**[DRAFTING NOTE: THIS DOCUMENT MUST BE RECORDED IN THE LAND RECORDS OF THE PROPERTY JURISDICTION AND INCLUDED ON SCHEDULE B2 OF LENDER’S TITLE POLICY; A SEPARATE PROPERTY LEVEL ASSIGNMENT OF LEASES AND RENTS (FORM 6494.DST) MUST BE ENTERED INTO AND RECORDED IMMEDIATELY PRIOR TO THE SECURITY INSTRUMENT AND THIS DOCUMENT; UCC FINANCING STATEMENTS MUST ALSO BE FILED WITH RESPECT TO MASTER LESSEE AND THE ASSIGNMENT OF LEASES AND RENTS, WHICH UCCS MUST BE ASSIGNED TO LENDER]**

**[DRAFTING NOTE: REPS AND COVENANTS NEED TO MATCH ANY CORRESPONDING NEGOTIATED CHANGES IN THE LOAN AGREEMENT]**

Prepared by, and after recording

return to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SUBORDINATION AGREEMENT**

**(Delaware Statutory Trust Master Lease)**

**SUBORDINATION AGREEMENT**

**(Delaware Statutory Trust Master Lease)**

This SUBORDINATION AGREEMENT (Delaware Statutory Trust Master Lease) (this “**Agreement**”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is executed by and among (a) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Master Lessee**”), (b) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), and (c) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

**Recitals:**

A. 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**”).

B. In addition to the Loan Agreement, the Mortgage Loan and the Note are also secured by, among other things, a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”).

C. Borrower is the owner of a multifamily residential property known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as more particularly described in the Security Instrument as the “**Mortgaged Property**.” A legal description of the Mortgaged Property is attached hereto as Exhibit A.

D. Master Lessee is the tenant under that certain **[**Lease Agreement or Operating Lease – **DRAFTING NOTE: ADD TITLE OF LEASE]**, between Master Lessee, as tenant and Borrower, as landlord, for the lease and operation of the Mortgaged Property (as the same has been amended to date and as may be further amended, modified and extended with Lender’s prior written consent, the “**Master Lease**”).

E. Concurrently with the execution of this Agreement, Master Lessee is executing and delivering to Lender a Master Lessee’s Estoppel Certificate with respect to the terms of the Master Lease.

F. Pursuant to the terms of that certain Property Level Assignment of Leases and Rents dated as of even date herewith by and between Borrower and Master Lessee (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Property Level** **Assignment of Leases and Rents**”), Master Lessee has assigned all its present and future right, title and interest in the Leases and Rents with respect to the Mortgaged Property to Borrower as additional collateral for Master Lessee’s obligations under the Master Lease.

G. Pursuant to the terms of that certain Assignment of Management Agreement (Delaware Statutory Trust) dated as of even date herewith by and among Lender, Borrower, Master Lessee, and property manager (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Assignment of Management Agreement**”), Master Lessee has assigned all its right, title and interest in the Management Agreement to Borrower as additional collateral for Master Lessee’s obligations under the Master Lease and Borrower has simultaneously assigned its rights, title and interest in the Management Agreement to Lender as additional collateral for the Mortgage Loan.

H. Lender requires that Master Lessee subordinate its right, title and interest to and under the Master Lease to the Loan Documents and Master Lessee is willing to so subordinate, all on the terms set forth in this Agreement.

**AGREEMENTS:**

NOW, THEREFORE, for good and valuable consideration, including the material financial benefit to be derived by Master Lessee and Borrower as a result of Lender’s entering into the Loan Agreement and approval of the Master Lease, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, Lender and Master Lessee agree as follows:

Definitions.

## Capitalized terms used in this Agreement shall have the meanings set forth in Schedule 1 attached hereto. Any capitalized terms used and not specifically defined herein shall have the meanings given to such terms in the Loan Agreement or the Security Instrument, as applicable.

