

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 6, 2018

S T R A T U S ®

Stratus Properties Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-37716
(Commission File
Number)

72-1211572
(I.R.S. Employer
Identification Number)

212 Lavaca St., Suite 300
Austin, Texas
(Address of Principal Executive Offices)

78701
(Zip Code)

Registrant's telephone number, including area code: (512) 478-5788

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

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR § 240.12b-2).

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

On December 6, 2018, Stratus Kingwood Place, L.P. (“Kingwood, L.P.”), a subsidiary of Stratus Properties Inc. (“Stratus”), and Comerica Bank, as lender, entered into a construction loan agreement and other related loan documents (collectively, the “Loan Documents”). The Loan Documents supersede and replace the land acquisition loan agreement and related documents dated August 6, 2018, which provided for a loan in the amount of \$6,750,000 (the “Prior Loan”), the proceeds of which were used to purchase a 54-acre tract of land located in Kingwood, Texas, for the future development of Kingwood Place, an H-E-B, L.P. (“HEB”)-anchored mixed-use development project (“Kingwood Place”).

The Loan Documents provide for a loan in the amount of \$32,870,000 (which includes an advance in the amount of the outstanding principal balance of the Prior Loan) and provides an additional \$26,120,000 in loan proceeds (collectively the “Loan”) to finance approximately 70 percent of the costs associated with the construction of the approximately \$48,000,000 Kingwood Place project. The remaining 30 percent of the project’s costs (approximately \$15,000,000) is being funded through borrower equity, contributed by Stratus and private equity investors. The development plan for Kingwood Place includes a 103,000-square-foot HEB grocery store, 41,000 square feet of retail space, 6 retail pads and an approximate 10-acre parcel planned for approximately 300 multi-family units. Stratus has engaged an agent to market and sell, subject to market conditions, the multi-family parcel to a third party developer. Construction of Kingwood Place is expected to begin in mid-December. The HEB grocery store is anticipated to open in third-quarter 2019.

The Loan Documents also provide that the maturity date of the Loan is December 6, 2022, with the possibility of two 12-month extensions, subject to satisfying specified conditions. The interest rate applicable to the Loan is the London Interbank Offered Rate plus 2.5 percent. Payments of interest on the loan are due and payable monthly, through December 6, 2022, the date on which the Loan will mature. During the extension periods, the principal balance of the Loan will be payable in monthly installments of principal and interest based on 6.5 percent and a 30-year amortization. Kingwood, L.P. may prepay all or any portion of the Loan without premium or penalty, subject to certain costs, at any time prior to the final maturity date. Upon the occurrence of certain customary events of default, the lender may accelerate repayments under the Loan and the repayment guaranty (discussed further below), sell or liquidate all or any portion of the collateral, set off against the indebtedness any amounts the lender owes to Kingwood L.P., charge interest at the default rate and exercise any one or more of the rights and remedies granted to the lender under the Loan Documents or applicable law.

The Loan is secured by a first lien deed of trust and security agreement that includes as collateral the Kingwood Place project and all leases and rents associated with Kingwood Place.

Stratus has guaranteed completion of the Kingwood Place project. In addition, Stratus has a repayment guaranty limited to 25 percent of the principal amount outstanding from time to time and all accrued and unpaid interest under the Loan. Stratus’s repayment obligations will be further limited to the actual losses or damages sustained by the lender, among other obligations, upon the occurrence of certain carve-out events if Stratus meets the specified requirements, which include completion of Kingwood Place and Kingwood L.P.’s ability to maintain a debt service coverage ratio of at least 1:20 to 1:00.

The Loan contains the same financial covenants as those in place under Stratus’ Comerica Bank credit facility, including a requirement that Stratus maintain a net asset value of \$125,000,000 and an aggregate promissory note debt-to-gross asset value of less than 50 percent. The Loan also contains other affirmative and negative covenants usual and customary for loan agreements of this nature.

The foregoing summary of the Loan does not purport to be complete and is subject to, and qualified in its entirety by, reference to the full text of the Loan Documents, which are filed as Exhibits 10.1 and 10.2.

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

The disclosures set forth in Item 1.01 herein are incorporated by reference into this Item 2.03.

Item 8.01. Other Events.

Stratus issued a press release dated December 12, 2018, announcing that Stratus Kingwood L.P. has obtained construction financing for Kingwood Place, an H-E-B, L.P. (HEB)-anchored mixed-use development project in Kingwood, Texas. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated by reference into this Item 8.01.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Exhibit Title</u>
10.1	Construction Loan Agreement by and between Stratus Kingwood Place, L.P., as borrower, and Comerica Bank, as lender, dated December 6, 2018.
10.2	Promissory Note by and between Stratus Kingwood Place, L.P. and Comerica Bank dated December 6, 2018.
99.1	Press Release dated December 12, 2018 titled "Stratus Properties Inc. Obtains Construction Financing for Kingwood Place."

SIGNATURE

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

Stratus Properties Inc.

By: /s/ Erin D. Pickens
Erin D. Pickens
Senior Vice President and
Chief Financial Officer
(authorized signatory and
Principal Financial Officer)

Date: December 12, 2018

CONSTRUCTION LOAN AGREEMENT

This CONSTRUCTION LOAN AGREEMENT (this “**Agreement**”) is made and entered into as of the 6th day of December, 2018, by and between **STRATUS KINGWOOD PLACE, L.P.**, a Texas limited partnership (“**Borrower**”), whose address is c/o Stratus Properties Inc., 212 Lavaca Boulevard, Suite 300, Austin, Texas 78701, and **COMERICA BANK** (“**Lender**”), whose address is 300 W. Sixth Street, Suite 2250, Austin, Texas 78701, Attn: Commercial Real Estate.

RECITALS

- A. Borrower owns certain real property described in Exhibit A hereto, together with all other appurtenances, fixtures, and other improvements now or hereafter located on the Land.
- B. Lender has agreed to make the Loan to Borrower and Borrower and Lender wish to enter into this Agreement in order to set forth the terms and conditions of the disbursement of the Loan;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

ARTICLE I DEFINITION OF TERMS

1.1 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

Advance means a disbursement by Lender, whether by journal entry, deposit to Borrower’s account, check to third party or otherwise of any of the proceeds of the Loan, any insurance proceeds or Borrower’s Deposit.

Affidavit of Commencement has the meaning set forth in **Section 5.13** hereof.

Affidavit of Completion has the meaning set forth in **Section 5.14** hereof.

Allocations means the line items set forth in the Budget for which Advances of proceeds of the Loan will be made.

Anti-Terrorism Laws means any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders, and ordinances of any Governmental Authority relating to terrorism or money laundering, including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 et seq.); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism”) and the United States Treasury Department’s Office of Foreign Assets Control

list of “Specifically Designated National and Blocked Persons” (as published from time to time in various mediums, including, without limitation, at <http://www.treas.gov/ofac/t11sdn.pdf>).

Appraisal means a written appraisal of the Mortgaged Property (including without limitation, the Improvements) prepared in conformance with the requirements of the Comptroller of the Currency, prepared by an appraiser designated by Lender in Lender’s sole discretion, and subject to review and adjustment consistent with Lender’s standard practices, and approved by Lender.

Approved Lease Form has the meaning set forth in **Section 3.1** hereof.

Assignment of Leases means the Assignment of Rents and Leases, dated as of the date hereof, executed by Borrower in favor of Lender, as modified, amended or supplemented from time to time, assigning to Lender all of Borrower’s interest in all Leases entered into for the Mortgaged Property and all rents and other rights and benefits to which Borrower is entitled under the terms of such Leases.

Borrower’s Deposit means such cash amounts as Lender may deem necessary for Borrower to deposit with it in accordance with the provisions of **Section 3.4** of this Agreement.

Borrower’s Equity shall mean an amount no less than \$15,000,000.

Budget means the budget which is set forth on **Exhibit B** attached hereto and incorporated herein by reference.

Business Day means a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Austin, Texas are authorized or required by law to be closed.

Charges means all fees, charges and/or other things of value, if any, contracted for, charged, received, taken or reserved by Lender in connection with the transactions relating to the Note and the other Loan Documents, which are treated as interest under applicable law.

Commencement Date means the date that is 30 days from the date of this Agreement.

Commitment Fee means \$328,700, to be paid by Borrower to Lender at the closing of the Loan, as consideration for Lender making the Loan to Borrower.

Completion Date means the date that is 18 months from the date hereof.

Construction Contract means collectively, all contracts and agreements entered into between Borrower and Contractor pertaining to the development, construction and completion of the Improvements.

Construction Management Agreement means collectively, all contracts and agreements entered into between Borrower (or its predecessor in interest) and Construction Manager pertaining to the development, construction and completion of the Improvements.

Construction Manager means R.W. Garner Contracting, LLC, together with any other Person acceptable to Lender with whom Borrower contracts for the development, construction and completion of the Improvements or any portion thereof.

Contractor means Joeris General Contractors, Ltd. and Sendero Industries, LLC, together with any other Person acceptable to Lender with whom Borrower contracts for the development, construction and completion of the Improvements or any portion thereof.

Debt Service means the product of (i) the constant monthly payment amount (i.e., payment including both principal and interest) sufficient to fully amortize (using mortgage amortization) the outstanding principal balance of the Loan plus any amounts remaining to be funded under the Loan at the time of determination in equal installments over a thirty (30) year period using an annual interest rate equal to the greatest of (a) the interest rate then in effect under the Note, (b) the then current 10-year U.S. Treasury Rate plus two percent (2.0%), or (c) six and one-half percent (6.5%), multiplied by (ii) twelve (12).

Debt Service Coverage Ratio means a ratio, as determined by Lender, the first number of which is the Net Operating Income as of the applicable Determination Date, and the second of which is Debt Service.

Deed of Trust means the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof, executed by Borrower in favor of Brian P. Foley, Trustee, for the benefit of Lender, as modified, amended, or supplemented from time to time, pursuant to which Borrower grants a lien and security interest in and to the Mortgaged Property for the benefit of Lender to secure the Loan.

Design Professional means Enviroplan Architects Planners Austin, Inc. and Big Red Dog Engineering|Consulting, together with any other Person acceptable to Lender with whom Borrower contracts for the providing of planning, design, architectural, engineering or other similar services relating to the Improvements.

Design Services Contract means, collectively, all contracts and agreements entered into between Borrower and each Design Professional pertaining to the design, development and construction of the Improvements.

Determination Date means the date the Debt Service Coverage Ratio is calculated for purposes of this Agreement and the other Loan Documents, and for the purposes of determining whether Borrower satisfies the conditions to an Extension Period, the Determination Date shall be the last day of the most recent calendar month ending at least thirty (30) days prior to the commencement of the Extension Period in question.

Disposition means any sale, lease (except as expressly permitted pursuant to the Loan Documents), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part, directly or indirectly, of any Equity Interest in Borrower (if Borrower is a corporation, limited liability company, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity), whether direct or indirect; provided, however, and notwithstanding anything to the

contrary contained in this Agreement, a sale of the publicly traded stock of Stratus Properties Inc. shall not constitute a Disposition under the terms of this Agreement.

Draw Request means a request by Borrower to Lender for an Advance in such form and containing such information as Lender may reasonably require.

DSCR/LTV Satisfaction Requirement means, to the extent Borrower or the Mortgaged Property has not satisfied a Debt Service Coverage Ratio test or Loan-to-Value Ratio requirement, as applicable, then Borrower may, in order to (and as a condition precedent to) satisfy such test either:

(a) prepay principal of the Loan, without premium, penalty or fee (other than any LIBOR Costs [as defined in the Note] actually incurred by Lender), in an amount necessary to satisfy the Debt Service Coverage Ratio test or Loan-to-Value Ratio requirement, as applicable;

(b) deposit with Lender in a restricted account with Lender (the "DSCR/LTV Account") and to be held pursuant to the provisions of **Section 5.27** below, an amount that if it were applied to the outstanding principal balance of the Loan would be sufficient to achieve the Debt Service Coverage Ratio test or Loan-to-Value Ratio requirement, as applicable, after giving effect to such hypothetical prepayment; or

(c) deliver to Lender, in form and substance acceptable to Lender and to be held pursuant to the provisions of **Section 5.27** below, a standby irrevocable letter of credit (the "Letter of Credit") in an amount that if it were called upon and the proceeds thereof applied to the outstanding principal balance of the Loan would be sufficient to achieve the Debt Service Coverage Ratio test or Loan-to-Value Ratio requirement after giving effect to such hypothetical prepayment.

Environmental Indemnity Agreement means that certain Environmental Indemnity Agreement dated on or about the date hereof, executed by Borrower and Guarantor, collectively as Indemnitor, in favor of Lender.

Environmental Law means any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or Improvements, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq.; and any corresponding state laws or ordinances including the Texas Water Code ("TWC") § 26.001 et seq.; Texas Health & Safety Code ("THSC") § 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations.

Equity Interest means (i) in the case of any corporation, all capital stock and any securities exchangeable for or convertible into capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents of corporate stock (however designated) in or to such association or entity, (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person, and including, in all of the foregoing cases described in clauses (i), (ii), (iii) or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases.

Event of Default means any happening or occurrence described in **Section 7.1** of this Agreement.

Extension Fee means cash in an amount equal to one-fourth of one percent (.25%) of the then outstanding principal balance of the Loan.

Extension Period means the First Extension Period or the Second Extension Period, as the case may be.

Financing Statement means the financing statement or financing statements (on Standard Form UCC-1 or otherwise) covering Borrower's personal property, as debtor, and naming Lender, as secured party, in connection with the Loan Documents.

First Extended Maturity Date means the date that is one (1) year after the Initial Maturity Date.

First Extension Period means a single period of one (1) year commencing on the first (1st) day after the Initial Maturity Date.

Governmental Authority means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

Governmental Requirements means all present and future statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees of any Governmental Authority applicable to Borrower, Guarantor or the Mortgaged Property.

Guarantor means Stratus Properties Inc., a Delaware corporation.

Guaranty means that certain Guaranty dated of even date with this Agreement executed by Guarantor in favor of Lender, guaranteeing the repayment of all or any part of the Loan, the satisfaction of, or continued compliance with, the covenants contained in the Loan Documents, or both, and certain carve outs from non-recourse liability, all as more particularly set forth therein.

Hazardous Substance means any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful

substance under any Environmental Law, including without limitation: (i) any substance included within the definition of “hazardous waste” pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of “hazardous substance” pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of “regulated substance” pursuant to Section 26.342(11) of TWC; or (b) the definition of “hazardous substance” pursuant to Section 361.003(11) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of “waste” pursuant to Section 30.003(b) of TWC or “pollutant” pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

HVCRE has the meaning set forth in **Section 5.28** hereof.

Improvements means a retail grocery store anchored shopping center containing approximately 186,500 rentable square feet of space, together with all other amenities, to be constructed on the Land, all as more particularly described in the Plans and Specifications.

Indebtedness has the meaning set forth in the Deed of Trust.

Initial Advance means the first Advance (after the Prior Land Loan Refinance Advance) to be made at the time Borrower satisfies the conditions set forth in **Sections 3.1** and **3.2** of this Agreement.

Initial Maturity Date means the date that is forty-eight (48) months from the date of this Agreement.

Inspecting Person means a representative of CD Construction Consulting or another inspecting architect engaged by Lender who will, from time to time, inspect the Improvements for the benefit of Lender.

Interest Reserve shall mean an initial amount of the Loan of up to \$952,614.47 from which Borrower may request Advances to pay interest on the Loan which shall accrue pursuant to the terms of this Agreement.

Land means the real property or interest therein described in **Exhibit A** attached hereto and incorporated herein by this reference.

“Leases” means all leases, ground leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral) that grant to third parties a possessory interest in or the right to use or occupy any part of the Mortgaged Property, together with all security and other related deposits or payments made in connection therewith.

Loan means the loan to be advanced to Borrower by Lender pursuant to the terms of this Agreement, in an amount (subject to the terms hereof), not to exceed, at any one time outstanding, \$32,870,000.00, as evidenced by the Note and other Loan Documents.

Loan Amount means a maximum amount of \$32,870,000.00.

Loan Documents means, collectively, the Note, the Deed of Trust, this Agreement, the Financing Statement, the Guaranty, the Assignment of Leases, the Environmental Indemnity Agreement, the Collateral Assignment of Contracts and Plans and other Agreements Affecting Real Estate, and any and all other documents now or hereafter executed by Borrower, Guarantor, or any other Person in connection with the Loan, the indebtedness evidenced by the Note, or the covenants contained in this Agreement.

Loan Party means, collectively, Borrower, Guarantor and any other Person obligated for the payment and performance of any of the Indebtedness and/or Obligations.

Loan-to-Value Ratio means a percentage determined by the quotient of (i) the Loan Amount (as may be reduced by any principal payments made by Borrower and, if applicable, cancellation of any unfunded principal amounts (if any) as provided in **Sections 2.8 or 2.10** hereof), divided by (ii) the as-is value of the Mortgaged Property as determined by a current Appraisal.

