**BUY-SELL (TRI-PARTY) AGREEMENTS**

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1. The Parties to the Agreement
	1. The Borrower
	2. The Construction Lender
	3. The Permanent Lender or Equity Provider
2. The Objective of the Agreement
	1. Facilitates the transition between construction stage and permanent stage of a project.
		1. Construction Loan Commitment
		2. Permanent Loan Commitment or Purchase Agreement
		3. Buy-Sell Agreement establishes the linkage between the other two agreements.
	2. Defines the rights and remedies of the parties.
		1. Default by Borrower under the Construction Loan.
		2. Default by Permanent Lender by failure to fund.
		3. Default by Equity Provider by failure to purchase.
	3. Provides for the legal mechanics of the transition.
		1. Assignment of existing loan documents.
		2. Replacement of existing loan documents with new loan documents.
			1. Attachment of form of new documents.
3. The Borrower's Perspective
	1. Get Construction Lender to fund and advance; and then get Permanent Lender to fund.
	2. Anticipate and resolve as many issues as possible as early as possible so as to reduce the risk of future problems.
		1. Title
		2. Survey
		3. Site and Engineering Plans
		4. Architectural Drawings
		5. Environmental Reports
		6. Existing Leases
		7. Tenants
			1. Credit criteria for future tenants
			2. Willingness to grant Subordination Nondisturbance Agree- ments
		8. Form of Lease
		9. Form of Certificates that will be required by Permanent Lender.
			1. General Contractor
			2. Architect
			3. Site Engineer
		10. Form of Opinion Letter from Borrower's counsel
4. The Construction Lender's Perspective.
	1. Objective is to advance funds and get "taken out."
	2. Borrower's assignment of permanent commitment or agreement to sell to Construction Lender as additional security.
		1. Permanent Lender's consent to such assignment.
		2. Permanent Lender's agreement to notify Construction Lender of default and afford opportunity to cure.
			1. Will this be concurrent notice to Borrower, or subsequent notice after Borrower fails to cure default?
		3. Agreement to modify the "take out" agreement (i.e. the permanent commitment or the agreement to purchase) if the Construction Lender succeeds to the position of the Borrower.
		4. Provision that no assumption by the Construction Lender of the "take out" agreement unless and until there is an affirmative written assumption agreement.
	3. What happens if unforeseen circumstances result in the Construction Lender having advanced more than the amount of the Permanent Lender's commit- ment?
		1. Will the Permanent Lender permit a second mortgage held by the Construction Lender?
		2. Can the Permanent Lender refuse to fund, even at its committed amount?
5. The Permanent Lender's/Equity Provider's Perspective
	1. Objective is to acquire loan or property in accordance with its commitment or purchase agreement.
	2. What is the degree of flexibility for change in its agreement in order to accommodate the Borrower and Construction Lender.
		1. To the extent that there is an assignment of the permanent commit- ment or the purchase agreement to the Construction Lender, the exercise of rights should be circumscribed to the extent set forth in the Buy-Sell Agreement.
	3. If default under the construction loan, Permanent Lender/Equity Provider wants notice and opportunity to cure.
		1. Alternative might be to acquire the defaulted construction loan for the amount that the Construction Lender has advanced.

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**TRI-PARTY AGREEMENT**

THIS TRI-PARTY AGREEMENT (this “**Agreement**”) is made as of , 199\_, among , a (“**Borrower**”), , a (“**Lender**”), and Equity Provider, a (“**Equity Provider**”).

**RECITALS**

1. Borrower is the fee owner of that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Premises**”).
2. Pursuant to that certain Construction Loan Agreement of even date herewith by and between Borrower and Lender (the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower to finance construction of the Improvements (as defined in the Loan Agreement) on the Premises (the Premises and the Improvements are hereinafter sometimes collectively referred to as the “**Project**”). Except as otherwise provided in this Agreement, initially-capitalized terms used in this Agreement shall have the meanings set forth in the Loan Agreement.
3. Pursuant to the Loan Agreement, Lender has agreed to lend to Borrower up to

$ (the “**Loan**”) for the purpose of, among other things, paying certain of the costs for acquiring the Premises and constructing the Improvements. The Loan is evidenced by a Promissory Note of even date herewith (the “**Note**”) executed by Borrower and payable to the order of Lender.

1. In connection with the Project, Borrower and Equity Provider have entered into that certain Agreement to Purchase Upon Completion, dated of even date herewith, by and between Borrower and Equity Provider (the “**Purchase Agreement**”), by which Borrower has agreed to sell to Equity Provider, and Equity Provider has agreed to purchase from Borrower, the Project, subject to and in accordance with the terms and conditions contained in the Purchase Agreement.
2. As a condition precedent to the funding of the Loan by Lender under the Loan Agreement, Lender has required, as security for the performance of Borrower’s obligations under the Loan Documents, that Borrower execute and deliver to Lender an assignment of Borrower’s right, title and interest in and to the Purchase Agreem ent, and that Equity Prov ider acknowledge said assignment, provided that the rights of Lender with respect to such assignment shall be subject to, and exercisable only in accordance with, the terms and conditions hereof.

NOW, THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and in order to induce Lender to enter into the Loan Agreement and make the advances thereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

* 1. **Assignment; Security Interest**. As additional security for Borrower’s obligations under the Loan Documents and all other obligations of Borrower to Lender which are secured by the Deed of Trust, Borrower hereby assigns, conveys and transfers to Lender, and grants to Lender a first priority security interest in, all of Borrower’s right, title, and interest in, to and under the Purchase Agreement, including, without limitation, all amounts from time to time due to Borrower under the Purchase Agreement pursuant to the terms thereof and all claims, demands, and other rights of Borrower with respect to the Purchase Agreement and documents associated with the Purchase Agreement, excluding any Incentive Development Fee or Incentive Management Fee (each hereinafter defined) which will no longer be payable under certain circumstances as provided in Section 2.(b) below. It is expressly understood and agreed by Borrower and Equity Provider that Lender does not hereby assume any of Borrower’s obligations or duties concerning the Purchase Agreement, unless and until Lender notifies Equity Provider in writing that Lender is exercising its rights pursuant to Section 2 hereof, in which case Lender’s rights and obligations shall be subject to the terms and provisions of the Purchase Agreement as modified by the applicable terms of this Agreement. Equity Provider acknowledges such assignment and agrees that such assignment is permitted under the Purchase Agreement and shall notconstitute a default under or otherwise permit Equity Provider to terminate the Purchase Agreement. Notwithstanding any provision of this Agreement to the contrary, Lender agrees that, although Lender has a security interest in all of Borrower’s rights under the Purchase Agreement, Lender’s rights and remedies with respect to the Purchase Agreement shall be exercised pursuant hereto. As additional securityfor Equity Provider’s obligations under this Agreement, Equity Provider hereby (a) assigns, conveys and transfers to Lender, and grants to Lender a security interest in and to the capital contributions of the partners of Equity Provider that are the subject of paragraph 3 of the Partners’ Undertaking referred to in Section 7.(g) below, and (b) agrees that such capital contributions shall be made directly to Lender.

# Enforcement by Equity Provider; Satisfaction by Lender.

* + 1. Lender may assign or grant participations in all or a portion of the Loan and Lender’s interest in this Agreement and the other Loan Documents to any affiliate of Lender and/or to any other bank, savings and loan association, insurance company, mortgage banker, pension fund or similar institutional lender, and in connection with any assignment or participation disseminate to the prospective assignee(s) or participant(s) any financial information Lender has pertaining to Borrower or Equity Provider, provided that (1) Lender remains the “lead bank” in connection with any participation or the agent bank in connection with any assignment prior to a Default (as defined in the Loan Agreement), except that after the occurrence of a Default, any single assignee who has been assigned all of Lender’s interest in the Loan Documents shall have all the rights of a “Permitted Owner” provided below; (2) any assignee of the Loan or portion thereof assumes in writing the obligations and agreements of Lender contained in this Agreement and the other Loan Documents (to the extent of the assignee’s interest in the Loan); and (3) before sending anyfinancial information regarding Borrower or Equity Provider to any prospective assignee or participant, Lender shall provide Borrower or Equity Provider, as the case may be, at least five (5) days’ prior written notice of Lender’s intent to send such information. Except to the extent required by law or by the terms hereof or of the Loan Documents, Lender agrees that it will not release any material part of the security for the Loan, accelerate maturity of the Loan, or forecl ose any of the Loan Documents without the prior written consent of Equity Provider (which consent shall not be unreasonably withheld or delayed) unless a Default shall occur under the Loan Documents. Upon the occurrence

of a Default, Lender agrees that it will not take any of the aforementioned actions if Equity Provider (without any obligation of Equity Provider to do so) (A) takes all action and pays all amounts necessary to cure such Default within thirty (30) days after Equity Provider receives written notice thereof from Lender at the address set forth in Section 18 hereof, except that if such Default does not involve the paymentof money and is not reasonably capable of being cured or remedied within thirty

(30) days and Equity Provider has notified Lender that it has elected to cure such Default and has commenced to cure such Default within such thirty (30) day period and is diligently proceeding to cure such Default, the cure period shall be extended for a reasonable period (not to exceed ninety

(90) days after Equity Provider receives such written notice from Lender) to complete such cure; provided, however, Equity Provider’s cure rights under this clause (A) shall not apply to a Default which is listed on Schedule I attached hereto and incorporated herein by this reference; or (B) agrees to purchase from Lender the Loan Documents within such thirty (30) day period for an amount (the “**Note Purchase Amount**”) equal to the outstanding balance of all principal, accrued interest at the nondefault rate and other amounts owed thereunder (but excluding anydefault interest, late payment penalties or other such delinquencies) plus all attorneys’ fees incurred by Lender to realize upon its collateral for the Loan (but excluding costs of filing suit against Borrower or any guarantor for any deficiency), in which event Lender agrees to sell and deliver to Equity Provider, without recourse or warranty, such Loan Documents upon receipt of such payment. After any such sale or delivery, Lender shall have no further obligations to Borrower, including, without limitation, any obligation to make any further advances to Borrower. To the extent the Note Purchase Amount is less than the full amount owed by Borrower under the Loan Documents, neither Borrower nor any guarantor of the Loan shall be released from its obligation to pay to Lender the difference and Lender shall have all rights and remedies against Borrower and such guarantor (but not the Project) provided in the Loan Documents for the difference notwithstandi ng the sale of the Loan Documents to Equity Provider in accordance with this Section 2.(a). In the event Equity Provider cures such a Default as provided above, Borrower shall reimburse Equity Provider for all reasonable costs and expenses actually incurred by Equity Provider in curing such Default together with interest at the Past Due Rate (as defined in the Note) from the date incurred until paid, immediately upon written demand from Equity Provider to Borrower. Equity Provider shall be entitled to offset any such amounts against any sums payable by Equity Provider to Borrower under the Purchase Agreement or any document attached as an exhibit to the Purchase Agreement, to the extent such sums exceed the Note Purchase Amount. The amounts paid by Equity Provider to cure a Default shall be applied in accordance with the Loan Documents. Any sums paid by Borrower to Equity Provider under this Section 2.(a) shall not be considered an “Allowable Development Cost”, as defined in the Purchase Agreement, to the extent such sums constitute costs or damages that would not have been incurred but for such Default.

* + 1. If Equity Provider shall fail to cure such Default within such cure period or shall fail to make such purchase within such thirty (30) day period, then Lender or another Permitted Owner (defined below) shall have the right to take and pursue all of its rights and remedies under the Loan Documents, including but not limited to those set forth herein. As used herein, “**Permitted Owner**” means Lender or any entity to whom Lender has assigned all of its interest under the Loan Documents in accordance with Section 2.(a) above. Without limiting the foregoing, Permitted Owner may, at its option, assume all of Borrower’s Obligations (as defined below) if either

(1) Permitted Owner delivers written notice to Equity Provider, within thirty (30) days after the expiration of the cure period described in Section 2.(a) above, expressly stating its intention to

exercise its rights under this Agreement, or (2) within thirty (30) days after acquiring title to the Project through foreclosure, trustee’s sale or deed in lieu thereof, Permitted Owner commences the completion of the Project and delivers to Equity Provider written notice of Permitted Owner’s intent to exercise its rights under this Agreement. Upon assuming Borrower’s Obligations as provided herein, Permitted Owner: (A) shall be entitled to all of the Borrower’s rights, remedies and benefits under the Purchase Agreement, including the right to enforce the obligation of Equity Provider to acquire the Project (but excluding Borrower’s rights to the Incentive Development Fee under Section 3.(d) of the Purchase Agreement, it being agreed by all parties that in such event, Section 3.(d) of the Purchase Agreement shall be null and void and no Incentive Development Fee shall be payable to Borrower or Permitted Owner, and further excluding Borrower’s and/or Permitted Owner’s right to enter into the Management Agreement pursuant to Sections 8.(b)(25) and 8.(c)(5) of the Purchase Agreement, it being agreed by all parties that in such event Equity Provider shall not be required to enter into such Management Agreement with Borrower or Permitted Owner and that no Incentive Management Fees (as defined in such Management Agreement) shall be payable to Borrower or Permitted Owner and that Equity Provider shall be free to enter into a management agreement for the Project with another party), only upon the timely performance of all the Borrower’s Obligations and satisfaction of all of the conditions precedent to Equity Provider’s obligations contained in the Purchase Agreement as modified by the applicable terms of this Agreement; or (B) may exercise its rights pursuant to Section 2.(c) hereof. Upon assuming all of Borrower’s Obligations and electing to exercise its rights under this Section 2.(b), Permitted Owner shall cure all defaults of Borrower (other than Waived Defaults (as defined below) and defaults by Borrower arising from defaults by Borrower under the Loan Agreement and/or related documents), as set forth in Section 13.(a) of the Purchase Agreement, then existing and perform all of Borrower’s Obligations in the time and manner specified by the Purchase Agreement as modified by the applicable terms of this Agreement. Without in any way limiting Permitted Owner’s other rights and remedies pursuant to the Loan Documents and applicable law, Borrower agrees to cooperate with Permitted Owner in the exercise of Permitted Owner’s rights pursuant to this Section 2.(b), notwithstanding any disputes, defenses, claims, counterclaims or other matters arising from or in any way related to the Purchase Agreement or the Loan. Neither Lender nor any other Permitted Owner shall have any liability to Borrower for, or in connection with, any such demand or requirement that Borrower perform under the Purchase Agreement. The term “**Waived Defaults**” means (i) any breach by Borrower of any representation or warranty in the Purchase Agreement that relates solely to Borrower or any partner of Borrower, (ii) any breach by Borrower of any covenant contained in Section 5 of the Purchase Agreement so long as Permitted Owner complies with such covenant after the date Permitted Owner acquires fee simple title to the Project through foreclosure, trustee’s sale, or deed in lieu thereof or otherwise effectively controls the Project (such date is referred to herein as the “**Transfer Date**”), and (iii) any other default or breach by Borrower so long as such default or breach is cured by Permitted Owner prior to Closing. Upon Permitted Owner’s assumption of all of Borrower’s Obligations, Equity Provider shall be deemed to have waived, for purposes of this Agreement only, all Waived Defaults that have occurred prior to such date; provided, however, such waiver of the Waived Defaults shall not affect or impair any liability of Borrower to Equity Provider under the Purchase Agreement or any documents executed in connection therewith.

* + 1. In addition to the rights of Permitted Owner pursuant to Section 2.(b) above, in the event Permitted Owner: (1) assumes Borrower’s Obligations as provided in Section 2.(b) above; (2) acquires title to the Project through foreclosure, trustee’s sale or deed in lieu thereof; and
1. performs all of the Borrower’s Obligations and satisfies all of the conditions precedent set forth in Section 6 of the Purchase Agreement (other than Section 6.(d) of the Purchase Agreement, to the extent applicable to Borrower, and Section 6.(e) of the Purchase Agreement, to the extent of representations and warranties unique to Borrower such as Borrower’s organization, existence and authority, except as provided in Section 2.(d) below) prior to the Extended Date (hereinafter defined), Equity Provider, upon Permitted Owner’s written request, shall purchase the Project from Permitted Owner at a purchase price (the “**Purchase Price**”) equal to the lesser of (x) amounts funded by Lender pursuant to and in accordance with the Approved Budget (as defined in the Purchase Agreement) (including any amendments to the Approved Budget either approved by Equity Provider or for which no approval by Equity Provider is required under the Purchase Agreement), or (y) $ , if the following conditions precedent have been satisfied:
	1. Permitted Owner must have completed its acquisition of fee simple title to the Proj ect through foreclosure, trustee’s sale, ordeed in lieu thereof. Equity Provider agrees that the date by which Permitted Owner shall use commercially reasonable efforts to complete the Project under Secti on 5.(d) of the Purchase Agreement and the last day for Equity Provider to purchase the Project from Permitted Owner pursuant to the Purchase Agreement may be extended by Permitted Owner (i) up to ninety (90) days to allow Permitted Owner to perform Borrower’s Obligations and satisfy the conditions precedent set forth in Section 6 of the Purchase Agreement as required under this Section 2.(c), (ii) up to ninety (90) more days if Permitted Owner, despite diligence in attempting to acquire title to the Project through foreclosure, trustee’s sale, or deed in lieu thereof, shall be restricted or prohibited from acquiringsuch title under applicable laws (including by way of example, but not limitation, restraining orders, automatic stay, and other restrictions applicable to Permitted Owner as a consequence of any bankruptcy filing or other debtor relief laws) and

(iii) to the extent applicable, by any cure period used by Equity Provider to cure or attempt to cure any Default pursuant to Section 2.(a) above (any such extended date under this Section 2.(c)(3)(A) is herein called the “**Extended Date**”);

* 1. Upon acquisition by Equity Provider, Borrower shall have no right, title or interest in the Project;
	2. Permitted Owner indemnifies, defends and holds Equity Provider harmless from any loss, cost, expense or damage actually incurred by Equity Provider resulting from (x) a judgment of a court of competent jurisdiction that the transfer of the Project or Permitted Owner’s acquisition of the Project was a transfer made with actual intent to delay, hinder or defraud creditors (“**Actual Fraud and Collusion Claim**”), or otherwise a fraudulent conveyance or transfer, or (y) a judgment that the transfer or acquisition pursuant to which Permitted Owner or Equity Provider acquired the Project involved actual fraud or collusion, was a fraudulent conveyance or was irregularly conducted;
	3. Permitted Owner agrees to pay the reasonable attorneys’ fees and costs incurred by Equity Provider in connection with any Actual Fraud and Collusion Claim. Borrower agrees to defend all Actual Fraud and Collusion Claims arising out of a transfer of the Project from Borrower and to pay and reimburse, on a quarterly basis, all reasonable attorneys’ fees and costs of Permitted Owner and Equity Provider in the defense of any

Actual Fraud and Collusion Claim arising out of a transfer of the Project from Borrower whether such claims are brought to judgment or Permitted Owner or Equity Provider prevail and whether Permitted Owner has any obligation to Equity Provider pursuant to the previous sentence; and

* 1. Permitted Owner delivers or causes to be delivered, as applicable, to Equity Provider at the closing all of the items required by Section 8.(b) of the Purchase Agreement, as if Permitted Owner were the Seller under the Purchase Agreement, except the items referred to in Sections 8.(b)(3) and 8.(b)(25) of the Purchase Agreement, provided that the documents required to be delivered pursuant to the Purchase Agreement shall be amended by Permitted Owner and EquityProvider, each acting reasonably and in good faith, to take into account that the Project is being conveyed by Permitted Owner to Equity Provider and, if applicable, that Permitted Owner or its agents and contractors have completed the Project.
		1. As used herein, “**Borrower’s Obligations**” shall mean all duties, rights, liabilities and obligations of Borrower under the Purchase Agreement arising after the Transfer Date other than (1) the duties, liabilities, and obligations that because of their personal nature can only be performed by Borrower, including, but not limited to, provisions of such documents relating to bankruptcy of Borrower, (2) any duty, liability or obligation of Borrower under the Purchase Agreement with respect to a breach or violation of the terms of a Tenant Lease (as defined in the Purchase Agreement) by a tenant thereunder, (3) the obligation of Borrower to pay to Equity Provider the Construction Delinquency Payment (as defined in the Purchase Agreement), or (4) any duty, liability or obligation of Borrower arising under the Purchase Agreement should any transaction provided for by the Purchase Agreement constitute a prohibited transaction under, or other violation of, the Employee Retirement Income Security Act of 1974, as amended, any regulation promulgated thereunder, or any other applicable federal or state law governing retirement or pension plans. In addition, upon the assumption by Permitted Owner of Borrower’s Obligations,

(A) those covenants, representations and warranties of Borrower that refer to Borrower (including, for example, the nature of Borrower, the financial status of Borrower, deliveries by Borrower, Borrower’s knowledge and the ownership of Borrower) shall be modified by Permitted Owner (and Lender if Permitted Owner is not Lender) and Equity Provider (each acting reasonably and in good faith) to refer to Permitted Owner (and Lender if Permitted Owner is not Lender) and Permitted Owner’s permitted successors and assigns hereunder, (B) the covenants, representations and warranties referred to in Exhibit E hereto shall be modified or qualified as set forth on Exhibit E, and

(C) Permitted Owner shall have no obligation to deliver any agreement from in order to satisfy any condition under Section 6.(i) of the Purchase Agreement. Notwithstanding any provision of the Purchase Agreement to the contrary, Lender shall have the right to assign its rights under this Agreement and the Purchase Agreement to any Permitted Owner. Notwithstanding the foregoing or the assumption of any of Borrower’s Obligations, in no event shall Lender or any other Permitted Owner or their respective successors or assigns be liable to Equity Provider for damages or other relief resulting from, or in connection with, the failure of Borrower, Lender or any other Permitted Owner, or their respective successors and assigns to satisfy the conditions and otherwise perform the obligations necessary to cause the sale and purchase of the Project contemplated hereby and by the Purchase Agreement; provided, however, that (D) upon closing of a sale to Equity Provider pursuant to Section 2.(c) above, Permitted Owner shall only be responsible for such

indemnities, liabilities and obligations which (i) arise from and after the date upon which Permitted Owner assumes Borrower’s Obligations in connection with and pursuant to the Purchase Agreement,

(ii) constitute Borrower’s Obligations, and (iii) survive the closing under the Purchase Agreement;

(E) the foregoing shall not limit any rights of Equity Provider against Borrower; (F) if Permitted Owner assumes Borrower’s Obligations, Permitted Owner shall be liable to the extent of Equity Provider’s reasonable actual out-of-pocket costs arising directly from and after the date upon which Permitted Owner assumes Borrower’s Obligations (including inspection costs, attorney’s fees and other consultant’s fees) if Permitted Owner does not satisfy the conditions and perform the obligations necessary to cause Equity Provider to purchase the Project; and (G) Permitted Owner’s liability to Equity Provider under this Agreement, the Purchase Agreement and the documents executed and delivered by Permitted Owner at the Closing shall not exceed $2,000,000 in the aggregate.

* + 1. Equity Provider agrees that all costs set forth in the Approved Budget constitute “Allowable Development Costs”. If Lender advances the proceeds of the Loan to pay costs in accordance with the Approved Budget, subject to the limitations set forth in the Purchase Agreement regarding the reallocation of line items in the Approved Budget, then all such costs shall constitute “Allowable Development Costs”. If Lender or another Permitted Owner assumes Borrower’s Obligations and sells the Project to Equity Provider in accordance with Section 2, the purchase price shall be the Purchase Price and Lender shall have no obligation to establish “Allowable Development Costs”.
	1. **Power of Attorney**. Upon the occurrence and continuation of a Default, Lender shall have the right (and Borrower hereby irrevocably constitutes and appoints Lender as its attorney-in- fact, which power is coupled with an interest, to do so) to demand, receive and enforce Borrower’s rights with respect to the Purchase Agreement, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower, and to do any and all acts in the name of Borrower or in the name of Lender with the same force and effect as Borrower could do if this Agreement had not been made.
	2. **Representations, Warranties and Covenants of Borrower**. As to items 4.(a) through 4.(g) below Borrower hereby certifies, represents and warrants to Lender, and as to items 4.(h) through 4.(j) below Borrower covenants and agrees with Lender, that:
		1. The Purchase Agreement has not been altered, amended or modified and is in full force and effect.
		2. Borrower has full title and right to assign its interest in the Purchase Agreement to Lender pursuant to this Agreement.
		3. No consent or approval of any person is required to be obtained by Borrower for the execution and delivery by Borrower of this Agreement.
		4. Borrower has delivered to Lender a true and complete copy of the executed counterpart of the Purchase Agreement.
		5. Except for the assignment by Borrower in this Agreement and the Loan Documents, no other assignment of all or any part of any interest of Borrower in and to the Purchase Agreement has been made by Borrower which remains in effect.
		6. There exists no monetary default under the Purchase Agreement, nor, to the best knowledge of Borrower, any nonmonetary default or any event or conditions which, with notice or the passage of time or both, would constitute such a monetary or nonmonetary default or would result in the termination of the Purchase Agreement or would give any party thereto the right to cancel the Purchase Agreement.
		7. No offsets, credits or defenses to the payment or performance of any obligation of Borrower under the Purchase Agreement exist.
		8. Borrower shall not assign, transfer or hypothecate (other than to Lender) the whole or any part of Borrower’s interest under the Purchase Agreement.
		9. Borrower shall obtain the prior written consent of Lender before entering into any agreement that amends, alters, modifies or terminates the Purchase Agreement, which consent Lender agrees not to unreasonably withhold or delay so long as Equity Provider has consented to such amendment, alteration, modification or termination, and such amendment, alteration, modification or termination does not materially and adversely affect Lender’s security for the Loan, Lender’s other rights and benefits under this Agreement and the other Loan Documents, or Borrower’s rights and benefits under the Purchase Agreement; provided, however, nothing herein shall limit or impair the right of Equity Provider to waive any default or covenant or condition of the Purchase Agreement.
		10. Borrower agrees to perform and comply in all respects with all the terms, conditions, covenants and requirements by it to be performed or observed in this Agreement, the Purchase Agreement and the Loan Documents. The foregoing sentence shall not be construed as creating personal recourse on Borrower or personal liability for Borrower, where Borrower does not otherwise have personal recourse or is not otherwise personally liable.
	3. **Performance by Borrower**. Borrower shall at all times diligently enforce its rights and perform its duties and obligations in, under and to the Purchase Agreement, unless otherwise permitted by Lender or anyother Permitted Owner in writing, and shall, at Borrower’s sole cost and expense, appear in and defend Lender and any other Permitted Owner in any action or proceeding in any wayconnected with the Purchase Agreement, and shall pay all reasonable costs andexpenses, including, without limitation, attorneys’ fees, which Lender or any other Permitted Owner may incur in connection with Lender’s or any other Permitted Owner’s appearance, voluntarily or otherwise, in any such action or proceeding in any way connected with the Purchase Agreement. Lender’s or any other Permitted Owner’s permission to Borrower not to perform under the Purchase Agreement shall not restrict or limit Equity Provider’s rights and remedies under the Purchase Agreement for Borrower’s resulting default, if any.
	4. **Indemnification by Borrower**. Borrower hereby agrees to pay and protect, defend, and indemnify and hold Lender and any other Permitted Owner harmless from, for and against, any

and all claims, demands, liabilities, losses, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys’ fees) to which Lender or any other Permitted Owner may become exposed, or which Lender or any other Permitted Owner may actually incur, in connection with the Purchase Agreement or in exercising its rights under this Agreement (including, without limitation, all such costs and expenses incurred by Lender or any other Permitted Owner in connection with the curing of Borrower’s defaults under the Purchase Agreement and the satisfaction of all conditions precedent to Equity Provider’s obligations under the Purchase Agreement). All such amounts due from Borrower to Lender or any other Permitted Owner pursuant to this section shall be payable upon demand and shall accrue interest at the Past Due Rate from the date of each such demand, which interest shall be immediately due and payable. **THE FOREGOING INDEMNITY SHALL INCLUDE CLAIMS, DEMANDS, LIABILITIES, LOSSES, LAWSUITS, JUDGMENTS, AND COSTS AND EXPENSES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF LENDER OR ANY**

**OTHER PERMITTED OWNER OR ANY STRICT LIABILITY.** The foregoing indemnity shall not, however, cover matters resulting solely from the gross negligence or willful misconduct of Lender or another Permitted Owner.

* 1. **Representations, Warranties and Covenants of Equity Provider**. As to items 7.(a) through 7.(i) below Equity Provider hereby certifies, represents and warrants to Lender, as to items 7.(j) through 7.(p) below covenants and agrees with Lender, and as to item 7.(q) below certifies, represents and warrants to Borrower and Lender, that:
		1. There are no other agreements in existence between Equity Provider and Borrower relating to the Project, other than the Purchase Agreement.
		2. The Purchase Agreement has not been altered, amended or modified and is presently in full force and effect.
		3. As of this date, Equity Provider has fulfilled in all material respects all of its duties and obligations under the Purchase Agreement to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Purchase Agreement. To the actual knowledge of those representatives of Equity Provider that as of the date hereof have been directly involved in the Project and the Purchase Agreement, Borrower has fulfilled in all material respects all of its duties and obligations under the Purchase Agreement to be fulfilled as of this date and is not in default in any material respect under the terms, conditions, covenants and obligations of the Purchase Agreement.
		4. Borrower has satisfied all of the terms and conditions of the Purchase Agreement required to be satisfied as of the date hereof, except for the items disclosed on Exhibit B attached hereto. Borrower has provided, and Equity Provider has approved, all “Initial Property Information,” “Additional Property Information,” and “Supplemental Property Information” required with respect to the Project under Section 1.1 of that certain Right of First Offer Agreement dated as of , 19 , by and among Equity Provider and the various companies named therein.
		5. Equity Provider has full power of authority to consummate the transactions contemplated pursuant to the Purchase Agreement.
		6. This Agreement and the Purchase Agreement have been duly authorized, executed and delivered by Equity Provider and are legal and binding upon Equity Provider, and are enforceable against Equity Provider in accordance with their terms.
		7. Attached hereto as Exhibit C is a written approval by and personal undertaking of the partners of Equity Provider in respect of the obligations of Equity Provider hereunder and under the Purchase Agreement (the “**Partners’ Undertaking**”).
		8. For purposes of Section 6.(n) of the Purchase Agreement, Equity Provider has satisfied itself that based on the facts existing as of the date of this Agreement, the transactions contemplated by the Purchase Agreement will not result in a non-exempt prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended, or the regulations promulgated thereunder, or, to the extent applicable, a violation of a state statute regulating governmental plans, subjecting Equity Provider or its constituent partners to liability for violation of any of the foregoing statutes or regulations.
		9. Equity Provider has satisfied itself that as of the date of this Agreement, Borrower has provided all insurance required, and otherwise satisfied all of Borrower’s obligations, under Section 5.(i) of the Purchase Agreement. Additionally, Equity Provider has approved the Tenant Leases, if any, which are described in Exhibit D attached hereto.
		10. During the term of the Loan, Equity Provider shall not enter into any agreement with Borrower to modify the Purchase Agreement or any attachment thereto without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed as provided in Section 4.(i) above.
		11. Whenever Equity Provider shall deliver any written notice or demand regarding a default by Borrower under the Purchase Agreement or this Agreement, to Borrower with respect to the Purchase Agreement or this Agreement, Equity Provider shall, at the same time, deliver to Lender a copy of such notice or demand. So long as such notice has been given in accordance with Section 18 hereof, Lender’s failure to receive such notice shall not limit or restrict Equity Provider’s rights or remedies under the Purchase Agreement or this Agreement.
		12. Any change in the ownership, management or control of Borrower arising from the exercise of Lender’s remedies following a Default under the Loan Documents shall not entitle Equity Provider to terminate the Purchase Agreement, subject to Equity Provider’s right to approve any assignee of Borrower under the Purchase Agreement other than a Permitted Owner as described in Section 2.(d) hereof.
		13. In the event of a breach or a default by Borrower under the Loan Documents and the subsequent foreclosure of the Project or acceptance of a deed in lieu thereof by Lender or another Permitted Owner, then Permitted Owner, upon timely assuming all of Borrower’s Obligations in writing in accordance with Section 2 hereof, shall be entitled to all of the rights and

benefits of Borrower under the Purchase Agreement (but excluding Borrower’s rights to the Incentive Development Fee under Section 3.(d) of the Purchase Agreement, it being agreed by all parties that in such event, Section 3.(d) of the Purchase Agreement shall be null and void and no Incentive Development Fee shall be payable to Borrower or Lender, and further excluding Borrower’s and/or Permitted Owner’s right to enter into the Management Agreement pursuant to Sections 8.(b)(25) and 8.(c)(5) of the Purchase Agreement, it being agreed by all parties that in such event Equity Provider shall not be required to enter into such Management Agreement with Borrower or Permitted Owner and that no Incentive Management Fees shall be payable to Borrower or Lender and that Equity Provider shall be free to enterinto a management agreement for the Project with another party) and subject to all the duties, obligations and liabilities of Borrower under the Purchase Agreement to the extent of Borrower’s Obligations and as provided in this Agreement.

* + 1. Should Borrower breach any representation, warranty, covenant, agreement, or other term or provision of the Purchase Agreement, or should any condition precedent to Equity Provider’s obligations under the Purchase Agreement fail to be satisfied within the time frame required under the Purchase Agreement, Equity Provider shall not take any action to terminate or cancel the Purchase Agreement, refuse to close the purchase of the Project under the Purchase Agreement, or exercise any other remedy against Borrower unless and until Equity Provider shall have given Lender written notice of the breach or failure and Lender shall have failed to cure same within thirty (30) days after delivery of such notice; provided, however, if the breach or failure by its nature cannot be cured in thirty (30) days, and if Lender commences the cure of such breach or failure within thirty (30) days after delivery of Equity Provider’s notice and thereafter diligently pursues such cure, Lender’s cure period shall be extended for a reasonable period (not to exceed ninety (90) days after delivery of Equity Provider’s notice to Lender) to complete such cure (the cure period provided to Lender under this Section 7.(n) is herein called the “**Cure Period**”). Additionally, if Equity Provider shall object, pursuant to Section 4 of the Purchase Agreement, to any matter disclosed in the Title Commitment or As-Built Survey delivered to Equity Provider thereunder, then Equity Provider will provide Lender written notice of the objection simultaneously with delivering the objection to Borrower, and Lender shall have the right during the Cure Period to cure such objection. During the Cure Period, Lender may, at its option, and without relieving Borrower of any of its obligations under any Loan Document, the Purchase Agreement or this Agreement, take any actions necessary in order to eliminate the reasons for the proposed action of Equity Provider. The requirements of this subsection shall in no way alter, amend or modify any provision in the Purchase Agreement providing for automatic cancellation or termination. In the event Lender cures any breach or failure by Borrower as provided above, Borrower shall reimburse Lender on demand for all costs and expenses actually incurred by Lender in effecting the cure, together with interest on such amounts at the Past Due Rate from the date of demand until paid, and all such costs and expenses and interest thereon shall constitute indebtedness secured by the Deed of Trust and any other Loan Documents securing the Loan. The provisions of this paragraph 7.(n) shall not affect Equity Provider’s agreement to waive “**Waivable Defaults**” as aforesaid.
		2. At all times prior to the date closing is required to occur under the Purchase Agreement, Equity Provider shall assure that the unfunded capital contributions which its partners are required to make under its limited partnership agreement remain outstanding in an aggregate amount equal to or greater than the sum of (1) the stated principal amount of the Loan plus (2) the stated principal amounts of all other outstanding loans made by Lender to Borrower or an affiliate

of Borrower and which are the subject of a tri-party agreement between Borrower (or its affiliate), Lender, and Equity Provider.

* + 1. Subject to any and all defenses which Equity Provider has under the express terms of the Purchase Agreement (but subject to the provisions of this Agreement) or this Agreement, the obligations of Equity Provider under this Agreement shall not be released, impaired or affected by or on account of (1) any impairment, modification, release or limitation of liability of, or stay of lien enforcement proceedings against, Borrower or its property, or the rejection or attempted rejection of this Agreement or the Purchase Agreement by Borrower in a bankruptcy proceeding or otherwise, or any receivership, insolvency, bankruptcy, reorganization or other similar proceedings affecting Borrower; (2) the exercise or failure to exercise by Lender of any right conferred upon Lender in any Loan Document; or (3) any defenses given to sureties or guarantors at law or in equity, which Equity Provider hereby waives. Lender shall not be required to take any action against Borrower, or other persons, to exhaust its remedies against endorsers, guarantors, collateral and other security, or to resort to any balance of any deposit account or credit on the books in favor of Borrower, or any guarantor of the Loan, or any other person before invoking the benefits of or pursing its rights and remedies under this Agreement.
		2. Equity Provider has reviewed and approved the items listed on Exhibit F hereto relating to Borrower and the Project (and any corresponding closing conditions under the Purchase Agreement).
	1. **Representations, Warranties and Covenants of Lender**. As to items 8.(a) through 8.(d) Lender hereby certifies, represents and warrants to Equity Provider, and as to items 8.(e) through 8.(g) Lender covenants and agrees with Equity Provider, that:
		1. There are no other agreements in existence between Lender and Borrower relating to the Project, other than the Loan Documents and the documents evidencing, securing or pertaining to the Site Development Loan.
		2. The Loan Documents have not been altered, amended or modified and are presently in full force and effect.
		3. As of this date, Lender has fulfilled all of its duties and obligations under the Loan Documents to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Loan Documents. To the best of the actual knowledge of those officers of Lender who have been directly involved in the Project and this Agreement, and as of this date, Borrower has fulfilled all of its duties andobligations under the Loan Documents to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Loan Documents.
		4. This Agreement and the Loan Documents have been duly authorized, executed and delivered by Lender and are legal and binding upon Lender, and are enforceable against Lender in accordance with their terms.
		5. So long as Equity Provider is not in default under this Agreement, Lender shall not enter into any agreement with Borrower to modify the Loan Documents or any attachment thereto without the prior written consent of Equity Provider, which shall not be unreasonably withheld or delayed so long as the modification in question does not materially and adversely affect Equity Provider’s rights and benefits under this Agreement or the Purchase Agreement; provided, however, nothing herein shall limit or impair the right of Lender to waive any default or covenant or condition of the Loan Documents.
		6. Whenever Lender shall deliver any written notice or demand to Borrower with respect to the Loan Documents or this Agreement, Lender shall, at the same time, deliver to Equity Provider a copy of such notice or demand. So long as such notice has been given in accordance with Section 18 hereof, Equity Provider’s failure to receive such notice shall not limit or restrict Lender’s rights or remedies under this Agreement or the other Loan Documents.
		7. Notwithstanding anything to the contrary contained in the documents evidencing, securing or pertaining to the Loan, if acasualty occurs with respect to the Project, Lender shall make available to Borrower all casualty insurance proceeds to rebuild or repair the Project and extend the term of the Loan as necessary to allow such rebuilding or repair to occur prior to maturity of the Loan, if both of the following conditions are met: (1) no Default shall then exist and no event shall then exist which, with the giving of notice or passage of time or both, would constitute a Default (for purposes of this subsection (1), a Default shall not be deemed to have occurred until Lender shall have given notice to Equity Provider and opportunity to cure pursuant to Section 2.(a) hereof, and pending any such cure, Lender shall hold all casualty insurance proceeds in its possession for the account of Borrower); and (2) Equity Provider and Borrower execute an amendment to the Purchase Agreement, in form and substance reasonably satisfactory to Lender, which provides that

(A) Equity Provider will not terminate the Purchase Agreement as a result of the casualty, (B) the date by which Borrower is required to complete the Project under Section 5.(d) of the Purchase Agreement, the last day for Equity Provider to purchase the Project from Borrower pursuant to the second sentence of Section 8.(a) of the Purchase Agreement, and the Anticipated Construction Period (as defined in the Purchase Agreement) shall be extended by the number of days required for Borrower to rebuild, restore, and repair the damage to the Project caused bythe casualty, and (C) the “Purchase Price” under the Purchase Agreement shall be increased by the amount of any reasonable, direct, out-of-pocket costs and expenses of Lender associated with the casualty or extension of the Loan (but excluding any extension fee) which Borrower is obligated to pay Lender under the Loan Documents (which costs and expenses shall constitute Allowable Development Costs under the Purchase Agreement).

* 1. **Transfer**. If, during the term of this Agreement, (“

 ”) shall desire to Transfer (as defined in the Limited Partnership Agreement of Equity Provider dated , 19 ), or shall initiate any procedure to Transfer, its limited partnership interest in Equity Provider to another party (the “**Intended Transferee**”), Equity Provider shall provide written notice thereof to Lender at least sixty (60) days prior to the date

 intends to consummate the Transfer. Such notice shall include a statement and evidence as to whether the financial condition of the Intended Transferee meets the Financial Threshold (defined below). If the Intended Transferee’s financial condition meets the Financial Threshold, then may Transfer its limited partnership interest in Equity Provider to the

Intended Transferee without Lender’s consent or approval. If the Intended Transferee’s financial condition does not meet the Financial Threshold, then may not Transfer its limited partnership interest in Equity Provider to the Intended Transferee unless Lender consents in writing to such Transfer. As used herein, the term “**Financial Threshold**” means, as to any Intended Transferee, either (a) a credit rating of BBB or better by Standard & Poor’s Corporation (“**S&P**”) (and such Intended Assignee is not on S&P’s credit watch with negative implications, nor has S&P publicly announced that it is reviewing such Intended Assignee for a downgrading of such Intended Assignee’s credit rating), or (b) if the Intended Transferee is not assigned a credit rating by S&P, Lender determines that such Intended Assignee has financial qualifications comparable to entities rated at least BBB by S&P, such determination to be made by Lender in its reasonable discretion and not to be unreasonably delayed by Lender.

* 1. **Limitation on Liability**. Nothing in this Agreement shall be deemed to be or construed to be an agreement by Lender or any other Permitted Owner to perform any covenant of Borrower under the Purchase Agreement unless and until Permitted Owner assumes Borrower’s Obligations as provided herein and then any such assumption shall be subject to the terms and conditions hereof. Equity Provider is not a party to the Loan Documents (other than this Agreement), and assumes, and shall have, no liability or responsibility under the Loan Documents (other than pursuant to this Agreement).
	2. **Waiver**. The waiver of a default hereunder shall not constitute a waiver of any other default or of the same default on any other occasion.
	3. **Cumulative Remedies**. The rights and remedies of Lender under this Agreement are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Lender may have under the Loan Agreement or the other Loan Documents, at law, or otherwise. Lender has no duty to Borrower, Equity Provider, any guarantor of the Loan or any other person to exercise its rights hereunder.
	4. **Severability**. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Agreement or any provision contained in the other Loan Documents or the Purchase Agreement.
	5. **Amendment**. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by Borrower, Lender and Equity Provider.
	6. **Successors and Assigns**. This Agreement shall be binding upon Lender, Borrower and Equity Provider and their respective successors and assigns, and shall inure to the benefit of Lender and Equity Provider and their respective successors and assigns and Borrower.
	7. **Termination**. Upon the satisfaction of all obligations of Borrower to Lender under the Loan Agreement, the Note and the other Loan Documents and the due recordation of the release or reconveyance of all deeds of trust now or hereafter securing said obligations, this Agreement shall automatically terminate. Lender, Equity Provider and Borrower each hereby agrees, upon

termination of this Agreement, to execute a release and reconveyance of this Agreement and all further documents, if any, necessary or required in order to evidence the termination of this Agreement.

* 1. **Choice of Law**. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF , WITHOUT GIVING EFFECT TO PRINC IPLES OF CONFLICTS OF LAW.
	2. **Notices**. Each notice, request, demand and other communication hereunder will be in writing and will be deemed to have been duly given (a) when delivered by hand (so long as the delivering party shall have been received a receipt of delivery executed by the party to whom such notice was delivered), or (b) three (3) business days after deposit in United States certified or registered mail, postage prepaid, return receipt requested, or (c) when sent by telex or telecopier (with receipt confirmed) provided a copy is also sent by United States mail, or (d) one (1) business day after delivery to a recognized overnight courier service, in each case addressed to the parties as follows (or to such other address as a party may designate by notice to the others):

Borrower:

Attn: Fax:

with a copy to:

Attn: Fax:

Equity Provider:

Attn: Fax:

with a copy to:

Attn: Fax:

Lender:

Attn: Fax:

with a copy to:

Attn: Fax:

* 1. **Counterparts**. This Agreement may be executed in anynumber of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.
	2. **Priority; Term**. Equity Provider agrees that if the Purchase Agreement or any memorandum thereof is recorded, the Purchase Agreement or such memorandum, as the case may be, shall be recorded subsequent to recordation of any Loan Documents by Lender and shall be subject and subordinate thereto. In addition, subject to termination as described in the next sentence, this Agreement and the rights and obligations of the parties hereto shall continue notwithstanding the exercise by Lender of its rights and obligations pursuant to the Loan Documents and/or this Agreement and notwithstanding any foreclosure, trustee’s sale, or deed in lieu thereof affecting the Project. Notwithstanding anything to the contrary contained in this Agreement, this Agreement and the obligations of Lender and Equity Provider hereunder shall terminate if Permitted Owner becomes entitled to assume Borrower’s Obligations under Section 2.(b) above but does not do so in the manner provided in Section 2.(b). Any such elections may bemade by Permitted Owner acting alone and shall be effective upon the delivery or recordation of a written declaration by Permitted Owner to that effect. Notwithstanding that Equity Provider’s joinder in any such elections shall not be required, Equity Provider agrees to join in such elections if requested to do so by Permitted Owner. This Agreement shall only be recorded if Lender so elects.
	3. **Cure Period**. Borrower’s failure to perform any of its obligations under this Agreement will not constitute a Default under the Loan Documents unless and until Lender gives written notice of the non-performance to Borrower and neither Borrower (pursuant to its cure rights provided under the Loan Documents) nor Equity Provider (pursuant to its cure rights provided under this Agreement) cures the non-performance within the applicable cure period after receipt of such notice.
	4. **Limitation on Liability of** Notwithstanding anything to the contrary contained herein, it is understood and agreed that under no circumstances shall have any personal liability hereunder in excess of its interest in Borrower and

IN WITNESS WHEREOF, Borrower, Lender and Equity Provider have caused this Agreement to be executed as of the date first hereinabove set forth.

**BORROWER**:

By: Name: Title:

**EQUITY PROVIDER:**

By: Name: Title:

**LENDER**:

By: Name:

# EXHIBIT B

List of terms and conditions of the Purchase Agreement that Borrower has not satisfied

None

# EXHIBIT C

**CONFIRMATION LETTER**

 , 199

Re: Construction of Business Park Building # Warehouse and Office Facilities (the “**Improvements**”) on the real property in County, \_ which is described in Exhibit A hereto (the “**Land**”) (the Land and Improvements are herein collectively called the “**Project**”)

Ladies and Gentlemen:

Equity Provider, a (the “**Company**”), is the sole general partner of Equity Provider (“**Equity Provider**”). The , a (“ ”), and , a

 (“ ”), are the sole limited partners of Equity Provider. Equity Provider exists pursuant to a Limited Partnership Agreement dated as of , 19 , by and among the Company, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ (the “**Partnership Agreement**”). The Company, and are herein collectively called the “**Partners**.”

On this date, the following documents, among others, are being executed in connection with the Project:

* 1. Construction Loan Agreement (the “**Loan Agreement**”) by and between (“**Lender**”) and (“**Borrower**”), pursuant to which Lender has agreed to loan Borrower the sum of $ (the “**Loan**”) for the acquisition of the Land and construction of the Improvements, subject to and in accordance with the terms and conditions of the Loan Agreement;
	2. Agreement to Purchase Upon Completion (the “**Purchase Agreement**”) by and between Borrower and Equity Provider, pursuant to which Borrower has agreed to sell, and Equity Provider has agreed to purchase, the completed Project, subject to and in accordance with the terms and conditions of the Purchase Agreement; and
	3. Tri-Party Agreement (the “**Tri-Party Agreement**”) by and among Borrower, Lender and Equity Provider, pursuant to which (a) Borrower has collaterally assigned to Lender Borrower’s

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right, title and interest in the Purchase Agreement, and (b) Borrower, Lender and Equity Provider have entered into other agreements pertaining to the Project.

As a condition to making the Loan, Lender has required the Partners to execute and deliver this letter. Understanding that Lender will rely on this letter in making the Loan, the Partners certify to Lender and agree as follows:

1. **Definitions**. Capitalized terms used in this letter without definitions have the respective meanings assigned to them in the Tri-Party Agreement.
2. **Amendments; Defaults**. The Partnership Agreement is in full force and effect, and has not been modified except as follows: Identify any modifications. To the best of the Partners’ knowledge, none of the Partners is in default in keeping, observing or performing any of the terms contained in the Partnership Agreement except as follows: Identify any defaults.
3. **Additional Forward Property**. The Project is an “Additional Forward Propert y” as defined under the Partnership Agreement.
4. **Capital Contributions**. At such time as Equity Provider is obligated to pay the Purchase Price (either as payment of the Purchase Price (as defined in the Purchase Agreement) under the Purchase Agreement or in payment for Equity Provider’s acquisition of the Note and the other Loan Documents under the Tri-Party Agreement) pursuant to and in accordance with the Purchase Agreement or the Tri-Party Agreement, as the case may be, the Partners shall, in the manner and to the extent required in the Partnership Agreement, contribute to Equity Provider, additional capital contributions in the proportions set forth in Sections 3.2 through 3.4 of the Partnership Agreement and in an aggregate amount equal to the Purchase Price. The Partners acknowledge that (a) Borrower has assigned all of its rights to the Purchase Price to Lender, (b) the Tri-Party Agreement authorizes and directs Equity Provider to pay the Purchase Price directly to Lender, (c) the Partners have reviewed and approved the Tri-Party Agreement, and (d) Equity Provider has granted Lender a security interest in, and assigned to Lender Equity Provider’s interest in, the capital contributions described in this paragraph. To induce Lender to make the Loan, the Partners hereby covenant and agree to Lender to make their respective capital contributions which, if all Partners make such capital contributions, will equal the amount of the Purchase Price as aforesaid directly to Lender on behalf of Equity Provider if and to the extent Equity Provider is obligated to pay the Purchase Price under the Purchase Agreement or the Tri-Party Agreement. If any Partner shall fail to make its additional capital contribution described herein (a “**Nonpaying Partner**”) and such failure shall continue for ten Business Days (as defined in the Partnership Agreement) unless Lender has otherwise received payment of the purchase price pursuant to the Purchase Agreement, the Nonpaying Partner shall, upon written demand from Lender or another Permitted Owner, pay such contribution directly to Lender or other Permitted Owner as a payment on the Loan, and such direct payment shall fulfill

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(1) the Nonpaying Partner’s obligation to make its additional capital contribution to Equity Provider with respect to the Project, and (2) to the extent of the payment, a portion of Equity Provider’s obligation to pay the purchase price for the Project under the Purchase Agreement and the Tri-Party Agreement; provided, however, in order to make such written demand on any Nonpaying Partner, Lender (or other Permitted Owner) shall contemporaneously make such a demand on all Nonpaying Partners except to the extent such demand is then precluded by applicable law (such as an automatic stay in a bankruptcy proceeding of a Nonpaying Partner). Any demand from Lender (or another Permitted Owner) to a Nonpaying Partner hereunder shall be sent to the address of the Nonpaying Partner specified for notices in the Partnership Agreement. So long as any written demand from Lender (or another Permitted Owner) hereunder shall remain unpaid, the Nonpaying Partner(s) to whom the demand has been sent shall remain liable to Lender (or other Permitted Owner) for the contribution which is the subject of the demand regardless of whether any of the Partners shall act to terminate the Partnership Agreement (under Section 12.1(c) of the Partnership Agreement or otherwise) as the result of a Nonpaying Partner’s failure to make the additional capital contribution required of it.

1. **Transfer**. If, during the term of the Tri-Party Agreement, shall desire to Transfer (as defined in the Partnership Agreement), or shall initiate any procedure to Transfer, its limited partnership interest in Equity Provider to any other party, shall not consummate the Transfer unless and until (a) Equity Provider has fully complied with all its agreements and obligations set forth in Section 9 of the Tri-Party Agreement and (b) the Intended Transferee has executed and delivered to Lender a written assumption of ’s agreements and obligations under this letter, in form and substance reasonably satisfactory to Lender.
2. **Obligations Not Impaired**. Subject to defenses which Equity Provider may assert under the express terms of the Purchase Agreement or the Tri-Party Agreement, the obligations of the Partners under this letter shall not be released, impaired or affected by or on account of (a) any impairment, modification, release or limitation of liability of, or stay of lien enforcement proceedings against, Borrower or its property, or the rejection or attempted rejection of the Tri-Party Agreement or the Purchase Agreement by Borrower in a bankruptcy proceeding or otherwise, or any receivership, insolvency, bankruptcy, reorganization or other similar proceedings affecting Borrower;

(b) the exercise or failure to exercise by Lender of any right conferred upon Lender in any Loan Document; (c) any defenses given to sureties or guarantors at law or in equity, which the Partners hereby waive; or (d) any defenses which the Partners may assert under the Partnership Agreement. Lender shall not be required to take any action against Borrower or EquityProvider, or other persons, to exhaust its remedies against endorsers, guarantors, collateral and other security, or to resort to any balance of any deposit account or credit on the books in favor of Borrower, or any guarantor of the Loan, or any other person before invoking the benefits of or pursing its rights and remedies under this letter. The Partners acknowledge that they willreceive a direct or indirect benefit from the Loan. The Partners agree not to amend the Partnership Agreement in any manner that adversely affects in any manner the obligations of any Partner to make the capital contributions that are the subject of

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this letter and any such amendment shall be null and void. The provisions of this letter may not be amended without the prior written consent of Lender.

1. **Remedies Cumulative**. The rights and remedies of Lender under this letter are cumulative of all other rights and remedies of Lender under the Loan Documents and applicablelaw.
2. **Successors and Assigns**. This letter shall be binding upon the Partners and their respective successors and assigns and shall inure to the benefit of Lender and its successors and assigns.
3. **Counterparts**. This letter may be executed in anynumber of counterparts and by the different Partners in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same letter.

Sincerely,

**Equity Provider**

By: Name: Title:

By: Name: Title:

By: Name: Title:

# EXHIBIT D

Approved Tenant Leases To be provided if applicable

# EXHIBIT E

**Seller’s Covenants in Section 5 of the Purchase Agreement**

(g) Equity Provider agrees this covenant will be complied with if at Closing all costs for any line item in the Approved Budget that exceed the amount in such line item have been paid in full and are not included in “Allowable Development Costs”.

# Conditions to Equity Provider’s obligations in Section 6 of the Purchase Agreement

1. If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees this condition will be satisfied if the representations and warranties as modified and qualified by this Agreement are true and correct on the Closing Date if certified by Lender and Permitted Owner (if Permitted Owner is not Lender) in writing in the manner required in Exhibit Q of the Purchase Agreement.
2. If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees this condition will be modified by deleting the words “which in the reasonable judgment of Purchaser makes it inadvisable to proceed with the consummation of such transactions shall have been instituted or threatened by any person or entity.”
3. This condition is deleted.
4. Equity Provider agrees this condition will be satisfied if Permitted Owner is unable to comply with all of the requirements of such condition provided at Closing Lender agrees to indemnifyEquity Provider against the consequences of failing to satisfy all of such requirements at Closing.
5. If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees this condition will be waived.
6. If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees the certificate referred to therein and the AIA Form G704 can be executed by Permitted Owner and Permitted Owner’s contractor and architect.

# Additional Deliveries by Seller under Section 7(b) of the Purchase Agreement

(12) If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees that Section 2.(e) of this Agreement shall govern this requirement.

# Deliveries by Permitted Owner in Section 8(b) of the Purchase Agreement

1. Equity Provider agrees to accept a legal opinion from anyreputable law firm licensed in the State of . If Permitted Owner has assumed Borrower’s Obligation, Equity Provider agrees the opinion requirements in subparagraphs (A), (B), (C) and (D) will apply to Permitted Owner and not Seller or its general partners.
2. If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees to accept an indemnity covering the matters contained in the Construction Indemnity Agreement from any of Permitted Owner, Permitted Owner’s contractor or, if a general contractor other than Borrower’s contractor completes the Project, .
3. If Permitted Owner has assumed Borrower’s Obligations, Lender shall execute and deliver the Bring Down Certificate and Equity Provider agrees the Bring Down Certificate shall apply to the representations and warranties in the Agreement as modified by this Exhibit E
4. , (16) and (26) If Permitted Owner has assumed Borrower’s Obligations, EquityProvider agrees these provisions will be deleted except for items identified in these provisions that are in Permitted Owner’s possession or control after exercising commercially reasonable efforts to obtain from Seller, or other apparent sources, those items identified in these provisions.

(18) Equity Provider agrees the Bills Paid Affidavit can be qualified to the extent of anyunpaid bills or claims for labor to the extent the same are being contested and any resulting lien is “insured around” or bonded in accordance with applicable laws and to Equity Provider’s reasonable satisfaction.

(20) If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees this requirement will be satisfied if (a) the certificate is qualified to the best of Permitted Owner’s knowledge as to Service Contracts and any amendment to the Critical Lease executed prior to the Transfer Date and is not so qualified as to Service Contracts and any amendment to the Critical Lease executed on and after the Transfer Date, (b) Permitted Owner delivers copies of such documents to Equity Provider and (c) Permitted Owner agrees to the indemnity referred to above regarding Section 6(j).

**Seller’s Covenants, Representations and Warranties in Section 12(a) of the Purchase Agreement**. If Permitted Owner assumes Borrower’s Obligations, all representations and warranties of Seller shall be deemed made by and apply only to Lender and Permitted Owner (if Permitted Owner is not Lender) as of the Closing Date, and as hereinafter amended:

(6) Equity Provider agrees this representation and warranty will be satisfied if there is no change in zoning applicable to the Project on the date hereof.

1. Equity Provider agrees this representation and warranty will be true as long as there is no violation which could have material adverse effect on the use and operation of the Project.
2. Equity Provider agrees that the second sentence will be deleted in its entirety and replaced with the following:

To the best of Seller’s knowledge, except as disclosed in writing to Purchaser, there are no special assessments pending or threatened against or with respect to the Project on account of or in connection with streets, roads, or any other public improvements, including but not limited to storm and sanitary sewer, water or other utility lines, curbs, gutters, drainage facilities, sidewalks, lighting and the like.

1. If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees that the first sentence and the last three sentences of this representation and warranty will be deleted in its entirety and replaced with the following:

Except as previously disclosed to Purchaser, the Land is not (a) designated by the Secretary of Housing and Urban Development, the Army Corps of Engineers, the State of , or any other governmental or quasi-governmental authority as a flood plain or wetlands area, nor (b) to the best of Seller’s knowledge, designated by any other governmental or quasi- governmental authority as an area subject to environmental or other regulation which would materially affect the use of the Project as an industrial office and warehouse facility as contemplated by the Construction Plans.

1. Equity Provider agrees this representation and warranty will be qualified to the best of Lender’s and Permitted Owner’s knowledge as to notices, negotiations and proceedings occurring prior to the Transfer Date.

(21) Equity Provider agrees this representation and warranty will be satisfied if any lien is “insured around” or bonded in accordance with applicable laws and to Equity Provider’s reasonable satisfaction.

# Indemnity in Section 14 of the Purchase Agreement

If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees that Permitted Owner shall have liability under the indemnity in Section 14 only if Permitted Owner sells the Project to Equity Provider pursuant to the Purchase Agreement and such liability shall be limited to acts or omissions of Permitted Owner committed after the Transfer Date and shall be limited as set forth in Section 2.(d) of this Agreement.

# Section 18 of the Purchase Agreement

If Permitted Owner has assumed Borrower’s Obligations and conveys the Project to Equity Provider, any obligations or liabilities of Permitted Owner that survive the Closing shall automaticallyexpire and be of no further force or effect 18 months after the Closing Date.

# Conditions to Equity Provider’s obligations in Section 6.(n) of the Purchase Agreement, Seller’s Representations and Warranties in Section 12.(a)(14) of the Purchase Agreement, and the Event of Default in Section 13.(a)(4) of the Purchase Agreement.

If Permitted Owner has assumed Borrower’s Obligations, Equity Provider agrees to accept from Permitted Owner a letter in the form of Exhibit G attached hereto (the “**ERISA Letter**”). If Permitted Owner is unable to make the representations contained in the ERISA Letter, Permitted Owner shall notify Equity Provider of such facts. Equity Provider will then in good faith determine if in the absence of such representations the consummation of the transactions contemplated by the Purchase Agreement and this Agreement would be a transaction prohibited by Section 406 of the Employee Retirement Income Security Act of 1974, as amended from time to time (“**ERISA**”), or

Section 4975(c)(1) of the Internal Revenue Code of 1986, as amended from time to time (the “**Code**”), and which prohibition is not made inapplicable by Section 408 of ERISA or Section 4975(d) of the Code respectively (a “**Prohibited Transaction**”). If Equity Provider determines that there is a Prohibited Transaction then the transactions contemplated bythe Purchase Agreement and this Agreement shall not close and Equity Provider and Permitted Owner will attempt in good faith (i) to restructure the transactions contemplated by the Purchase Agreement and this Agreement so that the transactions as so restructured would no longer be a Prohibited Transaction or (ii) file an application for a private exemption under ERISA Section 408(a) and Code Section 4975(c)(2), retroactive to a date which would result in no Prohibited Transaction occurring and diligently pursue such exemption. Equity Provider and Permitted Owner agree that the Extended Date will be extended for a period necessary to accomplish the above objectives not to exceed ninety

(90) days. Equity Provider and Permitted Owner acknowledge and agree that (A) in no event shall any party be required to close the transactions contemplated by the Purchase Agreement and this Agreement if such transactions would be a Prohibited Transaction, (b) neither Permitted Owner nor any of its subsidiaries shall be required to sell any stock of or refrain from entering into any relationship with the or the , and (C) in taking any actions contemplated by clauses (i) and (ii) above each party shall pay their own costs and expenses, but the party or parties whose action or relationship has necessitated such actions shall initiate and coordinate the attempts to resolve such Prohibited Transaction issue. Nothing contained herein shall obligate Equity Provider to agree to waive any of Borrower’s Obligations as amended herein.

# EXHIBIT F

Items Reviewed and Approved by Equity Provider Relating to Borrower and the Project (To be provided by )