# Subordination of Master Lease to Mortgage Lien.

## Master Lessee acknowledges that Borrower has entered into the Mortgage Loan pursuant to the terms of the Loan Documents. Master Lessee acknowledges, confirms, agrees and covenants that the Master Lease and the rights of Master Lessee under Master Lease, and all of Master Lessee’s right, title and interest in and to the Mortgaged Property pursuant to the Master Lease Documents, are and shall be subject, subordinate and inferior to:

## the Loan Documents and the rights of Lender under such Loan Documents (including all renewals, modifications, consolidations, replacements and extensions) and to all advances made pursuant to the Security Instrument, including all sums advanced for the purposes of protecting or further securing the lien of the Security Instrument, curing defaults by Borrower under the Loan Documents or for any other purposes expressly permitted by the Security Instrument, or constructing, renovating, repairing, furnishing, or equipping the Mortgaged Property;

## all right, title and interest of Lender in the Mortgaged Property; and

## all other Loan Documents now or hereafter securing payment of the Indebtedness. Master Lessee acknowledges and agrees that in all events the provisions of the Loan Documents relative to the rights of Lender with respect to proceeds (other than those expressly allocated to Master Lessee by the applicable condemning authority) arising from a Condemnation Action or casualty shall at all times be prior and superior to and shall control over any contrary provisions in Master Lease.

## If, by reason of its exercise of any right or remedy under the Master Lease, Master Lessee acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this Section 2(b)) would be senior to the lien of the Loan Documents, then, in that event, such lien shall be subject and subordinate to the lien of the Loan Documents and this Agreement.

## Without limitation of any other provision of this Agreement, Lender may, at its option and without joinder or further consent of Master Lessee, Borrower or any other Person, at any time after the date of this Agreement, subordinate the lien of the Loan Documents (or any other lien or security interest held by Lender which covers or affects the Mortgaged Property) to the Master Lease by executing an instrument or instruments that are intended for that purpose and that specify such subordination and Master Lessee shall execute any documents reasonably required to evidence such subordination.

## Master Lessee agrees that any fees or reimbursements payable to Master Lessee pursuant to the Master Lease are hereby subordinated in right to the prior payment in full of the Indebtedness.

## Master Lessee hereby agrees to be bound by all of the Operating Covenants (as defined in the Loan Agreement) as they relate to the use and operation of the Mortgaged Property or the “Master Lessee” (as defined in the Loan Agreement); provided, however, that except as may be specifically set forth in the Master Lease Documents, in no event shall Master Lessee have responsibility as a “borrower” or “guarantor” of the Indebtedness under the Loan Documents, and (subject to Lender’s Assigned Rights pursuant to the terms hereof) Master Lessee shall have no direct obligation with respect to the provisions of the Loan Agreement.

# Attornment.

## After a Foreclosure Event, the Master Lease shall be automatically terminated, if not terminated early by Lender in accordance with the terms of this Agreement. Prior to such termination, Lender shall not be:

## responsible for the performance of any covenant or obligation of any Previous Landlord under the Master Lease that is either personal to the Previous Landlord;

## liable for any act, omission, default, misrepresentation, or breach of warranty, of any Previous Landlord or obligations accruing as to the Mortgaged Property;

## subject to any offset, recoupment, estoppel, defense, claim or counterclaim that Master Lessee might be entitled to assert against any Previous Landlord;

## bound by any payment of rent, additional rent, supplemental rent or other charges or payments Master Lessee may have made to any Previous Landlord for more than one (1) month in advance;

## bound by any amendment or modification of the Master Lease made or entered into without the prior written consent of Lender;

## bound by any consent or acquiescence by any Previous Landlord under the Master Lease to any assignment of the Master Lease hereafter granted, or any termination or cancellation of the Master Lease, in each case, given or done during the term of this Agreement without the prior written consent of Lender;

## liable for the return or application of any security deposit or other deposit or security that Master Lessee may have given to any Previous Landlord;

## obligated to complete any construction work required to be performed by any Previous Landlord pursuant to the provisions of the Master Lease or to reimburse Master Lessee for any construction work performed by Master Lessee;

## required to make any capital improvements which any Previous Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment under the Master Lease;

## liable for the payment of any leasing commissions; or

## liable under any indemnity provision of whatever nature contained in the Master Lease, including any environmental indemnification which arose or occurred prior to such Master Lease termination date.

# Master Lease Not Deemed a Guaranty.

## Master Lessee represents, covenants and warrants to Borrower, and Borrower represents, covenants and warrants to Lender that it is its express intent that the Master Lease constitute a lease under applicable real property laws and that the sole interest of Master Lessee in the Mortgaged Property is as a tenant under the Master Lease. In the event that it is determined by a court of competent jurisdiction that the Master Lease is not a lease under applicable real property laws and that Master Lessee is deemed a guarantor of any obligations secured by the Mortgaged Property rather than a tenant, then the “springing provisions” identified below shall take effect automatically without further action or execution. The provisions in this Section 4 are contained herein solely to address enforcement issues in the event the Master Lease is re-characterized as a guaranty of obligations secured by the Mortgaged Property. However, it is neither the desire nor the intent of the parties that the Master Lease be re-characterized as such a guaranty. Master Lessee and Borrower covenant that neither Master Lessee nor Borrower, nor any officer, director, partner, manager, member, shareholder, or trustee of Master Lessee or Borrower, shall assert a claim or establish a defense that either party intended the Master Lease to constitute anything other than a lease under applicable real property laws.