Management Agreement means the written agreement(s) between Borrower and Manager pursuant to which Manager shall manage the Mortgaged Property and which shall be subject to the prior approval of Lender.

Manager means the initial property manager selected by Borrower and approved by Lender, together with any other Person with whom Borrower contracts for the management of the Mortgaged Property.

Material Adverse Effect means any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of Borrower or Guarantor, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Borrower or any Guarantor (or if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or such Guarantor) to pay and perform the Indebtedness or any other Obligations, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Maturity Date means the Initial Maturity Date, as may be extended to the First Extended Maturity Date and the Second Extended Maturity Date pursuant to the First Extension Period and/or the Second Extension Period, respectively, on the terms and conditions set forth in **Sections 2.8 and 2.9** hereof, subject, however, to the right of acceleration as herein provided and as provided elsewhere in the Loan Documents.

Maximum Lawful Rate means the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges (as herein defined) made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note and/or any other portion

of the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law.

Monthly Principal Installment has the meaning set forth in **Section 2.8** of this Agreement.

Mortgaged Property means, collectively, the Land, the Improvements, and all other collateral covered by the Loan Documents.

Net Operating Income means, as of any Determination Date, for the applicable period, the Operating Revenues actually received by Borrower from the operation of the Mortgaged Property for the period in question, less Operating Expenses incurred with respect to the Mortgaged Property for such period. Documentation of Net Operating Income shall be certified by an officer of Borrower with detail reasonably satisfactory to Lender and shall be subject to the approval of Lender, which approval shall not be unreasonably withheld.

Note means the Installment Note dated of even date herewith in the principal sum of \$32,870,000.00 (together with all renewals and extensions thereof) executed and delivered by Borrower payable to the order of Lender, evidencing the Loan.

Obligations means any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor, or any other Person a party to the Loan Documents to Lender, the trustee of the Deed of Trust, or others as set forth in the Loan Documents, and in any deed, Lease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Operating Expenses means, as of any Determination Date, the greater of (i) pro forma expenses for the Mortgaged Property for a twelve (12) month period as assumed in the Appraisal obtained by Lender in connection with making the Loan and (ii) for the prior three (3) month period immediately prior to the Determination Date, which sum shall then be annualized, all actual operating expenses of the Mortgaged Property for the period in question, including, without limitation, (a) ad valorem real estate taxes and assessments (on an accrual basis, based on the best information then available and approved by Lender); (b) insurance premiums (on an accrual basis, based on the best information then available and approved by Lender); and (c) operating expenses actually incurred by Borrower for the management, operation, cleaning, marketing, maintenance and repair of the Mortgaged Property, including (1) the greater of actual management fees or an assumed annual management fee of four percent (4.0%) of Operating Revenues, and (2) a replacement reserve equal to the greater of (x) actual reserves, or (y) \$.10 per square foot per annum. Operating Expenses for this purpose shall exclude (1) any capital expenditures; (2) any payment or expense to which Borrower was or is to be

reimbursed for costs from proceeds of the Loan, insurance, eminent domain, or any source other than Operating Revenues and (3) and any regularly scheduled payments of principal or interest due and owing under the Loan Documents. Operating Expenses shall not include any non-cash expense item such as depreciation or amortization, as such terms are used for accounting or federal income tax purposes.

Operating Reserve shall mean an initial amount of the Loan of up to \$150,000.00 from which Borrower may request Advances to pay operating expenses of the Mortgaged Property pursuant to the terms of this Agreement.

Operating Revenues means, as of any Determination Date, for the prior three (3) month period immediately prior to the Determination Date, which sum shall then be annualized, the recurring gross income actually received by Borrower from the operation of the Mortgaged Property for the period in question, net of any concessions and further excluding (1) security deposits until and unless forfeited by the depositor; (2) any payment to Borrower from the proceeds of the Loan, insurance (other than proceeds of business interruption insurance, which shall be included to the extent such business interruption insurance proceeds are actually received by Borrower) or any other source other than Operating Revenues for reimbursement of costs; (3) advances or loans to Borrower from any partners of Borrower; and (4) other non-recurring income.

Organizational Documents shall mean, in respect of any Person that is organized under the laws of a State, the United States or any other applicable jurisdiction, (i) in the case of any such Person that is organized as a corporation, such Person's articles of incorporation, its bylaws and corporate charter, (ii) in the case of any such Person that is organized as an association or business entity, any such Person's articles of organization or formation and operating agreement, (iii) in the case of any such Person that is organized a partnership, any such Person's partnership certificate, certificate of formation or similar organizational document, its partnership agreement, and any operating agreement, as applicable, (iv) in the case of any such Person that is organized a limited liability company, any such Person's certificate of formation or similar organizational document, its limited liability company agreement and any operating agreement, as applicable and (v) in the case of a Person organized as any other type of entity, the organizational and governing documents of such Person, in each case as modified, amended, supplemented, revised or replaced from time to time.

Partial Release means a release of a Release Parcel from the liens and other interests of Lender existing and evidenced by the Deed of Trust and other Loan Documents.

Patriot Act means the USA Patriot Act Title III of Pub. L. 107-56 (signed into law October 26, 2001), as amended.

Person means any individual, corporation, partnership (general or limited), joint venture, limited liability company, association, trust, unincorporated association, joint stock company, government, municipality, political subdivision, agency, or other entity.

Plans and Specifications means the plans and specifications for the development and construction of the Improvements, prepared by Borrower or the applicable Design Professional and

approved by Lender as required herein, by all applicable Governmental Authorities, by any party to a purchase or construction contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings, and related items.

Release Parcel means the real property or interest therein described in **Exhibit H** attached hereto and incorporated herein by this reference.

Release Price means the greater of (i) the net sales proceeds of the Release Parcel and (ii) \$4,240,057.20.

Prior Land Loan Refinance Advance means \$6,750,000.00.

Required Lease means that certain HEB grocery store Lease Agreement dated August 6, 2018 executed between Borrower, as landlord, and H-E-B, LP, a Texas limited partnership, as tenant, as amended by that certain letter agreement dated December 3, 2018, by and between Borrower and H-E-B, LP, a Texas limited partnership.

Second Extended Maturity Date means the date that is one (1) year after the First Extended Maturity Date.

Second Extension Period means a single period of one (1) year commencing on first day immediately following the First Extended Maturity Date.

Site Plan means the site plan which is set forth on **Exhibit F** attached hereto and incorporated herein by reference.

Soft Costs means all architectural, engineering, interior and landscape design, legal, consulting and other related fees, taxes on land and improvements, bond and insurance costs, and commitment fees, interest and other financing charges, all as set forth in the Budget.

Special Account means an account established by Borrower with Lender (in which Borrower shall at all times maintain a minimum balance of \$1,000.00) into which all Advances made directly to Borrower will be deposited.

Subordinate Mortgage means any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Borrower, the lien of which is subordinate and inferior to the lien of the Deed of Trust.

Title Insurance means a Loan Policy of Title Insurance issued by the Title Company, on a coinsurance or reinsurance basis (with direct access endorsement or rights) if and as required by Lender, for the Loan Amount, insuring or committing to insure that the Deed of Trust constitutes a valid first lien covering the Land and the Improvements, subject only to those exceptions which Lender may approve.

Title Company means the Title Company (and its issuing agent, if applicable) issuing the Title Insurance, which shall be acceptable to Lender in its sole and absolute discretion.

Treasury Rate means the latest Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the applicable Business Day, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to ten (10) years. Such implied yield shall be determined, if necessary, by (i) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice, and (ii) interpolating linearly between reported yields.

ARTICLE II THE LOAN

2.1 Agreement to Lend. Lender hereby agrees to lend up to but not in excess of the Loan Amount to Borrower, and Borrower hereby agrees to borrow such sum from Lender, all upon and subject to the terms and provisions of this Agreement, such sum to be evidenced by the Note. No principal amount repaid by Borrower may be reborrowed by Borrower. Borrower's liability for repayment of the interest on account of the Loan shall be limited to and calculated with respect to Loan proceeds actually disbursed to Borrower pursuant to the terms of this Agreement and the Note and only from the date or dates of such disbursements. After notice to Borrower, Lender may, in Lender's sole discretion, disburse Loan proceeds by journal entry to pay interest and financing costs and, following an uncured Event of Default, disburse Loan proceeds directly to third parties to pay costs or expenses required to be paid by Borrower pursuant to this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower.

2.2 Advances. The purposes for which Loan proceeds are allocated and the respective amounts of such Allocations are set forth in the Budget, which Advances shall be limited to the value of the work in place as determined by the Inspecting Person.

2.3 Allocations. The Allocations shall be disbursed only for the purposes set forth in the Budget. Lender shall not be obligated to make an Advance for an Allocation set forth in the Budget to the extent that the amount of the Advance for such Allocation would, when added to all prior Advances for such Allocation, exceed the total of such Allocation as set forth in the Budget.

2.4 Limitation on Advances. To the extent that Loan proceeds disbursed by Lender pursuant to the Allocations are insufficient to pay all costs required for the acquisition, development, construction and completion of the Improvements, or to the extent that Loan proceeds available to be disbursed by Lender pursuant to the Allocations are insufficient to pay all remaining costs required for the completion of the Mortgaged Property, Borrower shall pay such excess costs with funds derived from sources other than the Loan prior to any further Advances of the Loan.

2.5 Reallocations. Lender reserves the right, at its option, to disburse Loan proceeds allocated to any of the Allocations for such other purposes or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower shall not be entitled to require that Lender reallocate funds among the Allocations.

2.6 Contingency Allocations. Any amount allocated in the Budget for “contingencies” or other non-specific purposes may, in the Lender’s discretion after request by Borrower, or upon Lender’s own election at any time during the existence of an Event of Default, be disbursed by Lender to pay future contingent costs and expenses of constructing, maintaining, leasing and promoting the Mortgaged Property and such other costs or expenses as Lender shall approve. Under no circumstances shall Borrower have the right to require Lender to disburse any amounts so allocated and Lender may impose such requirements and conditions as it deems prudent and necessary should it elect to disburse all or any portion of the amounts so allocated.

2.7 Withholding. Lender may withhold from an Advance or, on account of subsequently discovered evidence, withhold from a later Advance under this Agreement or require Borrower to repay to Lender the whole or any part of any earlier Advance to such extent as may be necessary to protect the Lender from loss on account of (i) defective work not remedied or requirements of this Agreement not performed, (ii) liens filed or reasonable evidence indicating probable filing of liens which are not bonded, (iii) failure of Borrower to make payments to the Contractor for material or labor, except as is permitted by the Construction Contract, or (iv) a reasonable doubt that the construction of the Improvements can be completed for the balance of the Loan then undisbursed. When all such grounds are removed, payment shall be made of any amount so withheld because of them.

2.8 First Extension Period. Provided the following conditions precedent shall have been satisfied, then Borrower shall be entitled (the “**First Extension Option**”) to extend the Initial Maturity Date to the First Extended Maturity Date, subject to the satisfaction of the terms and conditions set forth in this Section. The First Extension Option shall be granted to Borrower only if all of the following conditions have been simultaneously satisfied in each instance:

(a) Written notice of such extension shall be given by Borrower to Lender no sooner than ninety (90) days prior to the Initial Maturity Date and not later than sixty (60) days prior to the Initial Maturity Date; and, with such notice, Borrower shall pay to the Lender, the Extension Fee;

(b) The Improvements shall have been completed in substantial accordance with the Plans and Specifications, and a final certificate of occupancy (or its equivalent as acceptable to Lender), if applicable, shall have been issued for the Improvements and all work Borrower is required to perform pursuant to any tenant Lease shall have been performed and completed;

(c) No Event of Default, or any event, circumstance or action of which Borrower is aware (by notice from Lender or otherwise) and with the passage of time or failure to cure would give rise to an Event of Default, has occurred and is then existing as of the Initial Maturity Date;

(d) No event, claim, liability or circumstance shall have occurred which, in the Lender's reasonable determination, could be expected to have or have had a Material Adverse Effect as of the Initial Maturity Date;

(e) Written evidence shall be provided by Borrower and such evidence shall be reasonably satisfactory to the Lender indicating that the Debt Service Coverage Ratio then equals or exceeds 1.20:1.0 (calculated on the Determination Date immediately preceding the commencement of the First Extension Period); provided, however that Borrower shall have the right, at its option, to satisfy the condition set forth in this subsection by satisfying the DSCR/LTV Satisfaction Requirement; provided, further, (i) to the extent funds are deposited in the DSCR/LTV Account to satisfy the DSCR/LTV Satisfaction Requirement, all such funds shall remain in the DSCR/LTV Account until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Debt Service Coverage Ratio is equal to or greater than 1.20:1.00 (without any credit for the funds held in the DSCR/LTV Account), whereupon the funds will be released to Borrower, and (ii) to the extent the Borrower has delivered Lender a Letter of Credit to satisfy the DSCR/LTV Satisfaction Requirement, the Letter of Credit shall remain outstanding, and Borrower shall cause the same to be renewed no less than thirty (30) days prior to the expiration date thereof, until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Debt Service Coverage Ratio is equal to or greater than 1.20:1.00 (without any credit for the Letter of Credit), whereupon the Letter of Credit will be released to Borrower; and

(f) Lender shall have received a new Appraisal or an updated Appraisal of the Mortgaged Property, at Borrower's expense, dated within ninety (90) days of the Initial Maturity Date, prepared by an appraiser acceptable to Lender and based upon such standards as Lender may require, which Appraisal shall confirm that the fair market value of the Mortgaged Property on an "as is" basis is such that the Loan-to-Value Ratio is not greater than 65%; provided, however that Borrower shall have the right, at its option, to satisfy the condition set forth in this subsection by satisfying the DSCR/LTV Satisfaction Requirement; provided, further, (i) to the extent funds are deposited in the DSCR/LTV Account to satisfy the DSCR/LTV Satisfaction Requirement, all such funds shall remain in the DSCR/LTV Account until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Loan-to-Value Ratio is not greater than 65% (without any credit for the funds held in the DSCR/LTV Account), whereupon the funds will be released to Borrower, and (ii) to the extent the Borrower has delivered Lender a Letter of Credit to satisfy the DSCR/LTV Satisfaction Requirement, the Letter of Credit shall remain outstanding, and Borrower shall cause the same to be renewed no less than thirty (30) days prior to the expiration date thereof, until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Loan-to-Value Ratio is not greater 65% (without any credit for the Letter of Credit), whereupon the Letter of Credit will be released to Borrower.

During the Extension Periods, no further Advances will be available from the Loan and the Loan Documents will be deemed to be automatically modified to reduce the total committed and available amount of the Loan from its original amount to the outstanding principal amount of the Loan as of the commencement of the First Extension Period. In addition, commencing on the first (1st) day of

the first month after the commencement of the First Extension Period and continuing on the first (1st) day of each month thereafter until the First Extended Maturity Date, Borrower shall pay a monthly payment of principal (each a “**Monthly Principal Installment**”) in an amount equal to 1/24th of the total principal which would be payable during the first twenty-four (24) months of a 30 year mortgage-style amortization of the then outstanding principal balance of the Loan based on an interest rate of six and one-half percent (6.5%) per annum, which installments of principal shall be due and payable in addition to accrued interest due and payable under the Note on each such date.

