform its obligations under this Agreement or any other Loan Document; and
		11. neither Grantor nor Borrower has commenced (within the meaning of any Insolvency Laws) a voluntary case, consented to the entry of an order for relief against it in an involuntary case, or consented to the appointment of a receiver or custodian of it or for any part of its property, nor shall a court of competent jurisdiction have entered an order or decree under any Insolvency Law that is for relief against it in an involuntary case or appointed a receiver or custodian for Grantor or Borrower or any part of its property.

## Covenants of Grantor and Borrower.

Grantor and Borrower each hereby covenants to Lender that:

* + 1. no consent of any other person or entity and no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body will be required  for the pledge by Borrower or Grantor (on behalf of Borrower) of the Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Grantor or Borrower (other than the consent of the Counterparty where such consent has been obtained),  for the perfection or maintenance of the security interest created hereby (including the first priority nature of such security interest) other than the filing of any financing statement as may be required by the UCC, or  for the performance of this Agreement by Grantor or Borrower;
		2. neither the performance by Grantor or Borrower of its obligations under this Agreement, nor the consummation of the transactions contemplated by this Agreement, will  conflict with any provision of the organizational documents of Grantor or Borrower,  conflict with, result in a breach of, or constitute a default (or an event which would, with the passage of time or the giving of notice or both, constitute a default) under, or give rise to a right to terminate, amend, modify, abandon or accelerate, any contract, agreement, promissory note, lease, indenture, instrument or license to which Grantor or Borrower is a party or by which Grantor’s or Borrower’s assets or properties may be bound or affected,  violate or conflict with any federal, state or local law, statute, ordinance, rule, regulation, order, judgment, decree or arbitration award which is either applicable to, binding upon or enforceable against Grantor or Borrower,  result in or require the creation or imposition of any Collateral Liens upon or with respect to the Collateral, other than Collateral Liens in favor of Lender,  violate any legally protected right of any Person or give to any Person a right or claim against Grantor or Borrower, or  require the consent, approval, order or authorization of, or the registration, declaration or filing (except to the extent that the filing of financing statements may be applicable) with, any federal, state or local government entity;
		3. Grantor or Borrower, as applicable, shall remain the sole legal and beneficial owner of, and shall have good and marketable title to (and has full right and authority to pledge and assign), the Collateral, free and clear of all Collateral Liens (other than in favor of Lender), all fiduciary obligations of any kind and any adverse claim of title thereto, and such Collateral shall not be subject to any offset, right of redemption, defense or counterclaim of a third party;
		4. there shall be no additional security for or any other arrangements or agreements relating to the Interest Rate Cap Documents, except as may have been disclosed to, and approved by, Lender in writing;
		5. the security interest of Lender in the Collateral when it attaches shall be at all times a first priority and perfected security interest. No financing statement covering the Collateral, or any part of the Collateral (other than any financing statement naming only Lender as the secured party) shall be outstanding or on file in any public office for indebtedness or other obligation that has not been fully repaid and satisfied and for which the secured party listed therein has any claim to or lien on the Collateral; and
		6. each Grantor and Borrower shall remain qualified to transact business and in good standing in the state in which it is formed or organized, the Property Jurisdiction (with respect to Borrower) and in each other jurisdiction that qualification or standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to be so qualified or in good standing would adversely affect Borrower’s operation of the Mortgaged Property or the validity, enforceability or the ability of Borrower or Grantor to perform its obligations under this Agreement or any other Loan Document.

# EVENTS OF DEFAULT; RIGHTS AND REMEDIES

## Event of Default.

The occurrence of any one or more of the following events shall constitute an “**Event of Default**” under this Agreement and the Loan Agreement:

* + 1. the failure by Grantor or Borrower to observe and perform any duty, obligation or covenant required to be observed or performed by this Agreement subject to any applicable notice and cure rights provided in this Agreement or the Loan Agreement;
		2. any representation or warranty on the part of Grantor or Borrower contained in this Agreement or repeated and reaffirmed in this Agreement proves to be false, inaccurate, or misleading in any material respect when made or deemed made; and
		3. the occurrence of any other Event of Default under any Loan Document.