**Springing Provisions**: Master Lessee waives:

## (1) the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of the Master Lease Documents and this Agreement (and agrees that Master Lessee’s obligations shall not be affected by any circumstances, whether or not referred to in the Master Lease Documents or this Agreement, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor);

## (2) the benefits of any right of discharge under any and all statutes or other laws relating to guarantors or sureties and any other rights of sureties and guarantors;

## (3) diligence in collecting the Indebtedness, presentment, demand for payment, protest and all notices with respect to the Loan Documents which may be required by statute, rule of law or otherwise to preserve Lender’s Assigned Rights, as further described herein, including notice of acceptance, notice of any amendment of the Loan Documents, notice of the occurrence of any “Event of Default” (as defined in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest and notice of the incurring by Borrower of any obligation or indebtedness; and

## (4) all rights to require Lender to:

(A) proceed against or exhaust any collateral held by or on behalf of Lender to secure the repayment of the Indebtedness;

(B) proceed against or pursue any remedy it may now or hereafter have against Borrower or any master lessee, or, if Borrower or any master lessee is a partnership, any general partner of Borrower or general partner of master lessee; or

(C) demand or require collateral security from Borrower, any other guarantor or any other person or entity as provided by applicable law or otherwise.

# Acknowledgment of Pledge of UCC Collateral and Assignment of Leases and Rents.

## Master Lessee hereby represents and warrants to Borrower, and Borrower hereby represents and warrants to Lender, in connection with the Master Lease and pursuant to the terms of the Master Lease and the Property Level Assignment of Rents and Leases, Master Lessee has pledged, assigned and granted to Borrower a continuing security interest in the UCC Collateral owned by it, and absolutely and unconditionally assigned and transferred to Borrower all Master Lessee’s right, title and interest in and to the Leases and the Rents.

## Master Lessee hereby acknowledges and agrees that, in connection with the Loan Agreement and pursuant to the terms of this Agreement and the Security Instrument, Borrower has pledged, assigned and granted to Lender a continuing security interest in its security interest in the UCC Collateral, and absolutely and unconditionally assigned and transferred to Lender all of its right, title and interest in and to the Leases and the Rents, including lease termination fees, if any, due and payable under the Master Lease.

# Assignment of Rents.

## Master Lessee acknowledges that all Rents shall be subject to the lockbox described in Section 11 below. Borrower hereby agrees that any rents, fees or other amounts paid by Master Lessee to or as directed by Lender after an Event of Default shall be deemed to have been duly and validly paid by Master Lessee under the Master Lease, and any such amounts shall be credited against Master Lessee’s obligations under the Master Lease as if the same were paid directly to Borrower. Borrower and Master Lessee each agree that Master Lessee shall have no obligation to determine whether Borrower is in default under such assignment, and Master Lessee may rely on such notice and direction from Lender without any duty to investigate.

## If, after Master Lessee receives notice (or otherwise acquires actual knowledge) of an Event of Default under the Loan Agreement, Master Lessee receives any payments pursuant to the Master Lease other than from Lender, or if Master Lessee receives any other payment or distribution of any kind from Borrower or from any other Person other than from Lender in connection with the Master Lease which Master Lessee is not permitted by this Agreement or the Master Lease to retain for its own account, such payment or other distribution will be received and held in trust for Lender and promptly remitted in readily available funds to Lender, properly endorsed to Lender, to be applied to amounts due under the Loan Documents in such order and in such manner as Lender shall determine.

# Recognition of Lender’s Interest in Assigned Rights; Power of Attorney.

## Master Lessee hereby recognizes the rights of Lender in the Assigned Rights, and acknowledges and agrees that, upon the occurrence and during the continuance of an Event of Default under the Loan Agreement, Lender shall have the right to exercise any and all of the rights and remedies granted it under the Loan Documents, and granted to Borrower under the Master Lease Documents. As the holder of the Assigned Rights, all references in the Master Lease Documents to landlord or lessor shall be deemed to run to Lender, as Borrower’s designee or assignee, as applicable. Master Lessee agrees to fully cooperate with Lender and any receiver as may be appointed by a court, including any appointment of a receiver *ex parte*, as may be permitted by applicable law, and take such action and comply with such written direction of Lender or any receiver as may be appointed by a court, in the exercise of remedies under this Agreement and the Property Level Assignment of Leases and Rents.

## Master Lesseehereby irrevocably constitutes and appoints Borrower as Master Lessee’sattorney-in-fact to demand, receive and enforce its rights with respect to the provisions set forth in this Agreement, to give appropriate receipts, releases and satisfactions for and on Master Lessee’s behalf and to do any and all acts in Master Lessee’s name with the same force and effect as Master Lesseecould do if this Agreement had not been made. The foregoing appointment shall be deemed to be coupled with an interest and irrevocable.

## In connection with the Mortgage Loan, Borrower has assigned or will assign to Lender, among other things, the powers of attorney granted in this Agreement and the Master Lease Documents. Master Lessee acknowledges and consents to such assignments and agrees to recognize Lender as Borrower’s attorney-in-fact. Lender’s exercise of such power of attorney shall not cause Lender to be construed as a mortgagee-in-possession, or constitute a waiver of any of Lender’s rights as a mortgagee, except as required by applicable law. Any and all action to be undertaken by Borrower hereunder (including those after a Master Lease Termination Event) may be taken by Lender in its stead.

# Master Lessee Representations and Warranties.

Master Lessee represents and warrants to Borrower, and Borrower represents and warrants to Lender, as follows as of the date of this Agreement:

## Master Lessee is an “Affiliated Master Lessee” as set forth in the Loan Documents; and

## all representations and warranties with respect to the Mortgaged Property and Master Lessee set forth in the Loan Documents are true and correct.

# Master Lessee Covenants.

Master Lessee covenants with Borrower, and Borrower covenants with Lender, that, during the term of this Agreement, Master Lessee shall:

## not transfer responsibility for the operation and management of the Mortgaged Property without Lender consent;

## reasonably cooperate with Lender at the sole cost and expense of Borrower, including attendance at any meetings requested by Lender (after reasonable prior notice), and allowing Lender to undertake inspections of the Mortgaged Property;

## deliver to Lender at the address indicated below and at the same time as such notice or communication is given to Borrower, any notice of default or request for consent under the Master Lease;

## certify promptly in writing to Lender in connection with any proposed assignment of the Note evidencing the Mortgage Loan, whether or not to its knowledge any default on the part of Borrower then exists under the Master Lease and, upon not less than ten (10) Business Days prior written notice from Lender, shall execute such estoppel certificates and subordination agreements as Lender shall reasonably require;

## provide immediate written notice to Borrower in writing with a copy to Lender of any claims, actions, suits, or proceedings at law or in equity (including any insolvency, bankruptcy, or receivership proceeding) by or before any Governmental Authority pending against, affecting or, to Master Lessee’s knowledge, threatened against Master Lessee, any entity that Controls Master Lessee, or the Mortgaged Property, which claims, actions, suits, or proceedings, if adversely determined reasonably would be expected to have a material adverse effect on the financial condition or business of Master Lessee, or the condition, operation, or ownership of the Mortgaged Property;

## not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower, during the term of this Agreement, without Lender’s prior written consent;

## not seek to terminate the Master Lease by reason of any default of Borrower without prior written notice to Lender and the lapse of such time as was offered to Borrower under the Master Lease in which to remedy the default, and the lapse of thirty (30) days after the expiration of such time as Borrower was permitted to cure such default; provided, however, that with respect to any breach or default of Borrower under the Master Lease, the cure of which requires possession and control of the Mortgaged Property, if Lender provides written notice to Master Lessee within thirty (30) days after receipt of the above notice that Lender will endeavor to cure or cause to be cured by a receiver such breach or default within the period permitted under this paragraph, then Lender’s cure period shall continue for such additional time as Lender may reasonably require to either obtain possession and control of the Mortgaged Property and thereafter cure the breach or default with reasonable diligence and continuity, or obtain the appointment of a receiver;

## not pay Master Lease Rent more than thirty (30) days in advance of the date on which the same are due or to become due under the Master Lease;

## not create, incur, or assume any lien on the Mortgaged Property or any part of the Mortgaged Property or pledge any interest in the Mortgaged Property or any part of the Mortgaged Property, except as provided in the Loan Documents;

## not without the prior written consent of Lender extend, modify or terminate any of the terms or provisions of the Master Lease, assign its rights under the Master Lease, in connection with the Master Lease that is a master lease covering more than one property, add or release any property subject to the Master Lease, or transfer the Master Lease. Within five (5) days of Master Lessee’s receipt, Master Lessee shall give Lender written notice of any notice or information that Master Lessee receives which indicates that any party is in default under the terms of the Master Lease, is extending, modifying or terminating the Master Lease, or is otherwise discontinuing its ownership, operation or management of the Mortgaged Property;

## upon the occurrence of an Event of Default under the Loan Documents, at the option of Lender, continue to maintain and operate the Mortgaged Property; and

## not perform any acts and has not executed, and shall not execute any instrument which would prevent Lender from exercising its rights under the Loan Documents.

# Defaults; Remedies.

## [Intentionally Deleted.]

## Upon the occurrence of a Master Lease Termination Event, Lender or its designee shall have the right to exercise all rights and remedies under this Agreement, the Security Instrument and the Loan Documents, at law or in equity, including the remedies of a secured party under the UCC. If a Master Lease Termination Event has occurred, Lender or its designee may enforce all rights and remedies with respect to the UCC Collateral and Leases and Rents pledged and assigned to Borrower pursuant to the Master Lease Documents and further assigned to Lender pursuant to the Security Instrument and UCC financing statements. In exercising any remedies, Lender may exercise its remedies against any of the collateral subject to the Assigned Rights separately or together, and in any order, without in any way affecting the availability of Lender’s other remedies. Any amounts disbursed by Lender in the exercise of such Assigned Rights shall be immediately due and payable to Lender by Borrower and shall become an additional part of the Indebtedness. The foregoing provisions shall not require Lender to incur any expense or take any action.

## If a Master Lease Termination Event has occurred and is continuing, Lender shall have the right to terminate or to direct Borrower to terminate the Master Lease without cause and without payment of any cancellation or termination fee, penalty or other liability, by giving written notice to Master Lessee of its election to do so. Lender’s direction to terminate (the “**Termination Notice**”) shall specify the date of termination (the “**Termination Date**”), and shall be delivered to Borrower with a copy to Master Lessee. The parties hereto covenant and agree that in the event that Borrower fails to terminate the Master Lease pursuant to the terms of the Termination Notice the Master Lease shall be deemed terminated on the Termination Date without further action required by Borrower or Master Lessee. Such termination right shall supersede any limitation on termination rights contained in the Master Lease and serve as consideration for the material benefit derived by Master Lessee from Lender’s entering into the Loan Agreement and approving the Master Lease.

## On the Termination Date, Master Lessee shall turn over to Lender all books and records relating to the Mortgaged Property and the residents and tenants (copies of which may be retained by Master Lessee, at Master Lessee’s expense), together with such authorizations and letters of direction addressed to residents, tenants, suppliers, employees, banks and other parties as Lender may reasonably require. A final accounting of unpaid fees (if any) due to Master Lessee under the Master Lease shall be made within sixty (60) days after the effective date of termination, but Lender shall not have any liability or obligation to Master Lessee for unpaid fees or other amounts payable under the Master Lease which accrue before Lender acquires title to the Mortgaged Property, or before Lender becomes a mortgagee in possession (other than as set forth herein).

## If a Master Lease Termination Event has occurred, upon written request from Lender, Master Lessee shall furnish promptly to Lender evidence of deposits and withdrawals from any account held or controlled by Master Lessee relating to the Mortgaged Property.

## If a Master Lease Termination Event has occurred, Lender or its designee may (in Lender’s sole discretion) direct all Rent to be paid directly to Lender, subject to the provisions of Section 11.

## Notwithstanding anything to the contrary in this Agreement and/or the Loan Documents generally, other than pursuant to the Assigned Rights, the parties agree that Master Lessee shall have no direct obligations to Lender.

# Lockbox.

## Master Lessee hereby acknowledges and agrees that, as consideration for Lender making the Mortgage Loan and approving the Master Lease, all Rent shall be subject to the lockbox requirements set forth in the Loan Agreement, as more particularly described in the DST Lockbox Provisions Schedule attached thereto. Master Lessee acknowledges that Borrower has established the Clearing Account which is under the sole dominion and control of Lender and into which all Rents and other income and revenue from the Mortgaged Property, including all Tenant Rents, service charges and insurance payments, shall be deposited. Master Lessee hereby agrees that it shall:

## immediately deposit all Rents and other income and revenue from the Mortgaged Property collected now and in the future by Master Lessee into the Clearing Account;

## immediately deposit all funds otherwise payable to Borrower by Master Lessee pursuant to the Master Lease (or otherwise in connection with the Mortgaged Property) now and in the future into the Clearing Account;

## on or before the date of this Agreement, deliver irrevocable written instructions (a “**Tenant Direction Letter**”) to all tenants under existing Leases to deliver all payments due thereunder directly to the Clearing Account, and within five (5) Business Days after the date hereof, deliver to Lender a copy of each Tenant Direction Letter, together with evidence that the same has been sent to tenants;

## simultaneously with the execution of any new Lease entered into after the date hereof, deliver a Tenant Direction Letter to each tenant under each new Lease, and upon the request of Lender, deliver to Lender a copy of each such Tenant Direction Letter sent in connection with a new Lease, together with evidence that the same has been sent; and

## upon the request of Lender, promptly deliver and execute any replacement Tenant Direction Letter that Lender may request from time to time.

## Without the consent of Lender, Master Lessee shall not terminate, amend, revoke, withdraw, 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 Tenant Direction Letter. To the extent that Master Lessee or any Person on Master Lessee’s behalf holds any Rents or other income or revenue with respect to the Mortgaged Property, whether in accordance with the Loan Agreement, this Agreement or otherwise, such amounts shall be held in trust for the benefit of Lender and shall not be commingled with any other funds or property of Master Lessee or Borrower, and Master Lessee shall deposit such amounts in the Clearing Account within two (2) Business Days of receipt.

## Master Lessee acknowledges and agrees that after an Event of Default under the Loan Agreement has occurred, the following shall apply:

## The Cash Management Account described in the Loan Agreement shall be established by Lender.

## Within thirty (30) days after the occurrence of an Event of Default under the Loan Documents, and not later than thirty (30) days prior to the commencement of each calendar year, Master Lessee shall submit to Lender the Annual Budget (as defined in the Loan Agreement), which Annual Budget shall be subject to Lender’s written approval. The Annual Budget shall be prepared by Master Lessee in good faith and in accordance with generally accepted and sound real estate accounting standards applied on a consistent basis and shall also identify the operating expenses related to the Mortgaged Property that are Master Lessee’s responsibility pursuant to the Master Lease. Master Lessee acknowledges and agrees that so long as the Master Lease has not been terminated and there is in effect an Approved Annual Budget, and provided that no Master Lease Event of Default has occurred, Lender shall disburse funds on deposit in the Master Lessee Escrow Subaccount for Approved Monthly Operating Expenses to Borrower or, at the written direction of Borrower (which may be a standing direction), to Master Lessee within ten (10) days after receipt of a written disbursement request delivered to Lender from Borrower or Master Lessee Notwithstanding anything to the contrary, Master Lessee shall obtain Lender’s prior written consent prior to payment of any operating expenses by Master Lessee which exceed the budgeted line item amount for such expense set forth in the Approved Annual Budget by more than ten percent (10%).

## Within forty-five (45) days after the end of each calendar quarter, Master Lessee shall deliver to Lender a “Reconciliation Certificate” (as defined in the Loan Agreement) certifying as to the Quarterly Reconciliation (as defined in the Loan Agreement). Such Reconciliation Certificate shall: identify any Distribution Surplus or Distribution Shortfall (as defined in the Loan Agreement), be in a form reasonably acceptable to Lender, and provide such evidence of Actual Expenditures as may be reasonably requested by Lender in order to verify any applicable component of the Distribution Shortfall or Distribution Surplus. Funds shall be disbursed from the Cash Management Account (including the Master Lessee Escrow Subaccount) in accordance with the Loan Agreement.

## Master Lessee acknowledges and agrees that upon a Master Lease Termination Event, all amounts on deposit at such time and going forward in the Clearing Account and Cash Management Account (including the Master Lessee Escrow Subaccount) may be applied by Lender in accordance with the Loan Documents.

# Indemnification.

By executing this Agreement, Borrower agrees to indemnify and hold harmless Lender and its successors and assigns from and against any and all losses, claims, damages, liabilities and expenses including attorneys’ fees and costs, which may be imposed or incurred in connection with this Agreement.

# Modifications to Loan Documents.

Any amendments heretofore or hereafter made to any of the Loan Documents, other than this Agreement, shall not require the consent of Master Lessee.

# Lender Requests.

# If a Default has occurred and is continuing, within ten (10) days of written request of Lender, Master Lessee shall promptly furnish to Lender copies of all Leases, books, records, monthly reports, statements of account, budgets, third party payment documentation, financial statements (in connection with the operation of the Mortgaged Property), and operating statements for the Mortgaged Property, including reimbursement agreements, surveys, statements of deficiencies and plans of correction, and cost reports related to any payments or the right to receive payments from federal, state or local programs, boards, bureaus or agencies, and other items which Master Lessee is required to maintain or otherwise maintains under the Master Lease or which Master Lessee maintains with respect to the Mortgaged Property.

# Notice.

* 1. **Process of Serving Notice.**

All notices under this Agreement shall be:

* + 1. in writing and shall be:
			1. delivered, in person;
			2. mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
			3. sent by overnight courier; or
			4. sent by electronic mail with originals to follow by overnight courier;
		2. addressed to the intended recipient at its respective address set forth at the end of this Agreement; and
		3. deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

* 1. **Change of Address.**

Any party to this Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties to this Agreement in accordance with this Section 15.

* 1. **Default Method of Notice.**

Any required notice under this Agreement which does not specify how notices are to be given shall be given in accordance with this Section 15.

* 1. **Receipt of Notices.**

Borrower, Master Lessee and Lender shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

# Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

# Governing Law.

## This Agreement shall be governed by and construed in accordance with the laws of the Property Jurisdiction, and applicable federal law.

## Master Lessee and Borrower agree that any controversy arising under or in relation to this Agreement shall be litigated exclusively in the Property Jurisdiction and Master Lessee and Borrower irrevocably consent to service, jurisdiction, and venue of such course for any such litigation and waive any other venue to which Master Lessee or Borrower might be entitled by virtue of domicile, habitual residence or otherwise.

# Successors and Assigns.

This Agreement shall be binding upon Borrower, Master Lesseeand Lender and their respective successors, transferees and assigns, and shall inure to the benefit of and may be enforced by Lender and its successors, transferees and assigns. Borrower and Master Lesseeshall not assign any of their respective rights and obligations under this Agreement without the prior written consent of Lender.

# Entire Agreement; Amendments and Waivers.

This Agreement contains the complete and entire understanding of the parties as to its subject matter. No amendment to this Agreement will be valid unless it is made in writing and executed by the parties to this Agreement. No specific waiver or forbearance for any breach of any of the terms of this Agreement shall be considered as a general waiver of that or any other term of this Agreement.

# Relationship of Parties.

Nothing contained in this Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower or Master Lessee, or render Lender liable for any debts, obligations, acts, omissions or representations of Borrower or Master Lesseeexcept as provided herein. The parties hereto acknowledge and agree that Lender is entering into this agreement directly with Borrower and Master Lessee to facilitate Lender directly enforcing its Assigned Rights in accordance with this Agreement; Borrower is intended to constitute an “investment trust” pursuant to Treasury Regulations Section 301.7701-4(c); and the Master Lease is intended to constitute a “true lease” within the meaning of Revenue Procedure 2001-28.

# Enforceability.

The determination of invalidity, illegality or unenforceability of any provision of this Agreement, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Agreement, each of which shall remain in full force and effect.

# Construction.

* 1. The captions and headings of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.
	2. Any reference in this Agreement to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit or Schedule attached to this Agreement or to a Section or Article of this Agreement. All Exhibits and Schedules attached to or referred to in this Agreement, if any, are incorporated by reference into this Agreement.
	3. Any reference in this Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
	4. Use of the singular in this Agreement includes the plural and use of the plural includes the singular.
	5. As used in this Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
	6. Whenever Borrower’s or Master Lessee’s knowledge is implicated in this Agreement or the phrase “to Borrower’s knowledge,” “to Master Lessee’s knowledge” or a similar phrase is used in this Agreement, Borrower’s or Master Lessee’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s or Master Lessee’s knowledge respectively after reasonable and diligent inquiry and investigation.
	7. Unless otherwise provided in this Agreement, if Lender’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.
	8. All references in this Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
	9. “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

# Schedules and Exhibits.

The schedules and exhibits, if any, attached to this Agreement are incorporated fully into this Agreement by this reference and each constitutes a substantive part of this Agreement.

**ATTACHED EXHIBITS.** The following Exhibits are attached to this Agreement:

[x]  Exhibit A Legal Description

**ATTACHED SCHEDULES.** The following Schedules are attached to this Agreement:

[x]  Schedule 1 Definitions

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Master Lessee, Borrower, and Lenderhave executed this Agreement as of the day and year first written above.

|  |  |
| --- | --- |
|  | **MASTER LESSEE**: |
|  | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] |

**[ADD APPROPRIATE NOTARY BLOCK]**

|  |  |
| --- | --- |
|  | **BORROWER**: |
|  | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] |

**[ADD APPROPRIATE NOTARY BLOCK]**

|  |  |
| --- | --- |
|  | **LENDER**: |
|  | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] |

**[ADD APPROPRIATE NOTARY BLOCK]**

**EXHIBIT A**

**Legal Description**

**SCHEDULE 1**

**Definitions**

“**Assigned Rights**” means Borrower’s present and any future right, title and interest in and to:

(a) the Leases, Rents, and UCC Collateral (each as defined in the Property Level Assignment of Leases and Rents);

(b) the Management Agreement,

(c) Property Level Assignment of Leases and Rents,

(d) this Agreement,

(e) the Master Lease Documents, and

(f) the Mortgaged Property.

“**Default**” means:

(a) a default, a breach of a covenant or a failure by Master Lessee to perform any obligation under this Agreement or any Master Lease Document beyond the period, if any, specified in this Agreement or such Master Lease Document within which Master Lessee may cure such default;

(b) the failure of any representation or warranty by Master Lessee in this Agreement or any Master Lease Document to be true and correct when made;

(c) any other Master Lease Event of Default;

(d) fraud, gross negligence, willful misconduct, or material misrepresentation or material omission by or on behalf of Master Lessee or any of its officers, directors, trustees, partners, members, or managers in connection with:

(1) the application for, or creation of, the Indebtedness or the Master Lease;

(2) any financial statement, rent roll, or other report or information provided to Borrower during the term of the Mortgage Loan;

(3) any request for Lender’s consent to any proposed action, including a request for disbursement of Reserve/Escrow Account Funds or Collateral Account Funds; or

(e) any failure by Master Lessee to comply with the provisions of Section 5.02(b) and Section 5.02(c) of the Loan Agreement;

(f) any default by Master Lessee with respect to any of the Operating Covenants which default continues beyond the expiration of any applicable notice and cure period; or

(g) if a Bankruptcy Event (other than an acknowledgement in writing as described in clause (b) of the definition of “Bankruptcy Event”) occurs with respect to Master Lessee.

“**Leases**” has the meaning set forth in the Property Level Assignment of Leases and Rents.

“**Lender**” has the meaning set forth in the preamble of this Agreement.

“**Loan Agreement**” has the meaning set forth in Recital A.

“**Management Agreement**” means, if applicable, any agreement for management services as amended, restated, replaced, supplemented or otherwise modified from time to time, preapproved in writing by Borrower, under which daily management or operation with respect to the Mortgaged Property has been granted to any individual or entity other than Master Lessee.

“**Master Lease**” means the lease as identified in Recital D above.

“**Master Lease Documents**” means, collectively (a) the Master Lease, (b) the Property Level Assignment of Leases and Rents, (c) any other document executed in connection with the Master Lease. **[DRAFTING NOTE: Add Assignment of Asset Management Agreement if there is one and it is not subordinate to the Mortgage Loan.]**

“**Master Lease** **Event of Default**”means any default by Master Lessee under the Master Lease Documents, beyond any applicable cure period set forth therein.

“**Master Lease Rent**”meansany rent, fees or other amounts payable or to become payable to Borrower under the Master Lease.

“**Master Lease Termination Event**” means (a) a Master Lease Event of Default has occurred and is continuing, or (b) the occurrence of a Foreclosure Event.

“**Master Lessee**” has the meaning as defined in the Preamble above.

“**Mortgaged Property**” has the meaning as defined in Recital C above.

“**Operating Covenants**” has the meaning set forth in Section 2(e).

“**Previous Landlord**” means Borrower and any other person that was landlord under the Master Lease prior to a Master Lease termination.

“**Property Level Assignment of Leases and Rents**” has the meaning set forth in Recital F.

“**Rents**” has the meaning set forth in the Property Level Assignment of Leases and Rents.

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