2.9 **Second Extension Period.** Provided the following conditions precedent shall have been satisfied, then Borrower shall be entitled (the “**Second Extension Option**”) to extend the First Extended Maturity Date to the Second Extended Maturity Date, subject to the satisfaction of the terms and conditions set forth in this Section. The Second Extension Option shall be granted to Borrower only if all of the following conditions have been simultaneously satisfied in each instance:

(a) Borrower exercised the First Extension Option in accordance with **Section 2.8** above;

(b) Written notice of such extension shall be given by Borrower to Lender no sooner than ninety (90) days prior to the First Extended Maturity Date and not later than sixty (60) days prior to the First Extended Maturity Date; and, with such notice, Borrower shall pay to the Lender, the Extension Fee (such Extension Fee being in addition to the Extension Fee paid in conjunction with Borrower’s exercise of the First Extension Option);

(c) No Event of Default, or any event, circumstance or action of which Borrower is aware (by notice from Lender or otherwise) and with the passage of time or failure to cure would give rise to an Event of Default, has occurred and is then existing as of the First Extended Maturity Date;

(d) No event, claim, liability or circumstance shall have occurred which, in the Lender’s determination, could be expected to have or have had a Material Adverse Effect as of the First Extended Maturity Date;

(e) Written evidence shall be provided by Borrower and such evidence shall be reasonably satisfactory to the Lender indicating that the Debt Service Coverage Ratio then equals or exceeds 1.20:1.0 (calculated on the Determination Date immediately preceding the commencement of the Second Extension Period); provided, however that Borrower shall have the right, at its option, to satisfy the condition set forth in this subsection by satisfying the DSCR/LTV Satisfaction Requirement; provided, further, (i) to the extent funds are deposited in the DSCR/LTV Account to satisfy the DSCR/LTV Satisfaction Requirement, all such funds shall remain in the DSCR/LTV Account until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Debt Service Coverage Ratio is equal to or greater than 1.20:1.00 (without any credit for the funds held in the DSCR/LTV Account), whereupon the funds will be released to Borrower, and (ii) to the extent the Borrower

has delivered Lender a Letter of Credit to satisfy the DSCR/LTV Satisfaction Requirement, the Letter of Credit shall remain outstanding, and Borrower shall cause the same to be renewed no less than thirty (30) days prior to the expiration date thereof, until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Debt Service Coverage Ratio is equal to or greater than 1.20:1.00 (without any credit for the Letter of Credit), whereupon the Letter of Credit will be released to Borrower; and

(f) Lender shall have received a new Appraisal or an updated Appraisal of the Mortgaged Property, at Borrower's expense, dated within ninety (90) days of the First Extended Maturity Date, prepared by an appraiser acceptable to Lender and based upon such standards as Lender may require, which Appraisal shall confirm that the fair market value of the Mortgaged Property on an "as is" basis is such that the Loan-to-Value Ratio is not greater than 65%; provided, however that Borrower shall have the right, at its option, to satisfy the condition set forth in this subsection by satisfying the DSCR/LTV Satisfaction Requirement; provided, further, (i) to the extent funds are deposited in the DSCR/LTV Account to satisfy the DSCR/LTV Satisfaction Requirement, all such funds shall remain in the DSCR/LTV Account until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Loan-to-Value Ratio is not greater than 65% (without any credit for the funds held in the DSCR/LTV Account), whereupon the funds will be released to Borrower, and (ii) to the extent the Borrower has delivered Lender a Letter of Credit to satisfy the DSCR/LTV Satisfaction Requirement, the Letter of Credit shall remain outstanding, and Borrower shall cause the same to be renewed no less than thirty (30) days prior to the expiration date thereof, until such time as no Event of Default exists and Borrower has delivered evidence satisfactory to Lender that the Loan-to-Value Ratio is not greater than 65% (without any credit for the Letter of Credit), whereupon the Letter of Credit will be released to Borrower.

Borrower shall continue to pay a monthly payment of principal equal to the Monthly Principal Installment on the first (1st) day of each month during the Second Extension Period, which installments of principal shall be due and payable in addition to accrued interest due and payable under the Note on each such date.

ARTICLE III ADVANCES

3.1 Conditions to Initial Advance. Contemporaneously with the closing of the Loan as of the date hereof, Lender and Borrower agree that Lender will make the Prior Land Loan Refinance Advance. Thereafter, the obligation of Lender to make the Initial Advance hereunder and the first Advance after the closing of the Loan is subject to the prior or simultaneous occurrence of each of the following conditions:

(a) Lender shall have received from Borrower all of the Loan Documents duly executed by Borrower and, if applicable, by Guarantor.

(b) Lender shall have received certified copies of resolutions of each Loan Party, if such Loan Party is a corporation or limited liability company, or a certified copy of a consent

of partners, if such Loan Party is a partnership, authorizing execution, delivery and performance of all of the Loan Documents and authorizing the borrowing hereunder and any guaranties executed in connection with the Loan, along with such certificates of existence, certificates of good standing and other certificates or documents as Lender may reasonably require to evidence such Loan Party's authority.

(c) Lender shall have received true copies of all Organization Documents of each Loan Party, including all amendments or supplements thereto, along with such certificates or other documents as Lender may reasonably require to evidence such Loan Party's authority.

(d) Lender shall have received evidence that the Mortgaged Property is not located within any designated flood plain or special flood hazard area; or evidence that Borrower has applied for and received flood insurance covering the Mortgaged Property in the amount of the Loan or the maximum coverage available to Lender.

(e) Lender shall have received evidence of compliance with all Governmental Requirements.

(f) Lender shall have received a full-size, single sheet copy of all recorded subdivision or plat maps of the Land approved (to the extent required by Governmental Requirements) by all Governmental Authorities, if applicable, and legible copies of all instruments representing exceptions to the state of title to the Mortgaged Property.

(g) Lender shall have received policies of all-risk builder's risk insurance (non-reporting form) for the construction of the Improvements, owner's and contractor's liability insurance, workers' compensation insurance and such other insurance as Lender may reasonably require, with standard endorsements attached naming Lender as the insured mortgagee or additional insured, whichever is applicable, such policies to be in form and content and issued by companies reasonably satisfactory to Lender, with copies, or certificates thereof, being delivered to Lender.

(h) Lender shall have received an irrevocable commitment for the issuance of the Title Insurance, at the sole expense of Borrower.

(i) Lender shall have received from Borrower such other instruments, evidence and certificates as Lender may reasonably require, including the items indicated below:

(1) Evidence that all the streets furnishing access to the Mortgaged Property have been or will be completed and dedicated to public use and accepted by applicable Governmental Authorities.

(2) A current survey of the Land prepared by a registered surveyor or engineer and certified to Lender, Borrower and the Title Company, in form and substance reasonably acceptable to Lender, showing all easements, building or setback lines, rights-of-way and dedications affecting said land and showing no state of facts objectionable to Lender.

(3) Evidence reasonably satisfactory to Lender showing the availability of all necessary utilities at the boundary lines of the Land for the construction and operation of the Mortgaged Property and without limitation also meet the requirements set forth in the Required Lease (except as disclosed to Lender, and provided that in any event the Plans and Specifications provide that all such utilities will be available to the Land upon construction of the improvements contemplated thereby), including sanitary and storm sewer facilities, potable water, telephone, electricity, gas, and municipal services.

(4) Evidence that the current and proposed use of the Mortgaged Property and the construction contemplated of the Improvements complies with all Governmental Requirements.

(5) An opinion of counsel for Borrower, which counsel shall be satisfactory to Lender, to the effect that (i) Borrower possesses full power and authority to own the Mortgaged Property, to execute and deliver the Required Lease, to construct the Improvements and to perform Borrower's obligations hereunder and the Required Lease, and Guarantor has full power and authority to perform Guarantor's obligations under the Guaranty and Environmental indemnity Agreement; (ii) the Loan Documents and Required Lease have been duly authorized, executed and delivered by Borrower and, where required, by Guarantor, and constitute the valid and binding obligations of Borrower and Guarantor, not subject to any defense based upon usury, capacity of Borrower or otherwise; (iii) the Loan Documents are enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency and other laws affecting creditors' rights generally, and except that certain remedial provisions thereof may be limited by the laws of the State of Texas; (iv) to the knowledge of such counsel, there are no actions, suits or proceedings pending or threatened against or affecting Borrower, Guarantor or the Mortgaged Property, or involving the priority, validity or enforceability of the liens or security interests arising out of the Loan Documents, at law or in equity, or before or by any Governmental Authority, except actions, suits or proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable in respect to the Loan as represented by the Note; (v) to the knowledge of such counsel, neither Borrower nor Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority of which such counsel has knowledge; (vi) to the knowledge of such counsel, the consummation of the transactions hereby contemplated and the performance of this Agreement and the execution and delivery of the Guaranty will not violate or contravene any provision of any instrument creating or governing the business operations of Borrower or Guarantor and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, Lease, bank loan or credit agreement or other instrument to which Borrower or any Guarantor is a party or by which Borrower, Guarantor or the Mortgaged Property may be bound or affected; and (vii) such other matters as Lender may reasonably request.

(6) A cost breakdown satisfactory to Lender showing the total costs, including, but not limited to, such related nonconstruction items as interest during construction, commitment, legal, design professional and real estate agents' fees, plus the amount of the Land cost and direct construction costs required to be paid to satisfactorily complete the Improvements, free and clear of liens or claims for liens for material supplied and for labor services performed.

(7) Original or a copy of each Construction Contract for any Improvements then under construction.

(8) Original or a copy of each Construction Management Agreement for any Improvements then under construction.

(9) Original or a copy of each fully executed Design Services Contract for any Improvements then under construction.

(10) Waiver of lien or lien subordination agreement(s) for the prior month's Draw Request executed by each Contractor and by each subcontractor, laborer and suppliers furnishing labor or materials to Contractor or subcontractor for the Mortgaged Property, in a form acceptable to Lender, together with Borrower's affidavit to Lender that all changes and expenses incurred to date for the Mortgaged Property have been paid in full.

(11) A copy of the Plans and Specifications for the Improvements then under construction.

(12) Site Development Permit(s), Building permit(s) (if applicable), grading permit(s) (if applicable) and all other permits required with respect to the construction of the Improvements prior to construction of work requiring the same; accordingly, it is not a requirement for an Advance to have a permit that is not then required for the construction of Improvements then in progress.

(13) Evidence that all zoning ordinances (if applicable) and all restrictive covenants affecting the Land permit the use for which the Required Lease and the Improvements are intended and have been or will be complied with.

(14) Evidence of payment of required sums for insurance, taxes, expenses, charges and fees customarily required or recommended by Lender or any Governmental Authority, corporation, or person guaranteeing, insuring or purchasing, committing to guaranty, insure, purchase or refinance the Loan or any portion thereof.

(15) A current financial statement of Guarantor certified by said Guarantor.

(16) A Guaranty and Environmental Indemnity Agreement executed by Guarantor.

(17) A schedule of construction progress for the Improvements with the anticipated date and amounts of each Advance for the same.

(18) Copies of all agreements entered into by Borrower or its operating partner pertaining to the development, construction and completion of the Improvements or pertaining to materials to be used in connection therewith, together with a schedule of anticipated dates and amounts of each Advance for the same.

(19) Environmental site assessment report with respect to the Mortgaged Property prepared by a firm of engineers approved by Lender, which report shall be satisfactory in form and substance to Lender, certifying that there is no evidence that any Hazardous Substance have been generated, treated, stored or disposed of on any of the Mortgaged Property and none exists on, under or at the Mortgaged Property.

(20) A soils and geological report covering the Land issued by a laboratory approved by Lender, which report shall be satisfactory in form and substance to Lender, and shall include a summary of soils test borings.

(21) A form of lease to be used in the Improvements approved by Lender (the “**Approved Lease Form**”). All material changes and amendments to the Approved Lease Form must be approved by Lender.

(22) The fully executed Required Lease and subordination, non-disturbance and attornment agreement in form and substance acceptable to Lender.

(23) Such other instruments, evidence or certificates as Lender may reasonably request.

(j) Lender shall have ordered and received, at Borrower’s expense, an Appraisal of the Mortgaged Property, prepared by an appraiser acceptable to Lender and presented and based upon such standards as may be required by Lender.

(k) Lender shall have received payment of the Commitment Fee.

(l) Borrower shall have furnished evidence to Lender that it has contributed Borrower’s Equity, and which equity shall be used to pay for project costs in accordance with the Budget prior to any Advances under this Agreement.

(m) Lender’s shall have received and approved the plan and cost review related to the construction of the Improvements.

3.2 Conditions to Advances. The obligation of Lender to make each Advance hereunder, including the Initial Advance, shall be subject to the prior or simultaneous occurrence or satisfaction of each of the following conditions:

- (a) The conditions to the Initial Advance shall have been satisfied.
- (b) No Event of Default shall have occurred and then be continuing under this Agreement or any of the other Loan Documents.
- (c) The Loan Documents shall be and remain outstanding and enforceable in accordance with their terms, all as required hereunder.
- (d) Lender shall have received a title report dated within two (2) days of the requested Advance from the Title Company showing no state of facts objectionable to Lender, including, but not limited to, a showing that title to the Land is vested in Borrower and that no claim for mechanics' or materialmen's liens has been filed against the Mortgaged Property, and Lender shall receive a down date endorsement to the Title Insurance in connection with such Advance confirming same.
- (e) A monthly construction status report for the Improvements shall be prepared and submitted by Borrower to Lender on or before the tenth (10th) day of each month, commencing upon commencement of construction of the Improvements and continuing for each month thereafter until completion of the Improvements.
- (f) Completion of any inspections required by Lender with respect to any work performed since the date of the last Advance.
- (g) The representations and warranties made by Borrower, as contained in this Agreement and in all other Loan Documents shall be true and correct in all material respects as of the date of each Advance; and if requested by Lender, Borrower shall give to Lender a certificate to that effect.
- (h) The covenants made by Borrower to Lender, as contained in this Agreement and in all other Loan Documents shall have been fully complied with, except to the extent such compliance may be limited by the passage of time or the completion of construction of the Improvements.
- (i) Lender shall have received (i) a fully executed copy of each Construction Contract then in effect or copy thereof; (ii) a report of any changes, replacements, substitutions, additions or other modification in the list of contractors, subcontractors and materialmen involved or expected to be involved in the construction of the Improvements; and (iii) all permits required under **Section 3.1(i)(12)** above for Improvements then under construction.
- (j) Except in connection with the Prior Land Loan Refinance Advance, Lender shall have received from Borrower a Draw Request for such Advance, completed, executed and sworn to by Borrower and Contractor, with the Inspecting Person's approval noted thereon, stating that the requested amount does not exceed the difference of one hundred percent (100%) of the then unpaid cost of construction of the Improvements since the last certificate furnished hereunder less Retainage required hereunder for such requested amount; that said construction was performed in substantial accordance with the Plans and Specifications; and that, in the

opinion of Borrower, the applicable Contractor and the applicable Design Professional, construction of the Improvements can be completed on or before the Completion Date for an additional cost not in excess of the amount then available under the Loan. To the extent approved by Lender and included in the Budget, such expenses will be paid from the proceeds of the Loan.

(k) Except in connection with the Prior Land Loan Refinance Advance, Borrower shall have furnished to Lender, from each Contractor and each subcontractor and/or materialmen providing labor and or supplies or materials to Contractor or a subcontractor for the Mortgaged Property, an invoice, lien waiver (on the statutory form) and such other instruments and documents as Lender may from time to time specify, in form and content, and containing such certifications, approvals and other data and information, as Lender may reasonably require. The invoice, lien waiver and other documents shall cover and be based upon work actually completed or materials actually furnished and paid under a prior application for payment. The lien waiver for the prior month's draws of each contractor, subcontractor and materialman shall, if required by Lender, be received by Lender simultaneously with the making of any Advance hereunder for the benefit of such contractor, subcontractor or materialman.

(l) There shall exist no default or breach by any obligated party (other than Lender) under the Loan Documents.

(m) The Improvements shall not have been materially injured, damaged or destroyed by fire or other casualty, nor shall any part of the Mortgaged Property be subject to condemnation proceedings or negotiations for sale in lieu thereof.

(n) All work typically done at the stage of construction when the Advance is requested shall have been done, and all materials, supplies, chattels and fixtures typically furnished or installed at such stage of construction shall have been furnished or installed.

(o) All personal property not yet incorporated into the Improvements but which is to be paid for out of such Advance, must then be located upon the Land, secured in a method acceptable to Lender, and Lender shall have received evidence thereof, or if stored off-site, must be stored in a secured area and must be available for inspection by the Inspecting Person. Any materials stored off-site shall be stored in a third-party bonded warehouse acceptable to Lender, with adequate safeguards and insurance to prevent loss, theft, damage or commingling with other materials not intended to be used in the construction of the Improvements; provided, further, (i) Borrower shall give Lender prior notice of the off-site storage of any materials and (ii) any materials stored must be incorporated within 60 days after receipt of Loan proceeds from Lender to pay for such materials, unless such date is extended in writing by Lender.

(p) Borrower shall have complied with all reasonable requirements of the Inspecting Person to insure compliance with the Plans and Specifications and all requirements of the Governmental Authorities.

(q) Except in connection with the Initial Advance, if the Improvements are being built for any party under a purchase or construction contract, then Lender at its election may require the approval of such purchaser before making any additional Advance.

(r) Borrower shall have fully completed (to the extent applicable), signed, notarized and delivered to Lender the Draw Request.

(s) The Loan shall be “in balance” as provided in **Section 3.4** (i.e., the unfunded Loan proceeds and any portion of the Borrower’s equity not yet expended are not sufficient to complete construction of the Improvements in accordance with the Plans and Specifications and pay for all costs of construction in connection therewith), and if Lender requires a Borrower’s Deposit in accordance with **Section 3.4** below, then (x) Borrower shall have made such Borrower’s Deposit with Lender as provided thereunder and (y) Borrower shall have collaterally assigned such Borrower’s Deposit to Lender to put the Loan in balance by executing an assignment satisfactory to Lender.

(t) Borrower shall have funded all Borrower equity requirements indicated on the Budget.

3.3 Advance Not A Waiver. No Advance of the proceeds of the Loan shall constitute a waiver of any of the conditions of Lender’s obligation to make further Advances, nor, in the event Borrower is unable to satisfy any such condition, shall any such Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default.

3.4 Borrower’s Deposit. If at any time after Borrower has met its funding requirements under **Section 3.1(l)** above with respect to its required cash equity, Lender shall in its sole discretion deem that the undisbursed proceeds of the Loan are insufficient to meet the costs of completing construction of the Improvements, including without limitation, any and all Soft Costs for the Improvements, Lender may refuse to make any additional Advances to Borrower hereunder until Borrower shall have deposited with Lender sufficient additional funds (“**Borrower’s Deposit**”) to cover the deficiency which Lender deems to exist. Such Borrower’s Deposit will be disbursed by Lender to Borrower pursuant to the terms and conditions hereof as if they constituted a portion of the Loan being made hereunder prior to any further Advances of the Loan proceeds. Borrower agrees upon fifteen (15) days written demand by Lender to deposit with Lender such Borrower’s Deposit. Lender agrees that the Borrower’s Deposit shall be placed in an interest-bearing account. Borrower hereby grants a security interest to Lender in and to the Borrower’s Deposit and such account, and agrees that at any time during the existing of an Event of Default, Lender shall have the right to offset any Borrower’s Deposit against the Indebtedness then outstanding, in addition to any and all other remedies provided under this Agreement and the other Loan Documents or otherwise available at law or in equity.

3.5 Advance Not An Approval. The making of any Advance or part thereof shall not be deemed an approval or acceptance by Lender of the work theretofore done. Lender shall have no obligation to make any Advance or part thereof after the happening of any Event of Default, but shall have the right and option so to do; provided that if Lender elects to make any such Advance, no such

Advance shall be deemed to be either a waiver of the right to demand payment of the Loan, or any part thereof, or an obligation to make any other Advance.

3.6 Time and Place of Advances. All Advances are to be made at the office of Lender, or at such other place as Lender may designate; and Lender shall require five (5) Business Days prior notice in writing before the making of any such Advance. Lender shall not be obligated to undertake any Advance hereunder more than once in any 30-day period. Except as set forth in this Agreement, all Advances are to be made by direct deposit into the Special Account. In the event Borrower shall part with or be in any manner whatever deprived of Borrower's interests in the Land, Lender may, at Lender's option but without any obligation to do so, continue to make Advances under this Agreement, and subject to all its terms and conditions, to such Person or Persons as may succeed to Borrower's title and interest and all sums so disbursed shall be deemed Advances under this Agreement and secured by the Deed of Trust and all other liens or security interests securing the Loan.

3.7 Retainage. An amount equal to ten percent (10%) of the cost of construction of the Improvements ("**Retainage**") shall be retained by Lender and shall be paid over by Lender to Borrower, provided that no lien claims are then filed against the Mortgaged Property, when all of the following have occurred to the satisfaction of Lender with respect to those Improvements covered by a Construction Contract:

(a) Lender has received a completion certificate prepared by the Inspecting Person and executed by Borrower and the Design Professional stating that the Improvements have been completed in accordance with the Plans and Specifications, together with such other evidence that no mechanics or materialmen's liens or other encumbrances have been filed and remain in effect against the Mortgaged Property which have not been bonded to Lender's satisfaction (and otherwise in accordance with all applicable Governmental Requirements) and that all offsite utilities and streets, if any, have been completed to the satisfaction of Lender and any applicable Governmental Authority;

(b) each applicable Governmental Authority shall have duly inspected and approved the Improvements and issued the appropriate permit, license or certificate to evidence such approval;

(c) forty (40) days shall have elapsed from the later of (i) the date of completion of the Improvements, as specified in Texas Property Code §53.106, if the Affidavit of Completion provided for in this Agreement is filed within ten (10) days after such date of completion, or (ii) the date of filing of such Affidavit of Completion if such Affidavit of Completion is filed ten (10) days or more after the date of the completion of the Improvements as specified in Texas Property Code §53.106;

(d) receipt by Lender of an as-built ALTA survey of the Mortgaged Property, in form reasonably acceptable to Lender; and

(e) receipt by Lender of evidence satisfactory to Lender that payment in full has been made for all obligations incurred in connection with the construction and completion of

all off-site utilities and improvements (if any) as required by Lender or any Governmental Authority.

3.8 No Third Party Beneficiaries. The benefits of this Agreement shall not inure to any third party, nor shall this Agreement be construed to make or render Lender liable to any materialmen, subcontractors, contractors, laborers or others for goods and materials supplied or work and labor furnished in connection with the construction of the Improvements or for debts or claims accruing to any such Persons against Borrower. Lender shall not be liable for the manner in which any Advances under this Agreement may be applied by Borrower, Contractor and any of Borrower's other contractors or subcontractors. Notwithstanding anything contained in the Loan Documents, or any conduct or course of conduct by the parties hereto, before or after signing the Loan Documents, this Agreement shall not be construed as creating any rights, claims or causes of action against Lender, or any of its officers, directors, agents or employees, in favor of any contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other Person other than Borrower. Without limiting the generality of the foregoing, Advances made to any contractor, subcontractor or supplier of labor or materials, pursuant to any requests for Advances, whether or not such request is required to be approved by Borrower, shall not be deemed a recognition by Lender of a third-party beneficiary status of any such Person.

3.9 Interest/Operating Reserve. Subject to the conditions to the making of Advances hereunder, Lender shall make an Advance of funds held in the Interest Reserve as necessary to pay interest on the Advances (up to a maximum aggregate of Advances of \$952,614.47), which Advance shall constitute a principal Advance under the Loan, and such Advance shall be deemed to have been made at Borrower's request; provided, however, Advances will only be made from the Interest Reserve to pay interest to the extent that the net cash flow received from the operation of the Mortgaged Property, after all operating expenses of the Mortgaged Property have been paid current, is insufficient to pay such interest. Further, subject to the conditions to the making of Advances hereunder, Lender shall make an Advance of funds held in the Operating Reserve as are necessary to pay operating expenses of the Mortgaged Property included in the Budget (up to a maximum aggregate of Advances of \$150,000.00), which Advance shall constitute a principal Advance under the Loan, and such Advance shall be deemed to have been made at Borrower's request; provided, however, (i) Advances will not be made to pay such operating expenses to the extent Lender reasonably determines such Advance may deplete the portion of the Operating Reserve attributable to interest payments such that sufficient reserves would no longer be available to pay such interest expenses, and (ii) Advances will only be made from the Operating Reserve to pay operating expenses to the extent that the net cash flow received from the operation of the Mortgaged Property, after all operating expenses of the Mortgaged Property have been paid current, is insufficient to pay such operating expenses and sufficient interest reserve remains to pay interest for the term of the Loan. Under no circumstances shall any undisbursed proceeds of the Loan be disbursed to pay accrued interest thereon during the construction phase upon depletion of the balance of the Interest Reserve or Operating Reserve, or to the extent that revenues from the Mortgaged Property, after payment of all other operating expenses of the Mortgaged Property, are sufficient to pay the accrued interest or other amounts then due and payable under the Loan Documents. Notwithstanding anything to the contrary contained herein, upon depletion of the Interest Reserve, Lender may make Advances of funds held in the Operating Reserve as necessary to pay interest on the Advances, which Advance shall constitute a principal Advance

under the Loan, and such Advance shall be deemed to have been made at Borrower's request. For the avoidance of doubt, at no time shall funds held in the Interest Reserve be used to pay anything other than interest pursuant to the terms of this Section. In lieu of disbursing Loan proceeds to Borrower for payment of accrued interest thereon during the construction phase, Lender may handle such disbursement and payment by making appropriate entries on the books and records of Lender, whereupon a statement summarizing such entries shall be furnished to Borrower.

3.10 Additional Expenditures by Lender. Borrower agrees that all sums paid or expended by Lender under the terms of this Agreement in excess of the amount of the Loan shall be considered to be an additional loan to Borrower and the repayment thereof, together with interest thereon at the Default Rate (as defined in the Note), from the date of demand by Lender until the date paid, shall be secured by the Deed of Trust and the other Loan Documents and shall be immediately due and payable within ten (10) days of written notice to Borrower, and Borrower agrees to pay such sum upon demand. Nothing contained herein, however, shall obligate Lender to make such advances. In addition to the foregoing, if Borrower fails to perform any act or to take any action or to pay any amount provided to be paid by it under the provisions of any of the covenants and agreements contained in this Agreement or any other Loan Document, Lender may but shall not be obligated to perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Lender and any money so paid by Lender shall be an advance against the Note and shall bear interest from the date of making such payment until paid at the Default Rate and shall be part of the Indebtedness secured by the Deed of Trust, and Lender upon making any such payment shall be subrogated to all rights of the Person receiving such payment. Lender will endeavor to promptly notify Borrower of such amounts paid by Lender hereunder, but Lender's failure to do so shall not create or give rise to any liability on Lender's part or impair or affect any of Lender's rights and remedies under this Agreement or any of the other Loan Documents.

ARTICLE IV WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of the Agreement, as follows:

4.1 Plans and Specifications. The Plans and Specifications for the Improvements are satisfactory to Borrower, are in compliance with all Governmental Requirements in all material respects and, to the extent required by Governmental Requirements or any effective restrictive covenant, have been approved by each Governmental Authority (or will timely be approved by the applicable Governmental Authority when required for construction) and/or by the beneficiaries of any such restrictive covenant affecting the Mortgaged Property.

4.2 Governmental Requirements. No violation of any Governmental Requirements exists or will exist with respect to the Mortgaged Property and neither Borrower nor the Guarantor is, nor will either be, in default with respect to any Governmental Requirements.

4.3 Utility Services. All utility services of sufficient size and capacity necessary for the use and operation of the Improvements and the project and improvements contemplated in the

Required Lease for their intended purposes are available and upon completion of the applicable portion of the Improvements will be connected to the Improvements, including potable water, storm and sanitary sewer, gas, electric and telephone facilities. All utility services of sufficient size and capacity necessary for the construction of the Improvements and the use thereof for their intended purposes are available (or will be available upon completion of construction of any offsite utility lines contemplated by the Plans and Specifications) at the property line(s) of the Land for connection to the Improvements and the project and improvements contemplated in the Required Lease, including potable water, storm and sanitary sewer, gas, electric and telephone facilities.

4.4 Access. All roads necessary for the full utilization of the Improvements contemplated by the Required Lease for their intended purposes have been completed or will be completed in accordance with the Required Lease and dedicated to the public use and accepted by the appropriate Governmental Authority.

4.5 Financial Statements. Each financial statement of Borrower and Guarantor delivered heretofore, concurrently herewith or hereafter to Lender was and will be prepared in conformity with general accepted accounting principles, or other good accounting principles approved by Lender in writing, applied on a basis consistent with that of previous statements and completely and accurately disclose the financial condition of Borrower and Guarantor (including all contingent liabilities) as of the date thereof and for the period covered thereby, and there has been no material adverse change in either Borrower's or Guarantor's financial condition subsequent to the date of the most recent financial statement of Borrower and Guarantor delivered to Lender.

4.6 Statements. No certificate, statement, report or other information delivered heretofore, concurrently herewith or hereafter by Borrower or Guarantor to Lender in connection herewith, or in connection with any transaction contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading, and same were true, complete and accurate as of the date hereof.

4.7 Intentionally Omitted.

4.8 No Commencement. Except for clearing work previously performed on the Land, all of which was performed under a separate construction contract and has been completed and paid in full, with full releases and lien waivers obtained from all Contractors and subcontractors performing any such work in accordance with applicable Governmental Requirements, as of the date hereof, no steps to commence construction on the Land have been taken, including, without limitation, steps to clear or otherwise prepare the Land for construction or the delivery of material for use in construction of the Improvements; and no action has been taken under the Construction Contract or any other contract or other agreement for construction which could give rise to a lien on the Land.

4.9 Patriot Act. Borrower and Guarantor are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended), and all other enabling legislation or executive order

relating thereto, (b) the Patriot Act, and (c) all other federal or state laws relating to “know your customer” and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

4.10 Required Lease. The Required Lease has been fully executed by all parties thereto. There have been no modifications or amendments to the Required Lease, there are in existence no default or grounds for default thereunder; the Required Lease is in full force and effect.

ARTICLE V COVENANTS OF BORROWER

Borrower hereby unconditionally covenants and agrees with Lender, until the Loan shall have been paid in full and the lien of the Deed of Trust shall have been released, as follows:

5.1 Commencement and Completion. Borrower will cause the construction of the Improvements to commence by the Commencement Date and to be prosecuted with diligence and continuity and will complete the same in all material respects in accordance with the Plans and Specifications for the Improvements on or before the Completion Date and within the Budget (subject to any increases in the Budget funded by additional equity contributed by Borrower or Guarantor), free and clear of liens or claims for liens for material supplied and for labor services performed in connection with the construction of the Improvements.

5.2 No Changes. Borrower will not amend, alter or change (pursuant to change order, amendment or otherwise) the Plans and Specifications for the Improvements unless the same shall have been approved in advance in writing by Lender, by all applicable Governmental Authorities; provided, however, Borrower shall have the right to approve change orders without Lender’s consent which do not individually exceed \$50,000.00, or in the aggregate exceed \$200,000.00 for the Improvements.

5.3 Advances. Borrower will receive the Advances and will hold same as a trust fund for the purpose of paying the cost of construction of the Improvements and related nonconstruction costs related to the Mortgaged Property as provided for herein. Borrower will apply the same promptly to the payment of the costs and expenses for which each Advance is made and will not use any part thereof for any other purpose.

5.4 Lender’s Expenses. Borrower will reimburse Lender for all out-of-pocket expenses of Lender, including reasonable attorneys’ fees, incurred in connection with the preparation, execution, delivery, administration and performance of the Loan Documents.

5.5 Surveys. Borrower will furnish Lender at Borrower’s expense (i) a foundation survey and (ii) an as-built survey, each prepared by a registered engineer or surveyor acceptable to Lender, showing the locations of the Improvements, and certifying that same are entirely within the property lines of the Land, do not encroach upon any easement, setback or building line or restrictions, are

placed in accordance with the Plans and Specifications, all Governmental Requirements and all restrictive covenants affecting the Land and/or the Improvements, and showing no state of facts objectionable to Lender. All surveys shall be in form and substance and from a registered public surveyor acceptable to Lender.

5.6 Defects and Variances. Borrower will, upon demand of Lender and at Borrower's sole expense, correct any structural defect in the Improvements or any variance from the Plans and Specifications for the Improvements (except for those for which Lender's approval is not required under **Section 5.2** above) which is not approved in writing by Lender.

5.7 Estoppel Certificates. Borrower will deliver to Lender, promptly after request therefor, estoppel certificates or written statements, duly acknowledged, stating the amount that has then been advanced to Borrower under this Agreement, the amount due on the Note, and whether any known offsets or defenses exist against the Note or any of the other Loan Documents.

5.8 Inspecting Person. Borrower will pay the fees and expenses of, and cooperate, with the Inspecting Person and will cause the Design Professional, the Contractor, each contractor and subcontractor and the employees of each of them to cooperate with the Inspecting Person and, upon request, will furnish the Inspecting Person whatever the Inspecting Person may consider necessary or useful in connection with the performance of the Inspecting Person's duties. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished such items as working details, Plans and Specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, zoning ordinances, building codes and copies of the contracts between such Person and Borrower (if applicable) as may be requested by Lender. Borrower will permit Lender, the Inspecting Person and their representative to enter the Mortgaged Property for the purposes of inspecting same. Borrower acknowledges that the duties of the Inspecting Person run solely to Lender and that the Inspecting Person shall have no obligations or responsibilities whatsoever to Borrower, Contractor, the Design Professional, or to any of Borrower's or Contractor's agents, employees, contractors or subcontractors

5.9 **BROKERS. BORROWER WILL INDEMNIFY LENDER FROM CLAIMS OF BROKERS ARISING BY REASON OF THE EXECUTION HEREOF OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY TO THE EXTENT SUCH BROKER WAS CONTACTED OR HIRED BY BORROWER OR EITHER OF ITS JOINT VENTURERS.**

5.10 Personalty and Fixtures. Borrower will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien or security interests of the Deed of Trust.

5.11 Compliance with Governmental Requirements. Borrower will comply promptly with all Governmental Requirements.

5.12 Compliance with Restrictive Covenants. Borrower will comply with all restrictive covenants, if any, affecting the Mortgaged Property. Construction of the Improvements will be

performed in a good and workmanlike manner, within the perimeter boundaries of the Land and within all applicable building and setback lines in accordance with all Governmental Requirements and the Plans and Specifications. There are, and will be, no structural defects in the Improvements.

5.13 Affidavit of Commencement. Within ten (10) days after the commencement of construction of the Improvements, but not before construction of the Improvements has actually begun, Borrower shall file or cause to be filed in the appropriate records of the county in which the Land is situated, an Affidavit of Commencement in the form of **Exhibit C** attached hereto (the "**Affidavit of Commencement**") and incorporated herein by this reference, duly executed by Borrower and Contractor. The date set forth in the Affidavit of Commencement for commencement of work under the Construction Contract shall not be on or before the date on which the Deed of Trust is recorded.

5.14 Affidavit of Completion. Borrower, within ten (10) days after construction of the Improvements has been completed, shall file in the appropriate records in the county in which the Land is situated an Affidavit of Completion ("**Affidavit of Completion**") in the form of **Exhibit D** attached hereto and incorporated herein by this reference.

5.15 Payment of Expenses. Borrower shall pay or reimburse to Lender all out-of-pocket costs and expenses relating to the Mortgaged Property and for which an Advance is made, including (without limitation), title insurance and examination charges, survey costs, insurance premiums, filing and recording fees, and other expenses payable to third parties incurred by Lender in connection with the consummation of the transactions contemplated by this Agreement.

5.16 Notices Received. Borrower will promptly deliver to Lender a true and correct copy of all notices received by Borrower from any Person with respect to Borrower, Guarantor, the Mortgaged Property, or any or all of them, which in any way relates to or affects the Loan or the Mortgaged Property.

5.17 Advertising by Lender. Borrower agrees that during the term of the Loan, Borrower shall erect and thereafter shall maintain on the Mortgaged Property one or more advertising signs furnished by Lender indicating that the financing for the Mortgaged Property has been furnished by Lender.

5.18 Leases.

(a) Borrower will utilize the Approved Lease Form in leasing all or any part of the Mortgaged Property, subject only to non-material changes made on a lease-by-lease basis. Borrower shall not enter into any leases without Lender's prior written approval, such approval to be in the sole and absolute discretion of Lender. Notwithstanding the foregoing, so long as such lease otherwise meets the criteria provided in this Section 5.18 (i.e., Lender approves such proposed tenant's creditworthiness and Lender will receive an SNDA if an SNDA is required by Lender) and meets the criteria set forth in **Exhibit G** attached hereto, such approval shall be in Lender's reasonable discretion. Prior to the execution of any Lease, the Borrower

shall deliver to the Lender for its review and approval any Lease. Further, prior to the execution of any Lease, Borrower shall have received Lender's approval of the creditworthiness of the proposed tenant and Lender may condition any Lease approval on the receipt of an SNDA in form reasonably acceptable to Lender. Each Lease shall be substantially in the form of the Approved Lease Form unless otherwise agreed to by Lender. Borrower shall deliver to Lender a copy of each executed Lease promptly after acceptance and execution thereof by the Borrower.

(b) Upon request of Lender, Borrower shall use commercially reasonable efforts to obtain from the tenant under any Lease covering any portion of the Mortgaged Property, from time to time as requested by Lender, estoppel certificates stating that (i) the Lease is unmodified and in full force and effect and (ii) that no default exists thereunder on the part of Tenant or Borrower.

5.19 Statements and Reports. Borrower agrees to deliver to Lender, during the term of the Loan and until the Loan has been fully paid and satisfied, the following statements and reports:

(a) Annual financial statements of Guarantor within ninety (90) days after the end of each calendar year, commencing in the calendar year 2018, which shall be audited by an independent certified public accountant;

(b) Upon the earlier to occur of (i) issuance of a certificate of occupancy for the Improvements and (ii) commencement of leasing of the improvements, annual financial statements of Borrower within ninety (90) days after the end of each calendar year, commencing in the calendar year 2018, which shall be prepared and certified to by the chief financial officer of Borrower;

(c) Quarterly financial statements of Guarantor within forty-five (45) days after the end of each calendar quarter, commencing with the calendar quarter ending March 31, 2019, prepared and certified to by the chief financial officer of Guarantor;

(d) Upon the earlier to occur of (i) issuance of a certificate of occupancy for the Improvements and (ii) commencement of leasing of the improvements, quarterly financial statements of Borrower within forty-five (45) days after the end of each calendar quarter, commencing with the calendar quarter ending December 31, 2018, prepared and certified to by the chief financial officer of Borrower;

(e) Copies of all state and federal tax returns prepared with respect to Borrower and Guarantor within thirty (30) days of such returns being filed with the Internal Revenue Service or applicable state authority;

(f) Copies of extension requests or similar documents with respect to federal or state income tax filings for Guarantor within ten (10) days of such documents being filed with the Internal Revenue Service or applicable state authority;

(g) Upon the earlier to occur of (i) issuance of a certificate of occupancy for the Improvements and (ii) commencement of leasing of the improvements, annual operating

statements with respect to the Mortgaged Property within ninety (90) days after the end of each calendar year, prepared in such form and detail as Lender may require and certified to by the chief financial officer of Borrower;

(h) Upon the earlier to occur of (i) issuance of a certificate of occupancy for the Improvements and (ii) commencement of leasing of the improvements, monthly operating statements and a rent roll with respect to the Improvements, within thirty (30) days after the end of each calendar month, prepared in such form and detail as Lender may reasonably require and in accordance with generally accepted accounting principles and certified to by the chief financial officer of Borrower; and

(i) Such other financial statements and reports required to be delivered to Lender for Guarantor as set forth in the Guaranty, including without limitation, a Compliance Certificate executed by Guarantor certifying Guarantor's compliance (or non-compliance, as the case may be) with the financial covenants applicable to Guarantor set forth in the Guaranty, which Compliance Certificate shall be delivered to Lender within ninety (90) days after the end of each calendar year.

(j) Such other reports and statements as Lender may reasonably require from time to time.

5.20 Mechanic's Liens. Borrower shall not install nor otherwise incorporate in the Improvements any materials, equipment or fixtures under any conditional sales agreements or security agreement whereby the right is reserved or accrued to anyone to remove or repossess any such items. Borrower shall not cause or permit any lien or claim for lien for any labor or material to be filed or to become valid or effective against the Mortgaged Property; provided, however, that the existence of any unperfected and unrecorded mechanic's lien shall not constitute a violation of this Section if payment is not yet due for the work giving rise to the lien. In the event a lien is filed against the Mortgaged Property, Borrower shall, upon the request of Lender, obtain an indemnity bond for such lien complying with the requirements of Tex. Property Code §§ 53.171 *et. seq.*, and shall provide such bond to Lender within twenty (20) days of Lender's request unless Borrower otherwise causes such lien to be released prior to the expiration of such twenty (20) day period.

5.21 Transfer of Ownership Interests. Except as otherwise expressly permitted by this Loan Agreement, Borrower shall not convey, transfer or assign any interest in the Mortgaged Property, or permit a change in any of the Equity Interests in Borrower (whether direct or indirect), except for a sale of the publicly traded stock of Stratus Properties Inc., or other Disposition, unless the written consent of the Lender is first obtained, which consent may be granted or refused in Lender's sole discretion.

5.22 Assignment of Licenses and Permits. Borrower shall not assign or transfer any of its interest in any licenses and permits pertaining to the Mortgaged Property, or assign, transfer, or remove or permit any other Person to assign, transfer, or remove any records pertaining to the Mortgaged Property without Lender's prior written consent, which consent may be granted or refused in Lender's sole discretion.

5.23 Management Agreement. If Borrower enters into a Management Agreement for the Mortgaged Property, such Management Agreement shall be in form and substance reasonably satisfactory to Lender, and Borrower shall timely perform all of Borrower's obligations thereunder and enforce performance of all obligations of the Manager thereunder. Borrower shall not permit the termination, amendment or assignment of any Management Agreement unless the prior written consent of Lender is first obtained, which consent may be in the sole and absolute discretion of Lender and Borrower will cause the Manager to enter into a subordination agreement in form and substance acceptable to Lender, subordinating any Management Agreement to the lien of the Deed of Trust. Borrower will not change the Manager or enter into any other management agreement without Lender's prior written consent, which may be in the sole and absolute discretion of Lender.

5.24 Single Purpose Entity. Borrower shall be a single purpose entity at all times, the only business of which is the construction, financing, ownership, maintenance and operation of the Mortgaged Property and other assets directly related to the operation of the Mortgaged Property, and always be in compliance with its Limited Partnership Agreement. Borrower (i) shall exist solely for the purpose of owning the Mortgaged Property, (ii) will conduct business only in its own name, (iii) will not engage in any business or have any assets unrelated to the Mortgaged Property, (iv) does not have and will not incur any indebtedness other than the Loan and trade payables incurred in the ordinary course of business and which are paid prior to the delinquency date thereof, (v) will have its own separate books, records, and accounts (with no commingling of assets), (vi) will hold itself out as being an entity separate and apart from any other entity, and (vii) will observe corporate formalities independent of any other entity. Borrower shall immediately provide Lender with copies of any amendments or modifications of its formation or Organization Documents.

5.25 Insurance. Borrower shall obtain and maintain such insurance and evidence of insurance as Lender may reasonably require, including but not limited to the insurance described on Exhibit E attached hereto. To the extent there are any express inconsistencies between the coverages or deductibles set forth on Exhibit E and the insurance required pursuant to the terms of the Deed of Trust or any of the other Loan Documents, Exhibit E shall control.

5.26 Reimbursement Agreements It is contemplated that Borrower may enter into a developer reimbursement contract with the City of Houston for reimbursement up to 30% of the construction costs of a water line to be constructed by Sendero Industries, LLC (the "Developer Participation Agreement") and a public improvement agreement for certain public improvement components of the Improvements with the Lake Houston Redevelopment Authority (the "TIRZ Agreement"). To the extent assignable, within 30 days after the execution of each of the Development Participation Agreement and/or the TIRZ Agreement (or similar document), as applicable, Borrower shall also execute a collateral assignment of the Developer Participation Agreement or the TIRZ Agreement, as applicable, in form and substance acceptable to Lender.

5.27 DSCR/LTV Account.

(a) To the extent funds are deposited in the DSCR/LTV Account pursuant to **Sections 2.8 or 2.9**, the DSCR/LTV Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds. During the continuance of

an Event of Default, Lender may, at its sole discretion, apply at any time the balance in the DSCR/LTV Account against the Indebtedness in whatever order Lender shall subjectively determine. Borrower hereby grants to Lender a security interest in and to the DSCR/LTV Account and all funds therein (and all proceeds thereof) as additional security to secure payment of the Note. Unless the same are applied by Lender to the Indebtedness during the continuance of an Event of Default, all such funds shall remain in the DSCR/LTV Account until the earlier to occur of (i) such time as all Indebtedness has been repaid in full, or (ii) Borrower has satisfied the applicable Debt Service Coverage Ratio or Loan-to-Value Ratio requirement as provided in this Agreement. Funds in the DSCR/LTV Account may not be used by Borrower for any purposes, including for debt service payments under the Loan.

(b) To the extent a Letter of Credit is delivered to Lender, during the continuance of an Event of Default, Lender may, at its sole discretion, present the Letter of Credit to the issuer thereof for payment and apply the proceeds thereof against the Indebtedness in whatever order Lender shall subjectively determine. Any Letter of Credit delivered to Lender shall remain outstanding at all times any of the Indebtedness remains outstanding and unpaid, and Borrower shall cause the same to be renewed no less than thirty (30) days prior to the expiration date thereof. In the event that a Letter of Credit is not so renewed at least 30 days prior to the expiration date thereof in form and substance acceptable to Lender, then Lender may present the Letter of Credit for payment to the issuer thereof and hold the proceeds thereof in the DSCR/LTV Account and apply such proceeds in accordance with the terms and provisions of this Agreement upon the occurrence of an Event of Default. The foregoing notwithstanding, such Letter of Credit will be released at such time that Borrower has satisfied the applicable Debt Service Coverage Ratio or Loan-to-Value Ratio requirement as provided in this Agreement.

5.28 Restricted Distributions and other Payments. All capital contributed to the Mortgaged Property shall remain in the Mortgaged Property until the Loan is paid off in full. During the term of the Loan, Borrower shall not make any distribution of assets to any holder of a partnership interest or other ownership interest in Borrower, whether or not such a distribution is permitted under the terms of Borrower's limited partnership agreement, including without limit return of capital contributions, repayment of any loans made to Borrower by any holder of a partnership interest or other ownership interest in Borrower, distributions upon termination, liquidation or dissolution of Borrower or any development, property management, accounting or other fees payable to any holder of a partnership interest or other ownership interest in Borrower that would constitute a return of capital contributed to the Borrower by a holder of a partnership interest or other ownership interest in Borrower. Without limiting the foregoing, Borrower shall not at any time make a distribution of assets that would cause the Loan to constitute a high volatility commercial real estate ("HVCRE") exposure pursuant to Part 217 of Chapter II of title 12 of the Code of Federal Regulations as modified by Section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (2018). If, at any time, for any reason, the Loan constitutes an HVCRE exposure pursuant to Part 217 of Chapter II of title 12 of the Code of Federal Regulations as so modified, and the result of the foregoing is to increase the cost to Lender of making or maintaining the Loan or to reduce the return received by Lender in connection with the Loan, then, Lender, at its option, may immediately increase the Applicable Margin (as defined in the Note) to a rate determined

by Lender, in its sole discretion, that shall cause the Lender to receive the same return it would have received had the Loan not constituted an HVCRE exposure.

5.29 Partial Release. Borrower may, at any time and from time to time, obtain a Partial Release of a Release Parcel from the liens and all other interests of Lender existing by virtue of the Loan Documents upon satisfaction of all the following terms and conditions:

(a) Borrower shall have delivered written notice to Lender not less than thirty (30) days prior to the proposed date of the Partial Release.

(b) No Event of Default shall exist and be continuing under the Loan Documents as of the date of notice in clause (a) above or on the date the Partial Release is to become effective.

(c) Lender shall have received any and all sums then due and payable under the Loan Documents, and Borrower shall have paid to Lender for such Partial Release, on or before the date of the Partial Release, an amount equal to the sum of (i) the Release Price, and (ii) any LIBOR breakage costs then due and payable (if any) as determined by Lender with respect to the portion of the principal so prepaid.

(d) Lender shall have received evidence satisfactory to Lender that: (i) the portion of the Property not being released (the "Remaining Property") and the Release Parcel are each comprised of one or more legal parcels lawfully created in compliance with all applicable legal requirements, including without limitation, those pertaining to subdivisions, plat, replats or other land divisions; (ii) the Remaining Property has the benefit of all utilities, easements, public and/or private streets, covenants, conditions and restrictions as may be necessary for the continued operation thereof in a manner satisfactory to Lender, including all ingress and egress to public rights-of-way which are necessary for the legal and efficient operation of the Property such that the Remaining Property is a separate, economically viable project and otherwise complies (and will comply after the Partial Release) with all applicable legal requirements and otherwise in a manner acceptable to Lender; and (iii) the Remaining Property has sufficient parking to comply with (x) the terms of all Leases covering the Remaining Property and (y) all applicable legal requirements.

(e) Upon the recording of the Partial Release, Borrower shall, use good faith, diligent efforts to cause the Release Parcel to constitute a separate tax lot with a separate tax assessment, independent of the Remaining Property, and shall in any event complete the foregoing no later than the end of the calendar year of the year of the Partial Release.

(f) At least ten (10) days prior to the date of the Partial Release, Borrower shall deliver to Lender at Borrower's expense the form of the partial release to be executed by Lender (which form of release must be satisfactory to Lender in form and substance).

(g) At the time of the Partial Release, Borrower shall pay all costs and expenses incurred by Lender in connection therewith (including reasonable attorney's fees and

expenses) and Borrower shall, at its sole cost and expense, obtain and deliver to Lender an endorsement of the Title Insurance in form and content acceptable to the Lender.

ARTICLE VI ASSIGNMENTS

6.1 Assignment of Construction Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Construction Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Construction Contract Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Construction Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Construction Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF LENDER, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION. THIS INDEMNITY INCLUDES ANY LIABILITY ASSERTED AGAINST LENDER ON ACCOUNT OF LENDER'S NEGLIGENCE OR ALLEGED NEGLIGENCE, BUT NOT ANY LIABILITY ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Construction Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Construction Contract, provided that Borrower shall not cancel or amend any Construction Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

6.2 Assignment of Plans and Specifications. As additional security for the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's right, title and interest in and to the Plans and Specifications and hereby represents and warrants to and agrees with Lender as follows:

(a) Each schedule of the Plans and Specifications for the Improvements delivered or to be delivered to Lender is and shall be a complete and accurate description of such Plans and Specifications.

(b) The Plans and Specifications for the Improvements are and shall be complete and adequate for the construction of the Improvements and there have been no modifications thereof except as described in such schedule. The Plans and Specifications shall not be modified without the prior consent of Lender.

(c) Lender may use the Plans and Specifications for the Improvements for any purpose relating to the Improvements, including but not limited to inspections of construction and the completion of the Improvements.

(d) Lender's acceptance of this assignment shall not constitute approval of the Plans and Specifications by Lender. Lender has no liability or obligation in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans and Specifications for the Improvements. Lender has no duty to inspect the Improvements, and if Lender should inspect the Improvements, Lender shall have no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Lender to make objections after any such inspection shall constitute a representation by Lender that the Improvements are in accordance with the Plans and Specifications or any other requirement or constitute a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications or any other requirement.

(e) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

6.3 Assignment of Design Services Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Design Services Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Design Services Contract Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Design Services Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Design Services Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Design Services Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF LENDER, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION. THIS INDEMNITY INCLUDES ANY LIABILITY ASSERTED AGAINST LENDER ON ACCOUNT OF LENDER'S NEGLIGENCE OR ALLEGED NEGLIGENCE, BUT NOT ANY LIABILITY ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Design Services Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Design Services Contract, provided that Borrower shall not cancel or amend any Design Services Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

6.4 Assignment of Proceeds. Borrower hereby further collaterally transfers and assigns to Lender and acknowledges that Lender shall be entitled to receive (i) any and all sums which may be awarded and become payable to Borrower for condemnation of all or any portion of the Mortgaged Property, or (ii) the proceeds of any and all insurance upon the Mortgaged Property (other than the proceeds of general public liability insurance).

(a) Borrower shall, upon request of Lender, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any of such insurance or condemnation proceeds.

(b) Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums.

(c) Any sums so received by Lender pursuant to this **Section 6.4** may, in Lender's sole discretion, be provided back to Borrower for restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements in documents as Lender may require, or shall be applied to the liquidation of the Indebtedness in accordance with the provisions of **Section 6.4** of the Deed of Trust; provided, however, if Lender determines that the Mortgaged Property can be restored prior to the maturity date of the Note, and no Event of Default exists, then Lender will apply the proceeds to the restoration of the Mortgaged Property.

ARTICLE VII EVENTS OF DEFAULT

7.1 Events of Default. Each of the following shall constitute an "**Event of Default**" hereunder:

(a) If Borrower shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise and such default shall continue for a period of five (5) calendar days beyond any due date (provided, however, any default in making the payment due on the Maturity Date shall be an immediate Event of Default without any grace period).

(b) If Borrower shall fail, refuse or neglect, or cause others to fail, refuse, or neglect to comply with, perform and discharge fully and timely any of the Obligations in any of the Loan Documents (and which are not otherwise specifically addressed in any other subsections of this **Section 7.1**) as and when called for, and such failure shall continue for a period of fifteen (15) days after receipt of written notice from Lender; provided, however, Borrower

shall have the right to attempt to cure said default for up to an additional forty-five (45) days if Borrower is diligently prosecuting a cure of said default.

(c) If any representation, warranty, or statement made by Borrower, Guarantor, or others in, under, or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Lender to be false or misleading in any material respect as of the date hereof or thereof or shall become so at any time prior to the repayment in full of the Indebtedness.

(d) If Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property which is not cured within any notice or grace period.

(e) If Borrower (i) shall execute an assignment for the benefit of creditors or an admission in writing by Borrower of Borrower's inability to pay, or Borrower's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Borrower or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks of the benefit or benefits of any Debtor Relief Law (as defined in the Deed of Trust), or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Lender or the trustee under the Deed of Trust granted in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Borrower as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Property, or any part thereof, or of any significant portion of Borrower's other property and (a) Borrower admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Borrower, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing.

(f) If Borrower, any Constituent Party (as defined in the Deed of Trust), or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.

(g) If Borrower creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions (as defined in the Deed of Trust) and subject to the right

of Borrower to cure or bond over a mechanic's or materialmen's lien in accordance with this Agreement.

(h) Any Disposition occurs without the prior written consent of Lender.

(i) If any condemnation proceeding is instituted or threatened which would, in Lender's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.

(j) If the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Lender's judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

(k) If Lender reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.

(l) If Borrower abandons all or any portion of the Mortgaged Property.

(m) The occurrence of any event referred to in **Sections 7.1(e)** and **7.1(f)** hereof with respect to any Guarantor, Constituent Party or other Person obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Guarantor, Constituent Party or other Person were the "Borrower" in such Sections).

(n) An Event of Default, as defined in any of the Loan Documents, occurs.

(o) (i) The Required Lease, for any reason, terminates or is no longer in full force or effect, or (ii) Borrower commits a default under the Required Lease beyond any applicable notice and/or cure period.

(p) If the construction of the Improvements are, at any time, (i) discontinued due to acts or matters within Borrower's control for a period of ten (10) or more consecutive days, (ii) not carried on with reasonable dispatch, or (iii) not completed by the Completion Date; subject, however, to Force Majeure (hereinafter defined), not to exceed sixty (60) days in the aggregate. "**Force Majeure**" shall be deemed to mean that Borrower is delayed or hindered in or prevented from the performance of any act required hereunder, not the failure of Borrower, by reason of (i) inability to procure materials or reasonable substitutes thereof, (ii) failure of power, (iii) civil commotion, riots, insurrection or war, (iv) unavoidable fire or other casualty, or acts of God (v) strikes, lockouts or other labor disputes (not by Borrower's employees), (vi) restrictive governmental law or regulation, (vii) delay by Lender of any act required of it hereunder, or (viii) any other causes of a like nature to the above listed (i) through (vii). Financial inability on the part of Borrower shall not be construed a Force Majeure hereunder. Borrower agrees to use its best efforts to resume the construction of the Improvements as soon as practicable after the cause of such delay has been removed or cancelled.

(q) If Borrower is unable to satisfy any condition of Borrower's right to receive Advances hereunder for a period in excess of thirty (30) days after Lender's refusal to make any further Advances.

(r) If Borrower executes any conditional bill of sale, chattel mortgage or other security instrument covering any materials, fixtures or articles intended to be incorporated in the Improvements or the appurtenances thereto, or covering articles of personal property placed in the Improvements, or files a financing statement publishing notice of such security instrument, or if any of such materials, fixtures or articles are not purchased in such a manner that the ownership thereof vests unconditionally in Borrower, free from encumbrances, on delivery at the Improvements, or if Borrower does not produce to Lender upon reasonable demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Borrower claims title to such materials, fixtures and articles.

(s) If any levy, attachment or garnishment is issued, or if any lien for the performance of work or the supply of materials is filed, against any part of the Mortgaged Property and remains unsatisfied or unbonded following the earlier of (i) twenty (20) days after the date of filing thereof or (ii) the requesting by Borrower of an Advance.

(t) The Management Agreement, if any, shall be terminated without the prior written approval of Lender.

(u) Borrower fails to make a Borrower's Deposit upon the written request of Lender within the time period required under this Agreement.

(v) If (i) any representation or warranty made by Guarantor in the Guaranty or any of the other Loan Documents is false or misleading in any material respect, (ii) Guarantor breaches any covenant of Guarantor set forth in the Guaranty which is not cured within fifteen (15) days after written notice from Lender or (iii) Guarantor breaches any of the negative covenants or financial covenants applicable to Guarantor set forth in **Sections 5** and **6** of the Guaranty.

7.2 **Remedies.** Lender shall have the right, during the continuance of an Event of Default, in addition to any rights or remedies available to it under all other Loan Documents, to enter into possession of the Mortgaged Property, to succeed Borrower as the Landlord of the Required Lease and/or to perform any and all work and labor necessary to complete the Improvements in accordance with the Plans and Specifications. All amounts so expended by Lender shall be deemed to have been disbursed to Borrower as Loan proceeds and secured by the Deed of Trust. For this purpose, Borrower hereby constitutes and appoints (which appointment is coupled with an interest and is therefore irrevocable) Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution to complete the Improvements in the name of Borrower, and hereby empowers Lender, acting as Borrower's attorney-in-fact, as follows: to use any funds of Borrower, including any balance which may be held in escrow, any Borrower's Deposit and any funds which may remain unadvanced hereunder, for the purpose of completing the Improvements in the manner called for by the Plans and Specifications; to make such additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Improvements in the manner contemplated by

the Plans and Specifications; to continue all or any existing construction contracts or subcontracts; to employ such contractors, subcontractors, agents, design professionals and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the work or the clearing of title; to execute all the applications and certificates in the name of Borrower which may be required by any construction contract; and to do any and every act with respect to the Required Lease and construction of the Improvements which Borrower could do in Borrower's own behalf. Lender, acting as Borrower's attorney-in-fact, shall also have power to prosecute and defend all actions or proceedings in connection with the Mortgaged Property and to take such action and require such performance as is deemed necessary.

ARTICLE VIII
LENDER'S DISCLAIMERS - BORROWER'S INDEMNITIES

8.1 No Obligation by Lender to Construct. Lender has no liability or obligation whatsoever or howsoever in connection with the Mortgaged Property or the development, construction or completion thereof or work performed thereon, and has no obligation except to disburse the Loan proceeds as herein agreed, Lender is not obligated to inspect the Improvements nor is Lender liable, and under no circumstances whatsoever shall Lender be or become liable, for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Mortgaged Property, or any part thereof, or for the payment of any cost or expense incurred in connection therewith, or for the performance or nonperformance of any obligation of Borrower or Guarantor to Lender nor to any other Person without limitation. Nothing, including without limitation, any disbursement of Loan proceeds or the Borrower's Deposit nor acceptance of any document or instrument, shall be construed as such a representation or warranty, express or implied, on Lender's part.

8.2 No Obligation by Lender to Operate. Any term or condition of any of the Loan Documents to the contrary notwithstanding, Lender shall not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct or operation of the business and affairs of Borrower or Guarantor. Any term or condition of the Loan Documents which permits Lender to disburse funds, whether from the proceeds of the Loan, the Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to Borrower, Guarantor, the Mortgaged Property or any other collateral for repayment of the Loan, shall be deemed to be solely to permit Lender to audit and review the management, operation and conduct of the business and affairs of Borrower and Guarantor, and to maintain and preserve the security given by Borrower to Lender for the Loan, and may not be relied upon by any other Person. Further, Lender shall not have, has not assumed and by its execution and acceptance of this Agreement hereby expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or Guarantor and no term or condition of the Loan Documents, shall be construed otherwise. Borrower hereby expressly acknowledges that no term or condition of the Loan Documents shall be construed so as to deem the relationship between Borrower, Guarantor and Lender to be other than that of borrower, guarantor and lender, and Borrower shall at all times represent that the relationship between Borrower, Guarantor and Lender is solely that of borrower, guarantor and lender. **BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD LENDER**

HARMLESS FROM AND AGAINST ANY COST, EXPENSE OR LIABILITY INCURRED OR SUFFERED BY LENDER AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY OBLIGATION OR RESPONSIBILITY OF LENDER FOR THE MANAGEMENT, OPERATION AND CONDUCT OF THE BUSINESS AND AFFAIRS OF BORROWER OR GUARANTOR, OR AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY LIABILITY OR RESPONSIBILITY OF LENDER FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER OR GUARANTOR, INCLUDING WITHOUT LIMITATION ANY COST, EXPENSE OR LIABILITY RESULTING FROM ANY CLAIMS OF NEGLIGENCE OR ALLEGED NEGLIGENCE BY LENDER, BUT NOT ANY COST, EXPENSE OR LIABILITY ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8.3 INDEMNITY BY BORROWER. BORROWER HEREBY INDEMNIFIES LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM, AND HOLDS EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES TO WHICH ANY OF THEM MAY BECOME SUBJECT, INsofar AS SUCH LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES ARISE FROM OR RELATE TO ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY OR FROM ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING RELATING TO ANY OF THE FOREGOING, INCLUDING WITHOUT LIMITATION, ANY LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES RESULTING FROM ANY CLAIMS OF NEGLIGENCE OR ALLEGED NEGLIGENCE BY LENDER, BUT NOT ANY LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Without intending to limit the remedies available to Lender with respect to the enforcement of its indemnification rights as stated herein or as stated in any Loan Document, in the event any claim or demand is made or any other fact comes to the attention of Lender in connection with, relating or pertaining to, or arising out of the transactions contemplated by this Agreement, which Lender reasonably believes might involve or lead to some liability of Lender, Borrower shall, immediately upon receipt of written notification of any such claim or demand, assume in full the personal responsibility for and the defense of any such claim or demand and pay in connection therewith any loss, damage, deficiency, liability or obligation, including, without limitation, legal fees and court costs incurred in connection therewith. In the event of court action in connection with any such claim or demand, Borrower shall assume in full the responsibility for the defense of any such action and shall immediately satisfy and discharge any final decree or judgment rendered therein. Lender may, in its sole discretion, make any payments sustained or incurred by reason of any of the foregoing; and Borrower shall immediately repay to Lender, in cash and not with proceeds of the Loan, the amount of such payment, with interest thereon at the Default Rate (as defined in the Note) from the date of such payment. Lender shall have the right to join Borrower as a party defendant in any legal action brought against Lender, and Borrower hereby consents to the entry of an order making Borrower a party defendant to any such action.

8.4 No Agency. Nothing herein shall be construed as making or constituting Lender as the agent of Borrower in making payments pursuant to any construction contracts or subcontracts entered into by Borrower for construction of the Improvements or otherwise. The purpose of all requirements of Lender hereunder is solely to allow Lender to check and require documentation (including, but not limited to, lien waivers) sufficient to protect Lender and the Loan contemplated hereby. Borrower shall have no right to rely on any procedures required by Lender, Borrower hereby acknowledging that Borrower has sole responsibility for constructing the Improvements and paying for work done in accordance therewith and that Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor and each materialman, Lender having no responsibility for any such Persons or for the quality of their materials or workmanship.

ARTICLE IX MISCELLANEOUS

9.1 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Borrower and Lender, and their respective heirs, legal representatives, successors and assigns; provided, however, that Borrower may not assign any rights or obligations under this Agreement without the prior written consent of Lender.

9.2 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define or be used in construing the text of such Articles, Sections or Subsections.

9.3 Survival. The provisions hereof shall survive the execution of all instruments herein mentioned, shall continue in full force and effect until the Loan has been paid in full and shall not be affected by any investigation made by any party.

9.4 Intentionally Omitted.

9.5 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on page 1 of this Agreement; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein.

9.6 Reliance by Lender. Lender is relying and is entitled to rely upon each and all of the provisions of this Agreement; and accordingly, if any provision or provisions of this Agreement should be held to be invalid or ineffective, then all other provisions hereof shall continue in full force and effect notwithstanding.

9.7 Participations. Lender shall have the right at any time and from time to time to grant participations in the Loan and Loan Documents or sell or assign its interest in the Loan and the Loan Documents to a third party. Each participant or assignee of Lender shall be entitled to receive all information received by Lender regarding the creditworthiness of Borrower, any of its principals and the Guarantor, including (without limitation) information required to be disclosed to a participant pursuant to Banking Circular 181 (Rev., August 2, 1984), issued by the Comptroller of the Currency (whether the participant is subject to the circular or not).

9.8 Maximum Interest. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as defined in the Deed of Trust) (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to any of the Indebtedness, (ii) contracted for, charged or received by reason of Lender's exercise of the option to accelerate the maturity of the Note and/or any other portion of the Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of the Note and/or any of the other Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate (as defined in the Deed of Trust) shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of the Note and/or any of the other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against any other Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or other Indebtedness then owing by Borrower to Lender. All sums contracted for, charged or received by Lender for the use, forbearance or detention of any of the Indebtedness, including any portion of the debt evidenced by the Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method,

throughout the stated term of the Note and/or other Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or other Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the other Indebtedness for so long as any Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or any of the other Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

9.9 Controlling Document. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Loan Document, the terms and conditions of this Agreement shall control.

9.10 Construction of Agreement. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in **Section 1.1** hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term, whether such is singular or plural in nature, as the context may suggest or require.

9.11 Counterpart Execution. To facilitate execution, this Agreement may be executed in one or more counterparts as may be convenient or required, with all such counterparts collectively constituting a single instrument.

9.12 **CHOICE OF LAW AND VENUE.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PROVISIONS.**

(b) **THE PARTIES EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF TEXAS, AND ANY APPELLATE COURT THEREOF, (II) AGREES THAT ALL ACTIONS AND PROCEEDINGS BASED UPON, ARISING OUT OF, RELATING TO OR OTHERWISE CONCERNING THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, INCLUDING ALL CLAIMS FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, SHALL SOLELY AND**

EXCLUSIVELY BE BROUGHT, HEARD, AND DETERMINED (LITIGATED) IN SUCH COURTS, (III) ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, THE SOLE AND EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, (IV) WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED UPON THE GROUNDS OF FORUM NON CONVENIENS, THAT IT MAY NOW OR HEREAFTER HAVE TO BRINGING OR MAINTAINING ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTION, AND (V) AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT, OR ANY SUCH OTHER LOAN DOCUMENT. NOTHING HEREIN SHALL LIMIT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE ENFORCEMENT OF ANY LIENS OR SECURITY INTERESTS IN FAVOR OF LENDER ON ANY OF BORROWER'S PROPERTIES OR ASSETS.

9.13 WAIVER OF JURY TRIAL. BORROWER AND LENDER, BY ACCEPTANCE OF THIS AGREEMENT, ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.

9.14 USA PATRIOT ACT NOTIFICATION. The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Lender will ask for Borrower's name, taxpayer identification number, residential address, date of birth and other information that will allow Lender to identify Borrower, and, if Borrower is not an individual, Lender will ask for Borrower's name, tax identification number, business address, and other information that will allow Lender to identify Borrower. Lender may also ask, if Borrower is an individual, to see Borrower's driver's license or other identifying documents, and, if Borrower is not an individual, to see Borrower's legal organizational documents or other identifying documents.

9.15 **NOTICE OF INDEMNIFICATION. BORROWER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO SECTIONS 5.9, 6.1, 6.3, 8.2 AND 8.3 HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY BORROWER OR OTHERS AGAINST LENDER'S OWN NEGLIGENCE, BUT SAID INDEMNIFICATION DOES NOT INCLUDE INDEMNIFICATION FOR LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

9.16 **ENTIRE AGREEMENT.** THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO. IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THE PARTIES ACKNOWLEDGE THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

9.17 List of Attachments:

- Exhibit A - Land Description
- Exhibit B – Budget
- Exhibit C - Affidavit of Commencement
- Exhibit D - Affidavit of Completion
- Exhibit E – Insurance Requirements
- Exhibit F – Site Plan
- Exhibit G – Lease Terms
- Exhibit H – Release Parcel

The remainder of this page is blank. The signature page follows.

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

LENDER:

COMERICA BANK

By: /s/ Elaine Houston

Name: Elaine Houston

Title: Assistant Vice President

LOAN AGREEMENT – Signature Page

BORROWER:

STRATUS KINGWOOD PLACE, L.P., a Texas limited partnership

By: Stratus Northpark, L.L.C., a Texas limited liability company, General Partner

By: /s/ Erin D. Pickens
Erin D. Pickens, Senior Vice President

LOAN AGREEMENT – Signature Page



Installment Note
LIBOR-based Rate (Interim Construction/Term Loan)

AMOUNT	NOTE DATE	MATURITY DATE
\$32,870,000.00	December 6, 2018	December 6, 2022

For value received, the undersigned promise(s) to pay to the order of COMERICA BANK (herein called "**Bank**"), at any office of the Bank in the State of Texas, the principal sum of THIRTY TWO MILLION EIGHT HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$32,870,000.00), together with interest in accordance with the terms and conditions contained herein.

Subject to the terms and conditions of this Note, the unpaid principal balance outstanding under this Note from time to time shall bear interest at the LIBOR-based Rate plus the Applicable Margin, except during any period of time during which, in accordance with the terms and conditions of this Note, the Indebtedness hereunder shall bear interest at the Prime Referenced Rate plus the Applicable Margin.

The LIBOR-based Rate plus the Applicable Margin shall be the Applicable Interest Rate under this Note from the date of this Note, as set forth above, until the end of the Interest Period applicable to such LIBOR-based Rate, which shall be the first Business Day of the next succeeding month following the date of this Note. Effective as of the first Business Day of such next succeeding month, and as of the first Business Day of each succeeding month thereafter, the LIBOR-based Rate for the Interest Period commencing as of each such date shall become effective and such LIBOR-based Rate plus the Applicable Margin shall continue to be the Applicable Interest Rate for and in respect of the unpaid principal Indebtedness from time to time outstanding under this Note during such Interest Period, unless the LIBOR-based Rate is not otherwise available to the undersigned as the basis for the Applicable Interest Rate hereunder for the principal Indebtedness outstanding hereunder in accordance with the terms of this Note, in which case, the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate hereunder in respect of such Indebtedness for such period, subject in all respects to the terms and conditions of this Note. The foregoing shall not in any way whatsoever limit or otherwise affect any of Bank's rights or remedies under this Note upon the occurrence of any Default hereunder, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default.

Interest accruing hereunder on the basis of the Prime Referenced Rate (to the extent applicable) shall be computed on the basis of a 360-day year, and shall be assessed for the actual number of days elapsed, and in such computation, effect shall be given to any change in the Applicable Interest Rate as a result of any change in the Prime Referenced Rate, on the date of each such change. Interest accruing on the basis of the LIBOR-based Rate shall be computed on the basis of a 360 day year and shall be assessed for the actual number of days elapsed from the first day of the Interest Period applicable thereto but not including the last day thereof.

Payments under this Note shall be first applied to accrued and unpaid interest hereunder and the balance, if any, to principal.

Accrued and unpaid interest hereunder shall be payable monthly, in arrears, on the first (1st) day of each month, commencing on December 6, 2018, and on a like day of each succeeding month thereafter, until the Maturity Date, when the entire unpaid balance of principal and interest under this Note shall be due and payable (unless sooner accelerated in accordance with the terms of this Note). In the event the undersigned extends the Maturity Date pursuant to and in accordance with the First Extension Period (as defined in the Loan Agreement), then commencing on the first (1st) day of the first month after the commencement of the First Extension Period and continuing on the first (1st) day of each month thereafter until the First Extended Maturity Date (as defined in the Loan Agreement), in addition to accrued interest, principal on this Note shall be paid in equal monthly principal installments in an amount equal to the Monthly Principal Installment (as defined in the Loan Agreement). Thereafter, in the event the undersigned further extends the Maturity Date pursuant to and in accordance with the Second Extension Period (as defined in the Loan Agreement), then the undersigned shall continue to pay on the first (1st) day of each month until the Second Extended Maturity Date (as defined in the Loan Agreement), in addition to accrued interest, monthly principal installments in an amount equal to the Monthly Principal Installment. Unless sooner accelerated in accordance with the terms of this Note, the entire remaining unpaid balance of principal and accrued interest on this Note shall be payable on the Maturity Date set forth above.

Subject to the terms and conditions of this Note and the other Loan Documents (defined below), advances of principal may be made hereunder until, but not after, the original Maturity Date, subject to the terms and conditions of the Loan Agreement. The sum of all advances made hereunder shall not exceed the face amount hereof, and amounts repaid may not be reborrowed. The principal amount payable under this Note shall be the sum of all advances made by the Bank to or at the request of the undersigned less principal payments actually received by the Bank. The books and records of the Bank shall be the best evidence of the principal amount and the unpaid interest amount owing at any time under this Note and shall be conclusive absent manifest error.

From and after the occurrence of any Event of Default (as defined in the Loan Agreement), and so long as any such Event of Default remains unremedied or uncured thereafter, the Indebtedness outstanding under this Note shall bear interest at a per annum rate of three percent (3%) above the otherwise Applicable Interest Rate(s) (the “**Default Rate**”), which interest shall be payable upon demand. In addition to the foregoing, a late payment charge equal to five percent (5%) of each late payment hereunder may be charged on any payment not received by Bank within ten (10) calendar days after the payment due date therefor (excluding the final installment due on maturity, whether by acceleration or otherwise), but acceptance of payment of any such charge shall not constitute a waiver of any Event of Default hereunder.

In no event shall the interest payable under this Note at any time exceed the Maximum Rate. The term “**Maximum Rate**”, as used herein, shall mean at the particular time in question the maximum nonusurious rate of interest which, under applicable law, may then be charged on this Note. If on any day the Applicable Interest Rate hereunder in respect of any Indebtedness under this Note shall exceed the Maximum Rate for that day, the rate of interest applicable to such Indebtedness shall be fixed at the Maximum Rate on that day and on each day thereafter until the total amount of interest accrued on the unpaid principal balance of this Note equals the total amount of interest which would have accrued if there had been no Maximum Rate. If such maximum rate of interest changes after the date hereof, the Maximum Rate shall be automatically increased or decreased,

as the case may be, without notice to the undersigned from time to time as of the effective date of each change in such maximum rate. For purposes of determining the Maximum Rate under the law of the State of Texas, the applicable interest rate ceiling shall be the “weekly ceiling” from time to time in effect under Chapter 303 of the Texas Finance Code, as amended.

The amount from time to time outstanding under this Note, the Applicable Interest Rate(s), the Interest Period(s), if applicable, and the amount and date of any repayment shall be noted on Bank’s records, which records shall be conclusive evidence thereof, absent manifest error; provided, however, any failure by Bank to make any such notation, or any error in any such notation, shall not relieve the undersigned of its obligations to repay Bank all amounts payable by the undersigned to Bank under or pursuant to this Note, when due in accordance with the terms hereof.

Subject to the definition of an “Interest Period” hereunder, in the event that any payment under this Note becomes due and payable on any day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day, and, to the extent applicable, interest shall continue to accrue and be payable thereon during such extension at the rates set forth in this Note.

All payments to be made by the undersigned to Bank under or pursuant to this Note shall be in immediately available United States funds, without setoff or counterclaim, and in the event that any payments submitted hereunder are in funds not available until collected, said payments shall continue to bear interest until collected.

In the event that the LIBOR-based Rate plus the Applicable Margin is the Applicable Interest Rate for the principal Indebtedness outstanding under this Note, and any payment or prepayment of any such Indebtedness shall occur on any day other than the last day of the Interest Period applicable thereto (whether voluntarily, by acceleration, required payment or otherwise), or if the undersigned shall fail to make any payment of principal or interest hereunder at any time that the LIBOR-based Rate is the basis for the Applicable Interest Rate hereunder in respect of such Indebtedness, the undersigned shall reimburse Bank, on demand, for any resulting loss, cost or expense incurred by Bank as a result thereof, including, without limitation, any such loss, cost or expense incurred in obtaining, liquidating, employing or redeploying deposits from third parties (“**LIBOR Costs**”). Such amount payable by the undersigned to Bank may include, without limitation, an amount equal to the excess, if any, of (a) the amount of interest which would have accrued on the amount so prepaid, for the period from the date of such prepayment through the last day of the relevant Interest Period, at the applicable rate of interest provided under this Note, over (b) the amount of interest (as reasonably determined by Bank) which would have accrued to Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. Calculation of any amounts payable to Bank under this paragraph shall be made as though Bank shall have actually funded or committed to fund the relevant Indebtedness hereunder through the purchase of an underlying deposit in an amount equal to the amount of such Indebtedness and having a maturity comparable to the relevant Interest Period; provided, however, that Bank may fund the Indebtedness hereunder in any manner it deems fit and the foregoing assumptions shall be utilized only for the purpose of the calculation of amounts payable under this paragraph. Upon the written request of the undersigned, Bank shall deliver to the undersigned a certificate setting forth the basis for determining such losses, costs

and expenses, which certificate shall be conclusively presumed correct, absent manifest error. The undersigned may prepay all or any part of the outstanding balance of any Indebtedness hereunder at any time without premium or penalty, provided, however, that if the undersigned prepays any part of the outstanding balance of any Indebtedness hereunder which is bearing interest at such time based upon the LIBOR-based Rate, the undersigned shall pay to the Bank LIBOR Costs incurred by the Bank due to such prepayment. Any prepayment hereunder shall also be accompanied by the payment of all accrued and unpaid interest on the amount so prepaid. Partial prepayments hereunder shall be applied to the installments hereunder in the inverse order of their maturities.

For any Indebtedness hereunder for which the Applicable Interest Rate is at any time based upon the LIBOR-based Rate, if Bank shall designate a LIBOR Lending Office which maintains books separate from those of the rest of Bank, Bank shall have the option of maintaining and carrying this Note and the relevant Indebtedness hereunder on the books of such LIBOR Lending Office.

If, at any time, Bank determines that, (a) Bank is unable to determine or ascertain the LIBOR-based Rate, or (b) by reason of circumstances affecting the foreign exchange and interbank markets generally, deposits in eurodollars in the applicable amounts or for the relative maturities are not being offered to Bank for any applicable Interest Period, or (c) the LIBOR-based Rate plus the Applicable Margin will not accurately or fairly cover or reflect the cost to Bank of maintaining any of the Indebtedness under this Note based upon the LIBOR-based Rate, then Bank shall forthwith give notice thereof to the undersigned. Thereafter, until Bank notifies the undersigned that such conditions or circumstances no longer exist, any obligation of the Bank to maintain any of the Indebtedness outstanding under this Note at an Applicable Interest Rate based upon the LIBOR-based Rate shall be suspended, and the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate for all Indebtedness hereunder during such period of time.

If any Change in Law shall make it unlawful or impossible for the Bank (or its LIBOR Lending Office) to maintain any of the Indebtedness under this Note with interest based upon the LIBOR-based Rate, Bank shall forthwith give notice thereof to the undersigned. Thereafter, (a) until Bank notifies the undersigned that such conditions or circumstances no longer exist, any obligation of the Bank to maintain any of the Indebtedness hereunder at an Applicable Interest Rate based upon the LIBOR-based Rate shall be suspended, and thereafter, the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate for the Indebtedness hereunder during such period of time, and (b) if Bank may not lawfully continue to maintain the Indebtedness hereunder at an Applicable Interest Rate based upon the LIBOR-based Rate to the end of the then current Interest Period applicable thereto, the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate for the remainder of such Interest Period.

If any Change in Law: (a) shall subject Bank (or its LIBOR Lending Office) to any tax, duty or other charge with respect to this Note or any Indebtedness hereunder, or shall change the basis of taxation of payments to Bank (or its LIBOR Lending Office) of the principal of or interest under this Note or any other amounts due under this Note in respect thereof (except for changes in the rate of tax on the overall net income of Bank or its LIBOR Lending Office imposed by the jurisdiction in which Bank's principal executive office or LIBOR Lending Office is located); or (b) shall impose, modify or deem applicable any reserve (including, without limitation, any

imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank (or its LIBOR Lending Office), or shall impose on Bank (or its LIBOR Lending Office) or the foreign exchange and interbank markets any other condition affecting this Note or the Indebtedness hereunder; and the result of any of the foregoing is to increase the cost to Bank of maintaining any part of the Indebtedness hereunder or to reduce the amount of any sum received or receivable by Bank under this Note by an amount deemed by the Bank to be material, then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, such additional amount or amounts as will compensate Bank for such increased cost or reduction. A certificate of Bank, prepared in good faith and in reasonable detail by Bank and submitted by Bank to the undersigned, setting forth the basis for determining such additional amount or amounts necessary to compensate Bank shall be conclusive and binding for all purposes, absent manifest error.

In the event that any Change in Law affects or would affect the amount of capital or liquidity required or expected to be maintained by Bank (or any corporation controlling Bank), and Bank determines that the amount of such capital or liquidity is increased by or based upon the existence of any obligations of Bank hereunder or the maintaining of any Indebtedness hereunder, and such increase has the effect of reducing the rate of return on Bank's (or such controlling corporation's) capital as a consequence of such obligations or the maintaining of such Indebtedness hereunder to a level below that which Bank (or such controlling corporation) could have achieved but for such circumstances (taking into consideration its policies with respect to capital adequacy and liquidity), then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, additional amounts as are sufficient to compensate Bank (or such controlling corporation) for any increase in the amount of capital and/or liquidity and reduced rate of return which Bank reasonably determines to be allocable to the existence of any obligations of the Bank hereunder or to maintaining any Indebtedness hereunder. A certificate of Bank as to the amount of such compensation, prepared in good faith and in reasonable detail by the Bank and submitted by Bank to the undersigned, shall be conclusive and binding for all purposes absent manifest error.

This Note and any other indebtedness and liabilities of any kind of the undersigned to the Bank, and any and all modifications, renewals or extensions of it, whether joint or several, contingent or absolute, now existing or later arising, and however evidenced and whether incurred voluntarily or involuntarily, known or unknown, or originally payable to the Bank or to a third party and subsequently acquired by Bank including, without limitation, any late charges; loan fees or charges; overdraft indebtedness; costs incurred by Bank in establishing, determining, continuing or defending the validity or priority of any security interest, pledge or other lien or in pursuing any of its rights or remedies under any Loan Document (or otherwise) or in connection with any proceeding involving the Bank as a result of any financial accommodation to the undersigned; and reasonable costs and expenses of attorneys and paralegals, whether inside or outside counsel is used, and whether any suit or other action is instituted, and to court costs if suit or action is instituted, and whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in bankruptcy, in administrative proceedings, in probate proceedings or otherwise (collectively "**Indebtedness**") are secured by and the Bank is granted a security interest in and lien upon all items deposited in any account of the undersigned with the Bank and by all proceeds of these items (cash or otherwise), all account balances of the undersigned from time to time with

the Bank, by all property of the undersigned from time to time in the possession of the Bank and by any other collateral, rights and properties described in each and every deed of trust, mortgage, security agreement, pledge, assignment and other security or collateral agreement which has been, or will at any time(s) later be, executed by the undersigned to or for the benefit of the Bank (collectively "**Collateral**"). Notwithstanding the above, (i) to the extent that any portion of the Indebtedness is a consumer loan, that portion shall not be secured by any deed of trust or mortgage on or other security interest in the undersigned's principal dwelling or in the undersigned's real property which is not a purchase money security interest as to that portion, unless expressly provided to the contrary in another place, or (ii) if the undersigned has (have) given or give(s) the Bank a deed of trust or mortgage covering real property which, under Texas law, constitutes the homestead of such person, that deed of trust or mortgage shall not secure this Note or any other indebtedness of the undersigned unless expressly provided to the contrary in another place.

If an Event of Default (as defined in the Loan Agreement) occurs and is continuing, then the Bank may, at its option and without prior notice to the undersigned, declare any or all of the Indebtedness to be immediately due and payable (notwithstanding any provisions contained in the evidence of it to the contrary), sell or liquidate all or any portion of the Collateral, set off against the Indebtedness any amounts owing by the Bank to the undersigned, charge interest at the Default Rate and exercise any one or more of the rights and remedies granted to the Bank by any Loan Document or given to it under applicable law.

The undersigned authorize(s) the Bank to charge any account(s) of the undersigned with the Bank for any and all sums due hereunder when due; provided, however, that such authorization shall not affect the undersigned's obligation to pay to the Bank all amounts when due, whether or not any such account balances that are maintained by the undersigned with the Bank are insufficient to pay to the Bank any amounts when due, and to the extent that are insufficient to pay to the Bank all such amounts, the undersigned shall remain liable for any deficiencies until paid in full.

This Note shall bind the undersigned, and the undersigned's respective heirs, personal representatives, successors and assigns.

Except as specifically set forth in a Loan Documents, the undersigned waive(s) presentment, demand, protest, notice of dishonor, notice of demand or intent to demand, notice of acceleration or intent to accelerate, and all other notices, and agree(s) that no extension or indulgence to the undersigned or release, substitution or nonenforcement of any security, or release or substitution of the undersigned, any guarantor or any other party, whether with or without notice, shall affect the obligations of the undersigned. The undersigned waive(s) all defenses or right to discharge available under Section 3-605 of the Texas Uniform Commercial Code and waive(s) all other suretyship defenses or right to discharge. The undersigned agree(s) that the Bank has the right to sell, assign, or grant participations or any interest in, any or all of the Indebtedness, and that, in connection with this right, but without limiting its ability to make other disclosures to the full extent allowable, the Bank may disclose all documents and information which the Bank now or later has relating to the undersigned or the Indebtedness. The undersigned agree(s) that the Bank may provide information relating to this Note or relating to the undersigned to the Bank's parent, affiliates, subsidiaries and service providers.

The undersigned agree(s) to pay or reimburse Bank, or any other holder or owner of this Note, on demand, for any and all costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside counsel is used, whether or not suit is instituted, and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in connection with the preparation, execution, delivery, amendment, administration, and performance of this Note and the related documents, or incurred in collecting or attempting to collect this Note or the Indebtedness or incurred in any other matter or proceeding relating to this Note or the Indebtedness.

The undersigned acknowledge(s) and agree(s) that there are no contrary agreements, oral or written, establishing a term of this Note and agree(s) that the terms and conditions of this Note may not be amended, waived or modified except in a writing signed by an officer of the Bank expressly stating that the writing constitutes an amendment, waiver or modification of the terms of this Note. As used in this Note, the word "undersigned" means, individually and collectively, each maker, accommodation party, endorser and other party signing this Note in a similar capacity. If any provision of this Note is unenforceable in whole or part for any reason, the remaining provisions shall continue to be effective. Chapter 346 of the Texas Finance Code (and as the same may be incorporated by reference in other Texas statutes) shall not apply to the Indebtedness evidenced by this Note. **SECTION 9.12 OF THE LOAN AGREEMENT IS HEREBY INCORPORATED BY REFERENCE AS IF SUCH PROVISION WERE INCLUDED HEREIN.**

This Note and all other documents, instruments and agreements evidencing, governing, securing, guaranteeing or otherwise relating to or executed pursuant to or in connection with this Note or the Indebtedness evidenced hereby (whether executed and delivered prior to, concurrently with or subsequent to this Note), as such documents may have been or may hereafter be amended from time to time (collectively, the "**Loan Documents**") are intended to be performed in accordance with, and only to the extent permitted by, all applicable usury laws. If any provision hereof or of any of the other Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby and shall be enforced to the greatest extent permitted by law. It is expressly stipulated and agreed to be the intent of the holder hereof to at all times comply with the usury and other applicable laws now or hereafter governing the interest payable on the indebtedness evidenced by this Note. If the applicable law is ever revised, repealed or judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the indebtedness evidenced by this Note, or if Bank's exercise of the option to accelerate the maturity of this Note, or if any prepayment by the undersigned or prepayment agreement results (or would, if complied with, result) in the undersigned having paid, contracted for or being charged for any interest in excess of that permitted by law, then it is the express intent of the undersigned and Bank that this Note and the other Loan Documents shall be limited to the extent necessary to prevent such result and all excess amounts theretofore collected by Bank shall be credited on the principal balance of this Note or, if fully paid, upon such other Indebtedness as shall then remain outstanding (or, if this Note and all other Indebtedness have been paid in full, refunded to the undersigned), and the provisions of this Note and the other Loan Documents shall

immediately be deemed reformed and the amounts thereafter collectable hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid, or agreed to be paid, by the undersigned for the use, forbearance, detention, taking, charging, receiving or reserving of the indebtedness of the undersigned to Bank under this Note or arising under or pursuant to the other Loan Documents shall, to the maximum extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as such indebtedness is outstanding. To the extent federal law permits Bank to contract for, charge or receive a greater amount of interest, Bank will rely on federal law instead of the Texas Finance Code, as supplemented by Texas Credit Title, for the purpose of determining the Maximum Rate. Additionally, to the maximum extent permitted by applicable law now or hereafter in effect, Bank may, at its option and from time to time, implement any other method of computing the Maximum Rate under the Texas Finance Code, as supplemented by Texas Credit Title, or under other applicable law, by giving notice, if required, to the undersigned as provided by applicable law now or hereafter in effect. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Bank to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

For the purposes of this Note, the following terms have the following meanings:

“**Applicable Interest Rate**” means, in respect of all or any part of the Indebtedness hereunder, either the LIBOR-based Rate plus the Applicable Margin or (subject to the terms of this Note) the Prime Referenced Rate plus the Applicable Margin, as determined in accordance with the terms and conditions of this Note.

“**Applicable Margin**” means, (i) with respect to any principal accruing interest at the LIBOR-based Rate, 2.5% per annum, or (ii) with respect to any principal accruing interest at the Prime Referenced Rate, 1.25% per annum.

“**Business Day**” means any day, other than a Saturday, Sunday or any other day designated as a holiday under Federal or applicable State statute or regulation, on which Bank is open for all or substantially all of its domestic and international business (including dealings in foreign exchange) in Dallas, Texas, and, in respect of notices and determinations relating to the LIBOR-based Rate, also a day on which dealings in dollar deposits are also carried on in the London interbank market and on which banks are open for business in London, England.

“**Change in Law**” means the occurrence, after the date hereof, of any of the following: (i) the adoption or introduction of, or any change in any applicable law, treaty, rule or regulation (whether domestic or foreign) now or hereafter in effect and whether or not applicable to Bank on such date, or (ii) any change in interpretation, administration or implementation of any such law, treaty, rule or regulation by any Governmental Authority, or (iii) the issuance, making or implementation by any Governmental Authority of any interpretation, administration, request, regulation, guideline, or directive (whether or not having the force of law), including, without limitation, any risk-based capital guidelines or any interpretation, administration, request, regulation, guideline, or directive relating to liquidity. For purposes of this definition, (x) a change in law, treaty, rule,

regulation, interpretation, administration or implementation shall include, without limitation, any change made or which becomes effective on the basis of a law, treaty, rule, regulation, interpretation, administration or implementation then in force, the effective date of which change is delayed by the terms of such law, treaty, rule, regulation, interpretation, administration or implementation, and (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173) and all requests, rules, regulations, guidelines, interpretations or directives promulgated thereunder or issued in connection therewith shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or promulgated, whether before or after the date hereof, and (z) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall each be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“**Governmental Authority**” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supranational bodies such as the European Union or the European Central Bank).

“**Interest Period**” means a period of one (1) month (or such shorter period as may be acceptable to Bank in its sole discretion). The initial Interest Period hereunder shall commence as of the date of the first advance under this Note, and shall end on the first Business Day of the next succeeding month following the date of such advance. The next occurring Interest Period, and each succeeding Interest Period, shall commence on the first Business Day of the month and shall end on the first Business Day of the next succeeding month; provided, however, that no Interest Period shall extend beyond the Maturity Date.

“**LIBOR-based Rate**” means a per annum interest rate which is equal to the quotient of the following:

(a) the LIBOR Rate;

divided by

(b) 1.00 minus the maximum rate (expressed as a decimal) during such Interest Period at which Bank is required to maintain reserves on “Euro-currency Liabilities” as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or definition is modified, and as long as Bank is required to maintain reserves against a category of liabilities which includes eurodollar deposits or includes a category of assets which includes eurodollar loans, the rate at which such reserves are required to be maintained on such category.

“**LIBOR Lending Office**” means Bank’s office located in the Cayman Islands, British West Indies, or such other branch of Bank, domestic or foreign, as it may hereafter designate as its LIBOR Lending Office by notice to the undersigned.

“LIBOR Rate” means, with respect to any Indebtedness outstanding under this Note bearing interest on the basis of the LIBOR-based Rate, the per annum rate of interest determined on the basis of the rate for deposits in United States Dollars for a period equal to the relevant Interest Period for such Indebtedness, commencing on the first day of such Interest Period, appearing on Page BBAM of the Bloomberg Financial Markets Information Service as of 11:00 a.m. (Dallas, Texas time) (or as soon thereafter as practical), two (2) Business Days prior to the first day of such Interest Period. In the event that such rate does not appear on Page BBAM of the Bloomberg Financial Markets Information Service (or otherwise on such Service), the “LIBOR Rate” shall be determined by reference to such other publicly available service for displaying eurodollar rates as may be reasonably selected by Bank, or, in the absence of such other service, the “LIBOR Rate” shall, instead, be determined based upon the average of the rates at which Bank is offered dollar deposits at or about 11:00 a.m. (Dallas, Texas time) (or as soon thereafter as practical), two (2) Business Days prior to the first day of such Interest Period in the interbank eurodollar market in an amount comparable to the amount of the outstanding Indebtedness hereunder which is to bear interest on the basis of such LIBOR-based Rate and for a period equal to the relevant Interest Period; provided, however, and notwithstanding anything to the contrary set forth in this Note, if at any time the LIBOR Rate determined as provided above would be less than zero percent (0%), then the LIBOR Rate shall be deemed to be zero percent (0%) per annum for all purposes of this Note (the “LIBOR 0% Floor”), except for any portion of any principal Indebtedness outstanding under this Note which, at any such time, is subject to any Specified Hedging Agreement, in which case, the LIBOR Rate for such portion of such Indebtedness shall be determined without giving effect to the LIBOR 0% Floor. Each calculation by Bank of the LIBOR Rate shall be conclusive and binding for all purposes, absent manifest error.

“Loan Agreement” means that certain Construction Loan Agreement dated of even date herewith, executed by and between the undersigned and Bank.

“Prime Rate” means the per annum interest rate established by Bank as its prime rate for its borrowers, as such rate may vary from time to time, which rate is not necessarily the lowest rate on loans made by Bank at any such time. In no event shall the Prime Rate be less than 0%; provided, however, that the 0% floor will not apply to any portion of the principal subject to a Specified Hedging Agreement.

“Prime Referenced Rate” means a per annum interest rate which is equal to the Prime Rate.

“Specified Hedging Agreement” means any agreement or other documentation between the undersigned (or any of them) and Bank providing for an interest rate swap that does not provide for a minimum rate of zero percent (0%) with respect to determinations of the LIBOR Rate, as applicable, for the purposes of such interest rate swap (e.g., determines the floating amount by using the “negative interest rate method” rather than the “zero interest rate method” in the case of any such interest rate swap made under any master agreement or other documentation published by the International Swaps and Derivatives Association, Inc.).

No delay or failure of Bank in exercising any right, power or privilege hereunder shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof, or the exercise of any other power, right or privilege. The rights of Bank under this Note are cumulative and not exclusive of any right or remedies which Bank would otherwise have, whether by other instruments or by law.

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

THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[signature page follows]

[signature page to Installment Note]

STRATUS KINGWOOD PLACE, L.P., a Texas limited partnership

By: Stratus Northpark, L.L.C., a Texas limited liability company, General Partner

By: /s/ Erin D. Pickens
Erin D. Pickens, Senior Vice President

212 Lavaca Boulevard, Suite 300 Austin Texas 78701
STREET ADDRESS CITY STATE ZIP CODE

For Bank Use Only				
OFFICER INITIALS	LOAN GROUP NAME	OBLIGOR NAME		
OFFICER ID NO.	LOAN GROUP NO.	OBLIGOR NO.	NOTE NO.	AMOUNT

NEWS RELEASE

Stratus Properties Inc.
212 Lavaca St., Suite 300
Austin, Texas 78701

NASDAQ Symbol: "STRS"

Financial and Media Contact:

William H. Armstrong III
(512) 478-5788

**STRATUS PROPERTIES INC. OBTAINS CONSTRUCTION FINANCING FOR
KINGWOOD PLACE**

AUSTIN, TX, December 12, 2018 - Stratus Properties Inc. (NASDAQ: STRS) announced today that on December 6, 2018, Stratus Kingwood Place, L.P., a subsidiary of Stratus, entered into a construction loan agreement with Comerica Bank, which supersedes and replaces the land acquisition loan agreement and related documents dated August 6, 2018 and provides for a loan in the amount of approximately \$32.9 million to finance nearly 70 percent of the costs associated with construction of Kingwood Place, an approximately \$48 million H-E-B, L.P. (HEB)-anchored mixed-use development project in Kingwood, Texas. The remaining 30 percent of the project's costs (totaling approximately \$15 million) is being funded by borrower equity, contributed by Stratus and private equity investors. The loan also provides that the maturity date of the loan is December 6, 2022, with the possibility of two twelve-month extensions, subject to satisfying specified conditions.

The development plan for Kingwood Place includes a 103,000-square-foot HEB grocery store, 41,000 square feet of retail space, 6 retail pads and an approximate 10-acre parcel planned for approximately 300 multi-family units. Stratus has engaged an agent to market and sell, subject to market conditions, the multi-family parcel to a third party developer.

William H. Armstrong III, Chairman of the Board, President and Chief Executive Officer of Stratus stated, "We are pleased to announce that we have secured financing for the construction of Kingwood Place, a new development project in the Houston area. We value our longstanding relationship with Comerica and appreciate their confidence in our strategy as we continue to expand our portfolio of development projects beyond Austin to other select, fast-growing Texas markets. We look forward to enhancing the value of this property and creating value for our shareholders."

Construction of Kingwood Place is expected to begin in mid-December. The HEB grocery store is anticipated to open in third-quarter 2019.

Stratus is a diversified real estate company engaged primarily in the acquisition, entitlement, development, management, operation and sale of commercial, hotel, entertainment, and multi- and single-family residential real estate properties, primarily located in the Austin, Texas area, but including projects in certain other select markets in Texas.

Cautionary Statement Regarding Forward-Looking Statements. *This press release contains forward-looking statements in which Stratus discusses factors it believes may affect its future performance. Forward-looking statements are all statements other than statements of historical fact, such as statements regarding the implementation, projections or expectations related to the future development, construction and completion of Stratus' projects, financing and regulatory matters, development plans and sales of properties, including, but not limited to, exploring opportunities to sell the parcel planned for the multi-family site, timeframes for development, and other plans and objectives of management for future operations and activities. The words "anticipates," "may," "can," "plans," "believes," "potential," "estimates," "expects," "projects," "intends," "likely," "will," "should," "to be" and any similar expressions and/or statements that are not historical fact are intended to identify those assertions as forward-looking statements. Nothing contained in this press release should be construed as an offer to sell or the solicitation of an offer to buy any securities.*

Stratus cautions readers that forward-looking statements are not guarantees of future performance, and its actual results may differ materially from those anticipated, expected, projected or assumed in the forward-looking statements. Important factors that can cause Stratus' actual results to differ materially from those anticipated in the forward-looking statements include, but are not limited to the availability of financing for development projects and other corporate purposes, Stratus' ability to sell properties at prices its Board considers acceptable, a decrease in the demand for real estate in the Austin, Texas area and other select Texas markets where Stratus operates, changes in economic and business conditions, reductions in discretionary spending by consumers and

corporations, competition from other real estate developers, Stratus' ability to attract tenants and customers for its developments, increases in interest rates, declines in the market value of Stratus' assets, increases in operating costs, including real estate taxes and the cost of construction materials, changes in consumer preferences, changes in laws, regulations or the regulatory environment affecting the development of real estate, opposition from special interest groups with respect to development projects, and other factors described in more detail under the heading "Risk Factors" in Stratus' Annual Report on Form 10-K for the year ended December 31, 2017, filed with the U.S. Securities and Exchange Commission (SEC) as updated by Stratus' subsequent filings with the SEC.

Investors are cautioned that many of the assumptions upon which Stratus' forward-looking statements are based are likely to change after the forward-looking statements are made. Further, Stratus may make changes to its business plans that could affect its results. Stratus cautions investors that it does not intend to update its forward-looking statements more frequently than quarterly notwithstanding any changes in its assumptions, business plans, actual experience, or other changes, and Stratus undertakes no obligation to update any forward-looking statements.

A copy of this release is available on Stratus' website, www.stratusproperties.com.

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