## Remedies on Default.

If any Event of Default under this Agreement has occurred and is continuing:

* + 1. At the direction of Lender, Grantor or Borrower shall deliver all Collateral to Lender or its designee;
		2. Lender may, without further notice, exercise all rights, privileges or options pertaining to the Collateral as if Lender were the absolute owner of such Collateral, upon such terms and conditions as Lender may determine, all without liability except to account for property actually received by Lender, and Lender shall have no duty to exercise any of those rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing; and
		3. Lender may, subject to the terms of the Interest Rate Cap Documents, exercise in respect of the Collateral, in addition to other rights and remedies provided for in this Agreement or otherwise available to it, all of the rights and remedies of a secured party under the UCC and also may, without notice except as specified below, sell the Collateral at public or private sale, at any of the offices of Lender or elsewhere, for cash, on credit or for future delivery, and upon such other terms as may be commercially reasonable. Grantor and Borrower agree that, to the extent notice of sale shall be required by applicable law, at least ten (10) days prior notice to Grantor or Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. In case of any sale by Lender of any of the Collateral, the Collateral so sold may be retained by Lender until the selling price is paid by the purchaser, but Lender shall not incur any liability in case of failure of the purchaser to take up and pay for the Collateral so sold. In case of any such failure, such Collateral so sold may be again similarly sold.

The foregoing rights and remedies  shall be cumulative and concurrent,  may be pursued separately, successively or concurrently against Grantor or Borrower and any other party obligated for the Indebtedness, or against the Collateral, or any other security for the Indebtedness, at the sole discretion of Lender,  may be exercised as often as occasion therefor shall arise, it being agreed by Grantor and Borrower that the exercise or failure to exercise any of same shall not in any event be construed as a waiver or release thereof or of any other right, remedy or recourse, and  are intended to be and shall be non-exclusive. Nothing in this Agreement shall require or be construed to require Lender to accept tender of performance of any of Grantor’s or Borrower’s obligations under this Agreement after the expiration of any time period set forth in this Agreement for the performance of such obligations and the expiration of any applicable cure periods, if any.

## Application of Proceeds.

Lender shall apply the Collateral or the cash proceeds actually received from any sale or other disposition of the Collateral in its sole and absolute discretion to the following, in any order:

* + 1. to reimburse Lender for any amounts due to it pursuant to Section 6.02 of this Agreement including the expenses of preparing for sale, selling and the like and to reasonable attorneys’ fees and legal expenses incurred by Lender in connection therewith;
		2. to the repayment of all amounts then due and unpaid on the Indebtedness in such order of priority as Lender may determine; and
		3. to purchase any required replacement Interest Rate Cap that meets the requirements of this Agreement or any of the other Loan Documents.

If the proceeds of sale, collection or other realization of or upon the Collateral are insufficient to cover the costs and expenses of such realization and the payment in full of the Indebtedness, Borrower shall remain liable for the deficiency, except to the extent that Borrower’s liability for payment of the Indebtedness is limited by the terms of the Loan Agreement.

## No Additional Waiver Implied by One Waiver.

If any provision of this Agreement is breached by Grantor or Borrower and thereafter waived by Lender in writing, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

## Lender Appointed Attorney‑in‑Fact.

Grantor and Borrower hereby appoint Lender, through any duly authorized officer of Lender, as Grantor’s and Borrower’s attorney-in-fact, with full authority in the place and stead of Grantor or Borrower and in the name of Grantor or Borrower or otherwise, from time to time in Lender’s discretion during the continuance of an Event of Default, to take any action and to execute any instrument which Lender may deem necessary or advisable to exercise the rights and remedies granted in this Agreement, including, to receive, endorse and collect all instruments made payable to Grantor or Borrower representing any interest payment, dividend, or other distribution in respect of the Collateral or any part of the Collateral and to give full discharge for the same. Both Grantor and Borrower agree that the power of attorney established pursuant to this Section 6.05 shall be deemed coupled with an interest and shall be irrevocable.

## Nature of Lender’s Rights.

The right of Lender to the Collateral held for its benefit under this Agreement shall not be subject to any right of redemption Grantor or Borrower might otherwise have and shall not be suspended, discontinued or reduced or terminated for any cause, including, without limiting the generality of the foregoing, any event constituting *force majeure* or any acts or circumstances that may constitute commercial frustration of purpose.

# MISCELLANEOUS PROVISIONS

## Fees, Costs and Expenses; Indemnification.

Grantor and Borrower agree to reimburse Lender, on demand, for all out-of-pocket costs and expenses incurred by Lender in connection with the administration and enforcement of this Agreement and agree to indemnify and hold harmless Lender from and against any and all losses, costs, claims, damages, penalties, causes of action, suits, judgments, liabilities and expenses (including, without limitation, reasonable attorneys’ fees and expenses) incurred by Lender under this Agreement or in connection with this Agreement, unless such liability shall be due to willful misconduct or gross negligence on the part of Lender or its agents or employees. If Grantor or Borrower fails to do any act or thing which it has covenanted to do under this Agreement or any representation or warranty on the part of Grantor or Borrower contained in this Agreement or repeated and reaffirmed in this Agreement is breached, Lender may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend its funds for such purpose. Any and all amounts so expended by Lender shall be repayable to it by Borrower upon Lender’s demand. The obligations of Grantor and Borrower under this Section 7.01 shall survive the termination of this Agreement and the discharge of the other obligations of Grantor or Borrower under this Agreement.

## Termination.

This Agreement and the assignments, pledges and security interests created or granted by this Agreement shall create a continuing security interest in the Collateral and shall terminate upon the earlier to occur of  payment in full of all amounts due under the Loan Documents, or  the conversion of the Mortgage Loan to a fixed rate of interest pursuant to the terms of the Conversion Agreement. Upon termination of this Agreement, Lender shall deliver to Grantor or Borrower all Collateral and documents then in the custody or possession of Lender and, if requested by Grantor or Borrower, shall execute and deliver to Grantor or Borrower for recording or filing in each office in which any assignment or financing statement relative to the Collateral or the agreements relating thereto or any part of the Collateral, shall have been filed or recorded, a termination statement or release under applicable law (including, if relevant, any financing statement), releasing Lender’s interest in the Collateral and such other documents and instruments as Grantor or Borrower may reasonably request, all without recourse to or any warranty whatsoever by Lender and at the cost and expense of Grantor or Borrower.

## No Deemed Waiver.

No failure on the part of Lender or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Lender or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

## Non-Recourse.

Article 3 (Personal Liability) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

## Governing Law; Consent to Jurisdiction and Venue.

Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

## Notices.

Section 15.02 (Notice) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

## Successors and Assigns Bound; Sale of Mortgage Loan.

Section 15.03 (Successors and Assigns Bound; Sale of Mortgage Loan) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

## Counterparts.

Section 15.04 (Counterparts) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement. Delivery of an executed counterpart of a signature page of this Agreement by any electronic means that reproduces an image of the actual executed signature page (including by the email of a scanned Portable Document Format file) shall be of the same legal effect, validity and enforceability as the physical delivery of a manually executed signature thereof.

## Severability; Entire Agreement; Amendments.

Section 15.07 (Severability; Entire Agreement; Amendments) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

## Construction.

Section 15.08 (Construction) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

## WAIVER OF TRIAL BY JURY.

Section 15.18 (WAIVER OF TRIAL BY JURY) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, the parties have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by their duly authorized representatives. Where applicable law so provides, the parties intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER**:

**[DRAFTING NOTE**: ALL CO-TENANTS MUST SIGN AS BORROWER]

By: (SEAL)

Name:

Title:

**GRANTOR**:

By: (SEAL)

Name:

Title:

**LENDER**:

By: (SEAL)

Name:

Title: