

STATE OF NORTH CAROLINA

LOAN AGREEMENT

COUNTY OF DURHAM

THIS LOAN AGREEMENT (the “Agreement”), dated as of September _____, 2024 is made and entered into by and between the COUNTY OF DURHAM, a North Carolina public body corporate and politic (the “County”), and 500 EAST MAIN, LLC, a North Carolina limited liability company (the “Borrower”).

BACKGROUND AND PURPOSE

A. Pursuant to that certain ground lease of even date herewith, entered into by and between the County, as “Lessor” and Borrower, as “Lessee” (the “Ground Lease”), Borrower has acquired a leasehold interest in a certain parcel or parcels of real estate in the City of Durham, Durham County, North Carolina, more particularly described on Exhibit A attached hereto (the “Property”), on which Borrower intends to construct one hundred ninety-five (195) affordable housing units (each referred to as a “Unit”, and collectively as the “Units”) and other improvements (collectively with the Units, the “Improvements”) in accordance with the site and building plans and specifications (the “Plans”) and Borrower’s proposal (the “Proposal”) submitted to and approved by the County. The Property and the Improvements are collectively referred to herein as the “Project.”

B. Borrower has applied to the County for a loan in the amount of Ten Million Six Hundred Eighteen Thousand Four Hundred Seventeen and no/100 Dollars (\$10,618,417.00) (the “Loan”) to be used for the payment of a portion of the cost of construction of the Improvements as more particularly described herein and the County has approved the allocation of the Loan to Borrower as a part of a community development project.

C. The Loan shall be disbursed as herein provided to enable Borrower to pay for the construction of the Improvements and in support of affordable housing in a low and moderate income area of the county.

THEREFORE, in consideration of and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows:

ARTICLE I
THE LOAN TO BORROWER

1. Loan Amount. The County shall lend to Borrower, and Borrower shall borrow from the County, the sum of up to Ten Million Six Hundred Eighteen Thousand Four Hundred Seventeen and no/100 Dollars (\$10,618,417.00).
2. Interest and Repayment. Beginning on the date hereof, interest shall accrue on the outstanding principal amount of the Loan at the rate of one and one-half percent (1.50%) per year, non-compounding and non-amortizing. Payments of accrued interest shall be made from Available Cash Flow only, which payments, if any, shall

commence annually beginning on the Conversion Date (as such term is defined in the Construction Loan Agreement, of even date herewith, between Borrower and Truist Bank). "Available Cash Flow" shall mean all Cash Flow (as such term is defined in the Second Amended and Restated Operating Agreement of Borrower, hereafter referred to as the "Operating Agreement") remaining after the payments and deposits set forth in Section 10.1A clauses First through Eighth of said Operating Agreement have been made. If not sooner paid, the entire outstanding principal and accrued but unpaid interest shall be due and payable upon the earlier of: (i) forty (40) years from the date of this agreement, or (ii) the expiration of the term on the first mortgage of the property subject to the Ground Lease for construction, equipping and operation of the Improvements.

3. Loan Documents. The Loan shall be evidenced by a promissory note of even date herewith (the "Note") and shall be secured by the following:
 - (a) A Leasehold Deed of Trust, Security Agreement and Financing Statement constituting a third lien on the Project (the "Deed of Trust");
 - (b) UCC-1 Financing Statements (the "UCC-1's");
 - (c) Assignment of Leases and Rents (the "Assignment");
 - (d) Declaration of Deed Restrictions (the "Declaration"); and
 - (e) Assignment of Contracts, Plans, and Permits (the "Assignment of Contracts").

The Note, Deed of Trust, UCC-1's, Assignment, Declaration, and Assignment of Contracts shall contain such terms and conditions as are acceptable to the County, and together with this Agreement and such other documents as are customarily provided in loan transactions of this type are collectively referred to as the "Loan Documents".

4. Compliance Fee. Borrower shall remit an annual "Compliance Fee" to the County in the initial amount of \$35.00 per Unit each year, commencing after construction completion and lease up of the Project and continuing until the expiration of the Affordability Period (as hereinafter defined). The Compliance Fee shall be subject to a three percent (3%) increase each year.

ARTICLE II USE OF LOAN

Borrower agrees that the Loan shall be used in support of affordable housing in a low and moderate income area of the county and only for the hard and soft costs necessary to execute the construction of the Project in accordance with the Plans (the "Work"), which costs are set forth on Exhibit B attached hereto.

ARTICLE III
DISBURSEMENTS

1. Disbursement of the Loan. The County shall disburse the funds from the Loan (the “Funds”) as provided in this Article III. The County shall not be obligated to make disbursements of the Loan until all of the conditions stated in Article IV and this Article III hereof have been satisfied and the County has received the following:
 - (a) Draw Request (hereinafter defined);
 - (b) Evidence that no lien or other interest shall have been permitted to attach to the Project superior or subordinate to the interest of the County under the Deed of Trust, except for the following “Permitted Liens”:
 - (i) Taxes for the current year that are not yet due and payable;
 - (ii) All matters shown on Commitment No. 24-08934DU issued by Chicago Title Insurance Company as approved by the County; and
 - (iii) Other matters approved in writing by the County.
 - (c) A standard ALTA mortgagee policy as to the Property from a company or from companies approved by the County (including any reinsurance agreements required by the County), providing coverage for the full principal amount of the Loan and containing only the Permitted Liens approved by the County as superior to the County’s interest and containing all endorsements reasonably required by the County.

2. Draw Request.
 - (a) The County will disburse Loan funds through Draw Requests prepared and submitted by Borrower. Each Draw Request must be accompanied by the appropriate invoices and shall be certified as correct by Borrower.
 - (b) Draw Requests submitted to the County with the appropriate documentation will be paid within thirty (30) days of receipt.
 - (c) The County will not be responsible for payment of interest charges, penalties or late fees for either partial or final payments to third parties as a result of the timing of any disbursements under the Loan. All Draw Requests (only) must be emailed to Joe Futima at jfutima@dconc.gov and all Draw Requests, together with supporting documentation must be delivered to the following: Durham County Finance, Attn: Joe Futima or emailed to jfutima@dconc.gov, or such other address as the County may designate to Borrower in writing.
 - (d) Borrower shall submit a Copy of AIA Document G702 “Application and

Certificate for Payment” or comparable HUD approved forms signed by Progress Carolina NC, LLC the contractor for the Project (“Contractor”) and Neighboring Concepts PLLC the architect for the Project (if applicable).

3. Initial Disbursement. The County will not be obligated to make an initial disbursement under the Loan until after closing.
4. Retainage/Final Disbursement. A retainage amount of ten percent (10%) will be withheld by the County and disbursed to Borrower upon the Project receiving a final certificate of occupancy. The County shall not be obligated to disburse the retainage amount or make the final disbursement under the Loan until the Work has been completed in accordance with the terms of this Agreement and the contract documents between Borrower and Contractor.
5. Documentation. Until final completion of the Work, Borrower will provide to the County copies of all draw requests submitted for other funding sources for the Project as well as monthly updates as to the status of the Work in form and content reasonably requested by the County.

ARTICLE IV
CONDITIONS PRECEDENT

The County’s obligations under this Agreement shall not become binding until all of the events set out below have occurred. Until all of the events have occurred, the County retains the absolute right to refuse to be bound by any part of this Agreement, and no expenditure of funds or any other act on the part of Borrower or any other entity shall constitute reliance or consideration sufficient for the County to lose that right.

1. This Agreement is approved and executed on behalf of the County as required by law.
2. Execution and/or delivery to the County of the following items, all in form and substance reasonably satisfactory to the County and the County’s counsel:
 - (a) The Note. That certain promissory note, of even date herewith, in the original principal amount of Ten Million Six Hundred Eighteen Thousand Four Hundred Seventeen and no/100 Dollars (\$10,618,417.00).
 - (b) Deed of Trust as duly recorded in the office of the Register of Deeds of Durham County.
 - (c) UCC-1s as duly filed in the Office of the North Carolina Secretary of State and as recorded in the Office of the Register of Deeds for Durham County.
 - (d) Assignment of Leases and Rents as duly recorded in the office of the Register of Deeds of Durham County.

- (e) Survey. Two (2) copies of a recent ALTA survey of the Property by a registered engineer or land surveyor. Such survey shall show all boundaries of the land with courses and distances indicated, including chord bearings and arc and chord distances for all curves, and shall show dimensions and locations of all existing improvements and of all easements, private drives, roadways, encroachments, utility and transmission lines, and shall show the distances to, and names of the nearest intersecting streets, and other facts in any way affecting the Property, and shall show such other details as the County may reasonably request. The Property area must also be included thereon together with a certification as to the location of the Property within any special flood hazard area.
- (f) Flood Hazards. Evidence as to whether or not the Property is located within an area identified as having “special flood hazards” as such term is used in the federal Flood Disaster Protection Act of 1973. Such evidence can be the certification that is required in connection with the survey required herein.
- (g) Flood Hazard Insurance. If any part of the Improvements is or is to be located in an area having “special flood hazards”, a flood insurance policy naming the County as mortgagee must also be provided.
- (h) Insurance. Insurance meeting the requirements set forth in this Agreement. Satisfactory evidence of premium payments must be provided.
- (i) Authority Documents of Borrower.
 - (i) Articles of Organization for Borrower, and any amendments thereto, certified by the office of the Secretary of State for the State of North Carolina.
 - (ii) Operating Agreement of Borrower and any amendments thereto.
 - (iii) A Certificate of Existence for Borrower issued by the State of North Carolina.
 - (iv) Certified Resolutions of Borrower authorizing it to enter into the Loan Documents.
 - (v) Such other documentation of Borrower, and its members, as counsel for the County may reasonably request.
- (j) Building Plans and Permits. Verification by the County or such other qualified authority as the County may approve, that the Plans for the Project are in conformity with all developmental standards and ordinances which are prerequisites to Borrower receiving building permits for the Project. Copies of final building permits and/or site permits for the Project must be received by the County prior to

the first disbursement of Loan Funds.

- (k) Cost of Construction. Reasonable verification by the County or such other qualified authority as the County may approve, that the reasonably projected cost to construct the Project is no greater than the amount of the Loan plus all other loans or equity contributions for which Borrower has commitments.
- (l) Compliance with Laws. Evidence reasonably satisfactory to the County that the Property and the intended uses of the Property are or will be at all appropriate times in compliance with all applicable laws, regulations and ordinances. The laws, regulations and ordinances with which the Property must comply include, without limitation, the following: health and environmental protection laws, erosion control ordinances, storm drainage control laws, doing business and/or licensing laws, zoning laws (the evidence submitted as to zoning should include the zoning designation and zoning requirements as to parking, lot size, ingress, egress and building setbacks) and laws regarding access and facilities for disabled persons including, but not limited to, the N.C. Persons With Disabilities Protection Act.
- (m) Debarment Certification. A fully executed Certification Regarding Debarment, Suspension, Proposed Debarment, Ineligibility and Other Responsibility Matters attached hereto as Exhibit D.
- (n) Title Commitment. A standard ALTA Mortgagee title insurance commitment insuring the lien of the Deed of Trust as a third priority lien encumbering the Project from a company approved by the County containing only the Permitted Liens approved by the County as superior to the County's interest and containing all endorsements reasonably required by the County.
- (o) Environmental Assessment. Evidence in the form of an environmental assessment of the Property by an engineer or other environmental consultant as to whether or not (i) the Property is located within an area designated as a hazardous waste site by any federal, state or governmental authority, (ii) any materials regulated, controlled or prohibited by any federal, state or local environmental laws (including but not limited to asbestos) are now located on the Property, and (iii) any prior owner of the Property has handled or disposed of such materials on the Property.
- (p) Restrictions. The Restrictions attached hereto as Exhibit C have been duly recorded in the office of the Register of Deeds of Durham County.
- (q) Project Funding. Documentation that all funds necessary to complete the Project which are to be obtained from the other funding sources as shown on Exhibit B have been received by Borrower or an approved disbursing agent or Borrower has received binding commitments from such funding sources, in the combined amount from all funding sources, including the Loan, of at least \$[].
- (r) Encumbrances. No lien or other interest shall have been permitted to attach to the

Project superior or subordinate to the interest of the County under the Deed of Trust, except for the Permitted Liens set forth in Article III, Section 1(b).

- (s) Byrd Anti-Lobbying Certification. A fully executed Byrd Anti-Lobbying Certification attached hereto as Exhibit F.

ARTICLE V

BORROWER'S CERTIFICATIONS, REPRESENTATIONS, AND WARRANTIES

1. Borrower shall use the proceeds of the Loan only for the purposes and in the manner set forth in this Agreement and no other.
2. Borrower shall keep and maintain such books, records and other documents as may reasonably be necessary to reflect and disclose fully and separately the amount and disposition of funds lent pursuant to this Agreement, all receipts and expenditures of Project funds which are supplied or are to be supplied by other sources, and the total costs and expenses of the Project, including, but not limited to all records, receipts and contract documentation for all expenditures of Loan funds.

Borrower shall maintain such books, records and other documents for a period of at least four (4) years after the completion of the Work and shall make the same available for inspection, copying, audit, and examination at all reasonable times from-and-after the date hereof by any duly-authorized representative of the County.

3. Borrower shall permit any duly-authorized representative of the County to have access to the Project, at all reasonable times upon reasonable notice during normal business hours during the term of the Loan, subject to the rights of residential tenants.
4. Borrower shall use diligent efforts to ensure that the Contractor or any subcontractor performing work on the Project obtains and keeps in force all necessary licenses, permits, and franchises necessary for the completion of the Project. Borrower shall pay all taxes, assessments, and other governmental charges imposed upon Borrower or the Project before the date on which penalties may be charged for late payment.
5. Borrower shall not exclude, on the basis of race, color, religion, sex, national origin or handicap, any person from leasing any of the Units in the Project.
6. Borrower shall use diligent efforts to ensure that its Contractor will, to the greatest extent feasible in connection with the Project, provide opportunities for training and employment to lower income persons residing within the County's metropolitan area and that contracts for such work will be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in, the County's metropolitan area. Borrower will endeavor to ensure that all laborers and mechanics employed by contractors or subcontractors on any construction work to be

performed in connection with the Project shall be paid wages at rates not less than those prevailing on similar construction in the locality.

7. Borrower shall promptly give written notice to the County upon Borrower's discovery of any material default in any contract or other agreement relating to the Project. If Borrower is the defaulting party, Borrower shall attempt promptly to cure the default. If the material default is by some other party, Borrower shall vigorously pursue, to the extent commercially reasonable, all remedies available to Borrower to remove or cure such material default or to seek redress or relief from its effects, and to prevent or mitigate any adverse effects on the Project. Borrower shall keep the County fully informed as to the status of such actions.
8. Borrower shall use its best efforts to not allow any member of the County's governing body, or any employee, agent, consultant or officer of the County who exercises or has exercised any functions or responsibilities with respect to activities operated or administered by the County's Housing & Neighborhood Services Department or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, to obtain a personal or financial interest or benefit from the Project or have any interest in any contract, subcontract or agreement with respect to the Project, either for themselves, their Immediate Family, or for those with whom they have business ties, during or for one (1) year after such person's tenure with the County. Borrower shall include, or cause to be included, this provision in all contracts, subcontracts or agreements relating to the construction or operation of the Project. "Immediate Family" shall mean spouse, mother, father, brother, sister or child (whether related as a full blood relative or as a "half" or "step" relative, e.g. a half-brother or stepchild).
9. Borrower shall implement a practical plan to achieve thirty percent (30%) Minority and Women Business Enterprise Program ("MWBE") participation for the Project inclusive of a twenty percent (20%) commitment to ethnic minority business enterprises. The thirty percent (30%) MWBE participation shall be inclusive of construction costs, construction management, design and engineering, legal, developer and consultant fees. Notwithstanding the foregoing, the MWBE information shall be reviewed by the County's Purchasing Division for MWBE compliance at the time of construction bidding pursuant to the County's MWBE policy.
10. As a condition of any disbursement of Funds under the Loan, Borrower shall (i) comply with the E-Verify requirements set forth in Article 2 of Chapter 64 of the North Carolina General Statutes (the "E-Verify Requirements"), and (ii) cause its Contractor and any subcontractor performing work on the Project to comply with such E-Verify Requirements. Borrower will indemnify and save harmless the County from all losses, damages, costs and expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of any failure by Borrower, its Contractor or any subcontractor performing work on the Project to

comply with the E-Verify Requirements.

11. Borrower shall pay and discharge, and shall indemnify, defend and hold the County harmless from any lien or charge upon payments payable under this Agreement by Borrower to the County, and any taxes, assessments, impositions and other charges with respect to the Project (other than Permitted Liens).
12. To the fullest extent permitted by law, Borrower shall at all times indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against all "Charges" (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions or proceedings (i) arising from Borrower's failure to perform its obligations under this Agreement, or from any act of negligence or willful misconduct by Borrower or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible, or (ii) arising from any claim that Borrower or an employee or subcontractor of Borrower is an employee of the County, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the County, any federal agency that funds all or part of the Loan, and each of the County's and such federal agency's officers, officials, employees, agents and independent contractors (excluding Borrower); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts). This Section shall exclude any loss caused by the gross negligence or willful misconduct of any Indemnitee. Borrower shall insure to reasonably customary standards against the liability hereby assumed.
13. Borrower shall cause the Work to be completed on or before []. If performance of the Work is delayed at any time by an act or neglect of the County, or by changes in the Work, or by abnormal weather conditions, unusual delay in deliveries, unavoidable casualties, or other causes beyond the control of Borrower, then the time for completion of the Project may be extended for such time as may be reasonable.
14. Borrower agrees to execute and/or deliver to the County, concurrently with the execution of the Deed of Trust and upon the request of the County from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. Borrower hereby irrevocably (as long as the Loan remains unpaid) makes, constitutes and appoints the County as the true and lawful attorney of Borrower to sign the name of Borrower on or to file without signature any financing statement, continuation of financing statement or similar document required to perfect or continue such security interests.
15. Borrower shall not sell, encumber or otherwise dispose of any of the tangible

personality necessary for the operation of the Project except to incorporate such into the Improvements or replace such with goods of quality and value at least equal to that replaced.

16. Borrower shall not accept any prepayment of rent or installments of rent for more than two months in advance without the prior written consent of the County; provided however, Borrower may accept security deposits.
17. Borrower shall abstain from and will not permit the commission of waste in or about the Project and shall maintain the Project, or cause the Project to be maintained, in good condition and repair, reasonable wear and tear, casualty and acts of God, excepted.
18. Borrower hereby acknowledges to the County that (i) the identity of Borrower and the expertise available to Borrower for community development projects were and continue to be material circumstances upon which the County has relied in connection with, and which constitute valuable consideration to the County for the extending to Borrower of the indebtedness evidenced by the Note and (ii) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Note granted to the County by the Deed of Trust and Borrower agrees there shall not be any change in the ownership, membership or control of Borrower without the approval of the County, such approval not to be unreasonably withheld. Notwithstanding the foregoing, if completed in compliance with the terms of Borrower's Operating Agreement, neither (i) the withdrawal, replacement, and/or addition of Borrower's Investor Member and/or Special Member (as such terms are defined in the Operating Agreement), or its Investor Member's or Special Member's direct or indirect managers or members, nor (ii) the removal and replacement of Borrower's Managing Member (as such term is defined in the Operating Agreement) for cause by action of Borrower's Investor Member or Special Member, nor (iii) any action taken by a senior lender to foreclose on the Managing Member's interest in Borrower, shall constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan on the condition that (i) within thirty (30) days of the change in Borrower's Managing Member, Borrower provides the County with written notice of the transfer and (ii) Borrower certifies to the County that the internal reorganization will not affect Borrower's obligations or the transaction as contemplated in the Loan Documents and Borrower's Operating Agreement and (iii) the substitute managing member is the Investor Member or Special Member, or an Affiliate (as such term is defined in the Operating Agreement) of the Investor Member or Special Member.
19. Borrower shall pay or reimburse the County for all reasonable attorneys' fees (calculated as set forth in the Note), costs and expenses incurred by the County in any action, legal proceeding or dispute of any kind which affects the Loan or the Project, including but not limited to, any foreclosure of the Deed of Trust, enforcement of payment of the Note, any condemnation action involving the Project or any action to protect the security hereof. Any such amounts paid by the County

shall be due and payable upon demand and shall be secured by the Deed of Trust.

20. Borrower shall provide and maintain insurance as follows and as the County otherwise requires:

- (a) Liability. Borrower shall maintain, during the construction of the Improvements, Commercial General Liability (“CGL”) insurance in an amount not less than \$1,000,000 per each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Improvements or the general aggregate shall be twice the required limit. CGL insurance shall be written on Insurance Services Office (“ISO”) “occurrence” form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The County, its officers, officials, agents, and employees are to be covered as an additional insured under the CGL by endorsement CG 20 10 or CG 20 33 and CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the Borrower; products and completed operations of the Borrower; premises owned, leased or used by the Borrower. The Borrower’s CGL insurance shall be primary with respect to the County, its officers, officials, agents, and employees. The policies are to contain, or be endorsed to contain, the following provisions.

To the extent possible, each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be modified or canceled by the Borrower’s insurer except after thirty (30) days prior written notice has been given to the County. Regardless of whether such endorsement is available, the Borrower acknowledges that failure to remain fully insured at all times in accordance with this Agreement is grounds for the termination of this Agreement, provided, however, the Borrower shall have fifteen (15) days from notice of termination by the County to reinstate such insurance coverages and preempt the termination of this Agreement by the County. At all times, the Borrower shall remain obligated to notify the County immediately in writing of any changes in the status of the terms of its insurance coverage and to be fully liable for the direct or consequential damages for the failure to do so.

If the Borrower’s liability policies do not contain the standard ISO “Separation of Insureds” provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

The Borrower’s excess liability policy should be in the amount of \$5,000,000.

- (b) Permanent. At such time as the Units are occupied, an “all-risk” permanent insurance policy must be submitted to the County. The policy must be from a company satisfactory to the County, in an amount of no less than the replacement

cost of the Project, must include provisions requiring the insurance company to provide a minimum 30-day advance written notice to the County of any intended policy cancellation or non-renewal, and must designate the County as Loss Payee.

- (c) Rent Loss. Borrower shall, at its own cost, keep the rental value of all buildings now or hereafter comprising a part of the Project insured against loss or damage by fire and such other insurable risks, casualties and hazards as the County may from time to time specify.
- (d) Builder's Risk. Prior to the commencement of any building activities, an "all-risk," non-reporting builder's risk insurance policy must be submitted to the County. This policy must be from a company and in an amount satisfactory to the County and sufficient to avoid the application of any co-insurance provisions, must include provisions requiring the insurance company to provide a minimum 30-day advance written notice to the County of any intended policy cancellation or non-renewal, and must designate the County as an additional insured.
- (e) Satisfaction of County. All such policies must be from a company and in an amount satisfactory to the County.
- (f) Delivery of Policies and Renewals. Borrower agrees to deliver to the County, as additional security hereto, certificates of such insurance as is required by the County pursuant to subsections (a), (b), (c), (d) and (e) hereof. Certificates evidencing renewals of such policies shall be so delivered at least ten (10) days before any such insurance shall expire. In the event Borrower fails to maintain insurance as required hereunder, the County has the right to procure such insurance whether or not Borrower's failure to maintain such insurance constitutes an Event of Default (as defined in Article VII) or an event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default. Any amounts paid by the County for insurance shall be due and payable to the County upon demand and shall be secured by the Deed of Trust.
- (g) Proof of Loss; Claims Settlement. In the event of loss, Borrower shall give prompt notice thereof to the insurance carrier and the County, and the County may make proof of loss if not made promptly by Borrower. The County is hereby authorized, in its sole discretion, to adjust, compromise and collect the proceeds of any insurance claims.
- (h) Use of Proceeds. Borrower hereby assigns the proceeds of any such insurance policies to the County and hereby directs and authorizes each insurance company to make payment for such loss directly to the County. All insurance proceeds shall be applied to the outstanding balance of the Loan or, in the County's sole discretion, to the restoration or repair of the casualty damage. Notwithstanding the foregoing, if the Loan is not in default and if the County, in the County's reasonable judgment, determines that there are sufficient funds available (through insurance proceeds and contributions by Borrower) to restore or repair the property to a condition at least as

equal to the condition thereof as existed prior to the casualty damage, the County shall apply any sums received by it under this Section for the restoration or repair.

- (i) Approval of Senior Lender. The County's rights under this Section 20 (including, without limitation, the right to make proof of loss, the right to compromise and collect insurance proceeds and the right to receive and/or direct application of insurance proceeds) shall be subject to the rights of any senior lender approved by County.
21. Borrower will comply in all material respects with the terms and conditions of the Ground Lease and will not do or permit anything to be done, or refrain from doing anything, which will be grounds for declaring a forfeiture of the Ground Lease. Borrower will enforce the Ground Lease and will not terminate, modify, cancel, change, supplement, alter or amend the Ground Lease, or waive, excuse, condone or in any way release or discharge the Lessor under the Ground Lease of or from any of the material covenants and conditions to be performed or observed by the Lessor under the Ground Lease. Borrower will provide to the County prompt (and in all events within 5 business days) notice of any default under the Ground Lease or of the receipt by Borrower of any notice of default from the Lessor under the Ground Lease.
22. The Americans with Disabilities Act of 1990 (28 CFR Part 35) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services and telecommunications. No qualified handicapped person shall, on the basis of his/her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance. Borrower shall not discriminate against any employee, applicant for employment, or student because of race, religion, color, sex, age, disability, or national origin.
23. During the Affordability Period (as defined in the Restrictions attached hereto as Exhibit C) and for a period of four (4) years thereafter, Borrower shall maintain full and correct books and records showing in detail the earnings and expenses of the Project and shall permit the County and its representatives to examine said books and records and all supporting vouchers and data at any time and from time to time upon reasonable request by the County. Such statements shall be in such form and forms as are acceptable to the County and certified by a managing member or other authorized representative of Borrower. Borrower agrees to send copies of all funding requests for other funding sources, with supporting documentation, to the County for placement in the County's Loan file. With regard to the Project, if Borrower shall have obtained a financial statement certified by a certified public accountant for any fiscal year, Borrower agrees to furnish a copy of such certified statement to the County within 120 days of the end of Borrower's fiscal year. Also when so requested, Borrower shall submit to the County rent schedules showing occupied Units or spaces classified by size or type, rents per month per unit or space and vacant units or spaces and proposed rents therefrom.

In addition, Borrower shall provide the County with the following record keeping information:

- (a) Household data for all tenants occupying restricted Units including race, sex, age, verified income using W-2 forms or other acceptable income data.
- (b) Copies of leases between Borrower and tenants.
- (c) Copies of all final approvals for all required construction and trade permits for all rental Units.

Further, during the Affordability Period and for a period of four (4) years thereafter all such books, records and other documents shall be available for inspection, copying, audit, and examination at all reasonable times by any duly-authorized representative of the County, and if required by applicable laws and/or regulations, also by representatives of the Secretary of the United States Department of Housing & Urban Development, and of the Comptroller General of the United States.

- 24. Until such time as the construction of the Project is complete, Borrower shall post on the Property in a location clearly visible to the general public a sign identifying the project, with the County of Durham approved logo, stating that Financial Assistance has been provided by the County of Durham.
- 25. Borrower shall cause the Project to be managed by S.L. Nusbaum Realty Co., a Virginia corporation (“Project Manager”). The management team will consist of at least one full time property management staff person on site. There shall be no change in the Project Manager without the consent of the County which consent shall not be unreasonably withheld or delayed.
- 26. Borrower shall establish an operating reserve account (the “Operating Reserve Account”) that will be equal to four (4) months debt service and operating expenses of the Project and must be maintained for one full calendar year from the date that the 1:1.15 debt service coverage ratio is achieved. The County must approve any withdrawals from the Operating Reserve Account to meet the Project’s operating deficits that exceed \$2,000.00 per Unit in aggregate during any three (3) month period. Withdrawals from the Operating Reserve Account must be replaced from Available Cash Flow in order to maintain the required balance. The obligations hereunder shall not be in addition to the requirement under the Operating Agreement for the Borrower to fund and maintain the Operating Reserve (as defined in the Operating Agreement), and provided that any disbursement from the Operating Reserve pursuant to the Operating Agreement shall not require the County’s approval but Borrower shall be required to provide notice to the County of such withdrawal within five (5) business days thereof.
- 27. NC Prohibition of Contracts with Companies that invest in Iran or Boycott Israel. Borrower certifies that (i) neither Borrower nor any of Borrower’s members or

managers are identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. §147-86.58 (collectively, the “Treasurer’s IDA List”); (ii) neither Borrower nor any of Borrower’s members or managers has been designated by the NC State Treasurer pursuant to N.C.G.S. §147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the “Treasurer’s IB List”); and (iii) neither Borrower nor any of Borrower’s members or managers will take any action causing it to appear on the Treasurer’s IDA List or the Treasurer’s IB List during the term of the Loan. In signing this Agreement, Borrower further agrees, as an independent obligation, separate and apart from this Agreement, to reimburse the County for any and all damages, costs and attorneys’ fees incurred by the County in connection with any claim that this Agreement or any part thereof is void due to Borrower or any of its members or managers appearing on the Treasurer’s IDA List or the Treasurer’s IB List at any time before or during the term of the Loan.

28. NON-DISCRIMINATION CERTIFICATION. As a condition of entering into this Agreement, Borrower represents and warrants that it will fully comply with the County’s non-discrimination policy as stated in Article V of the Durham County, North Carolina Code of Ordinances and consents to be bound by thereby. As part of such compliance, Borrower shall not discriminate on the basis of race, color, national origin, religion, sex, age, disability, or veteran's status in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers, in connection with a County contract or contract solicitation process, nor shall Borrower retaliate against any person or entity for reporting instances of such discrimination. Borrower shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on County contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. Borrower understands and agrees that violation of this non-discrimination policy provision shall be considered a material breach of this Agreement and may result in contract termination, disqualification of Borrower from participating in County contracts, exercise of the County’s rights in the event of default pursuant to this Agreement, and/or other sanctions.

As a condition of entering into this Agreement, Borrower agrees to: (a) promptly provide to the County in a format reasonably specified by the County all information and documentation that may be reasonably requested by the County from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Agreement; and (b) if requested, provide to the County within sixty (60) days after request by the County a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Borrower has used on County contracts or agreements in the past five years, including the total dollar amount paid by Borrower on each subcontract or supply contract. Borrower further agrees to fully cooperate in any investigation

conducted by the County pursuant to the County's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the County, and to be bound by the award of any arbitration conducted under such Non-Discrimination Policy.

Borrower agrees to provide to the County from time to time, on the County's request, payment affidavits detailing the amounts paid by Borrower to subcontractors and suppliers in connection with this Agreement within a certain period of time. Such affidavits shall be in the format reasonably specified by the County from time to time.

ARTICLE VI MUTUAL COVENANTS

1. The terms and provisions of the Loan Documents are incorporated into this Agreement by reference.
2. This Agreement shall be binding upon all parties hereto and their heirs, representatives, successors and assigns.
3. No party to this Agreement shall sell, bargain, assign or otherwise transfer any of its rights or obligations hereunder without the written consent of the other party.
4. This Agreement may not be altered or amended except by written agreement of all parties.
5. This Agreement and the Loan Documents constitute the entire agreement among the parties and supersedes all prior oral and written agreements, if any, among the parties with respect to the Loan and the Project.
6. Nothing contained in this Agreement, nor any act of a party hereto relating hereto, shall be construed as creating any benefits on behalf of any other party or to create any relationship between any of the parties hereto of principal and agent, a limited or general partnership, or a joint venture. Borrower will include in all contracts relating to the Project an acknowledgment by the contracting party that this Agreement confers no rights upon the contracting party and creates none of the aforementioned relationships between any of the parties hereto and any other party.
7. Except for the making of the Loan specified in this Agreement, the County shall not be liable for the completion of, or the failure to complete, the Project.
8. The County, in its sole and absolute discretion, may extend the time for the performance of any obligation of Borrower required by the Loan Documents.
9. With regard to the parties' capacity and authority to carry out their respective obligations under this Agreement, the parties acknowledge neither is in violation of

its charter or any mortgage, indenture, agreement, instrument, judgment, decree, order, statute, rule, or regulation, and the execution and/or performance of this Agreement will not result in any such violation.

10. Any provisions of the Note or any instrument securing the Note and this Loan Agreement providing for the payment of “attorneys’ fees” or “reasonable attorneys’ fees” or other words or provisions of similar import, shall mean attorneys’ and paralegals’ fees incurred based upon the usual and customary hourly rate of the attorneys and paralegals involved for time actually spent by such attorneys and paralegals and without giving effect to any statutory presumption that may then be in effect.
11. the County, ZOM Carolinas, LLC (“ZOM”), and Laurel Street Residential, LLC (the “Developer”) entered in that certain Master Development Agreement effective as of August 17, 2021 (the “Original MDA”), in connection with the redevelopment of the Property; as such Original MDA was (i) amended by that certain First Amendment to Master Development Agreement dated April 27, 2023 by the County, ZOM and Affordable Developer; (ii) assigned by ZOM to ZC Development MD, LLC (“ZC Development”) pursuant to that certain Assignment and Assumption of Master Development Agreement effective as of May 23, 2022; and (iii) amended by that certain Tri-Party Agreement **as of May 1, 2024** by the County, ZC Development and Affordable Developer (the Original MDA, together with the documents listed in (i) to (iii) above, shall collectively be referred to as the “Development Agreement”). The Development Agreement and the County Loan Commitment Letter (as defined in the Development Agreement) are incorporated herein by reference and a true and exact copy thereof are attached hereto as Exhibit E. In the instance of conflict between the Loan Documents and the Development Agreement, the Loan Documents shall control.

ARTICLE VII DEFAULT BY BORROWER

Any one of the following events or occurrences which is not cured or corrected within thirty (30) days after the County has provided written notice to Borrower and Investor Member, unless Borrower or Investor Member is diligently pursuing a cure and then an additional thirty (30) days, shall constitute a default or event of default (“Default” or “Event of Default”) on the part of such Borrower:

1. Borrower fails to make any payment of principal or interest when due and payable under the Note.
2. The failure of Borrower to perform, or to cause to be performed, within the time or times specified, any undertakings and agreements set out in this Agreement, the Development Agreement, or in any of the Loan Documents, specifically including the affordability restrictions set forth in the Declaration.

3. Any event or occurrence, whether within or outside of the control of Borrower or with or without fault on the part of Borrower, if such event or occurrence is prohibited by the terms of this Agreement or of any of the Loan Documents.
4. Borrower's bankruptcy, insolvency, assignment for the benefit of creditors or marshalling of assets.
5. Borrower's material misrepresentation to the County of any fact, circumstance or opinion set forth in writing in the security documents or in the application for this Loan which influenced the County to make this Loan, with any such material misrepresentation to be an Event of Default upon discovery by the County, whether the same may or may not have been discoverable as of the date of this Agreement.
6. Borrower's sale, lease (excepting separate leases for individual Units) assignment, or other transfer, or further encumbrance (excepting the granting of utility easements necessary for the operation of the Project), without the prior written consent of the County or as provided herein, of all or any of the real property that serves as security for this Loan; provided, however, Borrower may transfer the same with the approval of the County, which approval will not be unreasonably withheld or delayed.
7. (a) Any representation or warranty submitted to the County concerning the financial condition or credit standing of Borrower or any officer or director thereof proves to be false or misleading in any material respect when made or, in the County's reasonable opinion, there is a threat to its security for the Loan by reason of a material adverse change in the financial condition or credit standing of Borrower; or (b) any failure by Borrower to provide any financial or operating statements or other information required by this Loan Agreement or any other Loan Document.
8. Borrower fails to keep the Project free and clear of all encumbrances, liens, deeds of trust, security interests and subordinate financing, except with regard to (a) the Permitted Liens, (b) any such claims approved by the County in advance; and (c) any such claims being diligently contested by Borrower in good faith as may be approved in writing by the County in its sole discretion or which are discharged, bonded over, stayed or vacated within forty-five (45) days from the date of attachment.
9. A voluntary petition is filed by Borrower seeking the protection of the bankruptcy court under any chapter or section of the Bankruptcy Code, as amended, or of any state or federal court under state insolvency or receivership laws.
10. Borrower has an involuntary petition filed against it under any chapter or section of the Bankruptcy Code, as amended, or under any state insolvency laws and such petition is not dismissed within ninety (90) days of its filing.
11. By the order of a court of competent jurisdiction, a trustee or receiver of the Project

or any part thereof or of Borrower shall be appointed and, if such order does not arise out of a voluntary receivership action instituted by Borrower, such order shall not be discharged or dismissed within ninety (90) days.

12. The occurrence of an event of default under the terms of the Development Agreement.

Notwithstanding anything to the contrary in the Loan Documents, Investor Member, Special Member and any lender, including Truist Bank, shall have the right, but not the obligation, to cure any Event of Default by Borrower under this Agreement or any default under any of the other Loan Documents, and the County shall accept performance by Investor Member, Special Member or such lender of any obligation of Borrower hereunder as though tendered by Borrower itself, provided such performance has occurred during the applicable cure period, if any, provided to Borrower hereunder with respect to such default or Event of Default. This provision shall survive the repayment of the Loan and termination of this Agreement to the extent the Declaration remains in effect.

ARTICLE VIII REMEDIES UPON DEFAULT

In the event of a Default by Borrower:

1. The County's remedies shall include, but not be limited to, the right to suspend or terminate disbursements of Loan proceeds to Borrower, to suspend or terminate this Agreement as it pertains to Borrower, and to declare immediately due and payable the entire outstanding balance of the Loan, without presentment or demand or notice of any kind.
2. The failure of the County to exercise any right or option shall not be considered a waiver of such right or option upon a subsequent default.
3. The County may exercise any right, including foreclosure, it has under any of the Loan Documents.
4. The rights and remedies available to the County shall survive the suspension or termination of this Agreement and the term hereof.
5. The County may use any one, all, or any combination of the available remedies.
6. The County may at any time or from time to time proceed to protect and enforce all rights available to it under this Agreement or rule of law by suit in equity, action at law, or by any other appropriate proceedings. The County is expressly granted the right to seek specific performance of any covenant or agreement contained herein or in any security document, damages, or other relief and to proceed to take any action authorized or permitted under applicable law or regulations, including the recapture of any expended loan proceeds from debtors of Borrower.

ARTICLE IX
NOTICES, DEMANDS, APPROVALS, AND VERIFICATIONS

Any notice, demand, or other communication required or authorized by this Agreement shall be considered given or delivered if it is delivered personally or by a nationally recognized courier to, or dispatched by certified mail, postage prepaid, to:

- In the case of the County: County of Durham
Office of the County Manager
200 East Main Street
2nd Floor, Old Courthouse
Durham, North Carolina 27701
Attn: Dr. Kimberly J. Sowell
- With a copy to: County of Durham
Office of the County Attorney
200 East Main Street
2nd Floor, Old Courthouse
Durham, North Carolina 27701
Attn: Curtis Massey, Esq., County Attorney
- In the case of Borrower: 500 East Main, LLC
2132 Thrift Road, Suite A
Charlotte, North Carolina 28208
Attn: Dionne Nelson
- With a copy to: The Banks Law Firm, P.A.
4309 Emperor Boulevard, Suite 110
Durham, North Carolina 27703
Attn: Sherrod Banks
- In the case of Investor Member: Truist Community Capital, LLC
303 Peachtree Street, NE, 22nd Floor
Atlanta, GA 02116
Attention: General Counsel
- With a copy to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: Jarrod C. Connors, Esq.

or to such other persons and such other addresses as a party may designate in a writing delivered to the other parties as provided above.

Except as otherwise required by law or regulation, the Director of the County's Housing & Neighborhood Services Department is hereby designated to act on behalf of the County for the purposes of issuing to Borrower all necessary or permitted notices and demands, issuing all necessary or permitted approvals and verifications, and loan extensions of time for the performance of any obligation authorized hereunder.

ARTICLE X
TERMINATION OF AGREEMENT

In the event of termination, Borrower shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement or any other Loan Document. The County may withhold any disbursement to Borrower for the purpose of a set-off until such time as the exact amount of damages due the County from Borrower is determined.

ARTICLE XI
SURVIVAL

The terms of this Agreement shall bind and inure to the respective heirs, executors, administrators, successors and assigns of the parties. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "Lender" shall include any payee of the Note and any transferee or assignee thereof, whether by operation of law or otherwise.

ARTICLE XII
TIME

Time is of the essence in this Agreement.

ARTICLE XIII
NON-RECOURSE NATURE OF LOAN

Notwithstanding anything to the contrary in the Note or the Loan Documents, it is understood and agreed that neither Borrower nor any of its partners, members, shareholders or officers shall have any personal obligation to repay the principal and interest due under the Note, and the County agrees to look solely to the property subject to the Deed of Trust and UCC Financing Statements for satisfaction of the indebtedness evidenced hereby, and the County will not seek to procure payments of any portion of the principal or interest or any other sums due under the Note out of any other assets of Borrower or its partners, members, managers, shareholders or officers, or to procure any judgment after foreclosure of the Deed of Trust; provided, however, that nothing herein contained shall be deemed to be a release or impairment of said indebtedness or the security therefore, or be deemed to preclude the County from foreclosing the Deed of Trust or from enforcing any of the County's other rights under the Note, the Deed of Trust, or any other documents given or issued in connection herewith.

In addition, notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way affect or apply to

the continuing liability of Borrower, to the County for:

- (a) fraud or material misrepresentation made in connection with the Loan Documents, including without limitation, any application or proposal submitted to the County requesting funding for the Project, the Note or any instrument governing, securing or pertaining to the payment thereof;
- (b) failure to pay, prior to delinquency, taxes, assessments, charges for labor or materials, or other charges which can create liens on any portion of the Project;
- (c) the misapplication of proceeds of insurance covering any portion of the Project or the Operating Reserve Account or proceeds of the sale or condemnation of any portion of the Project, or rentals received by or on behalf of Borrower subsequent to the date on which the County gives written notice of a default pursuant to any of the Loan Documents;
- (d) the return to the County of all unearned advance rentals or security deposits paid by tenants of the Project and not properly refunded to such tenants;
- (e) the return of or reimbursement for all tangible personalty owned by Borrower taken from the Project by Borrower out of the ordinary course of business and not replaced by items serving the same purpose of equal or greater value than the original value of the personalty so removed;
- (f) the cost of:
 - (i) any removal which Borrower is legally obligated to perform of any chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority and which may or could pose a hazard to the health and safety of the occupants of the Project;
 - (ii) the restoration of the Project to comply with all governmental regulations pertaining to hazardous wastes found in, on or under the Project prior to the cancellation of the Note; and
 - (iii) any indemnity or other agreements wherein Borrower agreed to hold the County harmless from and against any and all losses, liabilities, damages, injuries, costs and expenses of any and every kind arising under any of the Loan Documents as a result of the violation of any hazardous waste law, rule or regulation occurring during or prior to the ownership of Borrower.

ARTICLE XIV
ENVIRONMENTAL ISSUES

Borrower warrants that, (i) to the best of Borrower's knowledge and except as disclosed in

environmental reports previously delivered to the County, the Property is free of Hazardous Materials, (ii) neither Borrower, nor to the best of Borrower's knowledge, anyone else connected with the Property has received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Property, and (iii) to the best of Borrower's knowledge, there is not now pending or threatened any action, suit, investigation or proceeding against Borrower relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws.

Borrower covenants and agrees that (i) the Property shall be kept free of Hazardous Materials, (ii) Borrower shall not cause or permit the presence, use, disposal, installation, generation, manufacture, transportation, storage, release or treatment of Hazardous Materials in or on the Property and (iii) Borrower shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws. This paragraph and the preceding paragraph shall not apply to the presence, use or storage on the Property of (i) small quantities of Hazardous Materials that are generally recognized to be appropriate to normal residential use and to maintenance of the Property and (ii) Hazardous Materials used during the construction of the Improvements on the Property, so long as in either case such Hazardous Materials are used, stored and dispensed of in accordance with applicable governmental laws, rules, ordinances and regulations.

Borrower shall immediately give the County written notice of any investigation, claim, demand, lawsuit or other action by any party involving the Property and any Hazardous Materials or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Materials affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with all applicable Environmental Laws.

Borrower hereby agrees to indemnify the County and hold the County harmless from and against any and all losses, liabilities, damages and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against the County for, with respect to, or as a direct or indirect result of

- (i) the presence on or release from the Property prior to the cancellation of the Deed of Trust, completed foreclosure or deed in lieu of foreclosure of any Hazardous Material, regardless of whether or not caused by or within the control of Borrower,
- (ii) the violation of any Environmental Laws prior to the cancellation of this Deed of Trust relating to or affecting the Property, whether or not caused by or within the control of Borrower,
- (iii) the failure of Borrower to comply fully with the terms and provisions of this section, or
- (iv) any warranty or representation made by Borrower in this section being false

or untrue in any material respect.

For purposes of this Agreement, “Hazardous Material” means petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous material defined as such in or for the purpose of the Environmental Laws.

For purposes of this Agreement, “Environmental Laws” mean the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any “Superfund” or “Superlien” law, or any other federal, state or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or hazardous, toxic or dangerous material, as may now or at any time hereinafter be in effect.

The obligations and liabilities of Borrower under this section shall survive the foreclosure of the Deed of Trust, the delivery of a deed in lieu of foreclosure, the cancellation of the Note, or the sale or alienation of any part of the Property. Notwithstanding the foregoing, Borrower shall not be responsible for any such claims, losses or liabilities caused by the County or first occurring after the date the County or its designee acquires possession of the Property, whether by foreclosure, deed in lieu of foreclosure or otherwise.

ARTICLE XV
CLAIMS AGAINST COUNTY

The County shall not be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the claim of Borrower shall have been given to the County within thirty (30) days after Borrower first had knowledge of, or reasonably should have had knowledge of, the occurrence of the event which Borrower alleges gave rise to such claim and the County does not remedy or cure the default, if any there be, promptly thereafter. If it is determined in any proceedings that the County has improperly failed to grant its consent or approval, where such consent or approval is required by this Agreement or any other Loan Documents, Borrower’s sole remedy shall be to obtain declaratory relief determining such withholding to have been improper, and for itself and its partners, members, managers, shareholders or officers, Borrower hereby waives all claims for damages or set-off against the County resulting from any withholding of consent or approval by the County.

ARTICLE XVI
LOAN PRIORITY

Notwithstanding anything to the contrary in the Loan Documents, it is understood that the County’s Loan shall be a third lien on the Property during its term, subordinate only to the certain loan documents to or for the benefit of Housing Authority of the City of Durham, Truist Bank or Grandbridge Real Estate Capital LLC.

Furthermore, notwithstanding anything to the contrary contained herein or in any of the

other Loan Documents, the terms and conditions of this Agreement are subject to (i) the terms and conditions of that certain Subordination Agreement dated as of even date herewith between the County, Truist Bank, and Borrower (the “Senior Subordination Agreement”), and (ii) the terms and conditions of that certain Subordination Agreement dated as of even date herewith between the County, Grandbridge Real Estate Capital LLC, and Borrower (the “SWAP Subordination Agreement” and together with the Senior Subordination Agreement, the “Subordination Agreement”) so long as the Subordination Agreement remains in effect. To the extent there exists any conflicts between the terms and conditions of this Agreement and the terms and conditions of the Subordination Agreement, the terms and conditions contained in the Subordination Agreement shall control.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

[SIGNATURE PAGE TO LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year first above written.

COUNTY:

COUNTY OF DURHAM

a North Carolina public body corporate and politic

By: _____
Name: Kimberly J. Sowell
Title: County Manager

BORROWER:

500 EAST MAIN, LLC,

a North Carolina limited liability company

By: LSR 500 East Main, LLC
a North Carolina limited liability company
Its Managing Member

By: LSR Manager, LLC
a North Carolina limited liability company
Its Managing Member

By: _____(Seal)
Name: Lee M. Cochran
Title: Vice President

EXHIBIT A
LEGAL DESCRIPTION

[to be inserted]

EXHIBIT B

SOURCES AND USES OF FUNDS

EXHIBIT C

DECLARATION OF DEED RESTRICTIONS

Mail after recording to:

Prepared by and After Recording Return to:
Parker Poe Adams & Bernstein, LLP
620 S. Tryon Street, Suite 800
Charlotte, NC 28202
Attn: Anthony Fox

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

DECLARATION OF DEED RESTRICTIONS

THIS DECLARATION OF DEED RESTRICTIONS (the “Declaration”), made and entered into as of _____ by 500 EAST MAIN, LLC (the “Borrower”) for the benefit of and enforceable by the COUNTY OF DURHAM (the “County”);

WHEREAS, Borrower and County of Durham (“Owner”) have entered into that certain Ground Lease dated _____, 2024 (the “Lease”), executed by Owner as ground lessor and Borrower as ground lessee, which Lease or memorandum thereof is recorded in Book _____, Page _____ in the office of the Register of Deeds for Durham County, North Carolina, conveying a leasehold interest to Borrower in a certain tract of real property, more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, pursuant to the terms of a Promissory Note and Loan Agreement of even date herewith, the County has made a loan to Borrower in the original principal amount of \$10,618,417.00 (the “Loan”); and

WHEREAS, as a condition of making the Loan to Borrower, the County has required and Borrower has agreed to restrict the Property as set forth herein and Owner has agreed to consent to the restrictions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby represents, covenants, warrants and agrees:

1. Restrictions. Upon completion of construction and, thereafter, for the remainder of the term of this Declaration, a total of one hundred ninety-five (195) affordable housing units shall be located on the Property (the “Units”; collectively, such Units, together with the Property, may hereinafter be referred to as the “Project”). Fifty-three (53) of the Units will serve residents earning 30% or less of the Area Median Income. Eighty-nine (89) of the Units will serve residents earning 60% or less of the Area Median Income. Fifty-three (53) of the Units will serve residents earning 80% or less of the Area Median Income. For the purpose of this Declaration, the “Area Median Income” means the Durham-Chapel Hill MSA area median income as reported from time to time by the Department of Housing and Urban Development (“HUD”), or other reasonably equivalent data in the event such reports are no longer issued.

2. Term. This Declaration shall remain in full force and effect for a period of forty (40) years (the

“Affordability Period”), such Affordability Period to commence on the earlier of (i) the date of the issuance of a Certificate of Occupancy for the Project or any Unit therein, or (ii) []. This Declaration shall be automatically terminated in the event of transfer of title of the Property by foreclosure or by deed in lieu of foreclosure, subject to automatic revival if, at any time during the remainder of the Affordability Period, Borrower of record prior to the termination event, or any entity that includes such former Borrower or those with whom the former Borrower has or had family or business ties, or the manager or member of such former Borrower, obtains an ownership or leasehold interest in the Property. It is understood and agreed that the Term of this Declaration may extend beyond the term of the Loan.

3. Covenants to Run With the Land. The covenants, reservations and restrictions set forth herein (i) shall be deemed covenants running with the Property and, subject to Section 2, shall pass to and be binding upon Borrower, Borrower’s heirs, successors and assigns in title to the Property and all subsequent Borrowers, owners or operators of the Project and (ii) are not merely personal covenants of Borrower. The benefits shall inure to the County during the term of this Agreement. Borrower hereby agrees that any and all requirements of the laws of the State of North Carolina to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the Property and which touch and concern the Property shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the Property. Subject to Section 2, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall, subject to Section 2, run to each portion of the Property. Provided nothing herein shall be deemed to constitute County’s consent for the transfer, sale or conveyance of the Property or any portion thereof.

4. Compliance Monitoring. Borrower agrees to permit, during normal business hours and upon reasonable notice, any duly authorized representative of the County to inspect any books and records of Borrower regarding the Property, which pertain to compliance with this Agreement. Borrower shall submit any other information, documents or certifications reasonably requested by the County to substantiate Borrower’s continuing compliance with this Declaration.

5. Remedies; Enforceability. Borrower and County acknowledge that the primary purpose for requiring compliance by Borrower with the restrictions provided in this Declaration is to assure compliance of the Property and Borrower with any County restrictions. AND BY REASON THEREOF, BORROWER IN CONSIDERATION FOR RECEIVING THE LOAN FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE COUNTY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO OBTAIN SPECIFIC PERFORMANCE BY BORROWER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN ANY COURT OF COMPETENT JURISDICTION. Borrower hereby further specifically acknowledges that County cannot be adequately compensated by monetary damages in the event of default hereunder.

The provisions hereof are imposed upon and made applicable to the Property and, subject to Section 2, shall run with the land and shall be enforceable against Borrower or any other person or entity that has or had an ownership interest in the Property at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach of violation hereof at any later time or times.

6. Notice. All notices which are required or permitted to be given or served hereunder shall be deemed to have been sufficiently given if in writing and sent (i) in person or via courier, (ii) by reputable overnight delivery service, or (iii) by certified or registered mail, postage prepaid, return receipt requested, addressed to the parties as follows:

To Borrower:
500 East Main, LLC
2132 Thrift Road, Suite A
Charlotte, North Carolina 28208
Attn: Dionne Nelson

With copies to:
The Banks Law Firm, P.A.
4309 Emperor Boulevard, Suite 110
Durham, North Carolina 27703
Attn: Sherrod Banks

To County:
County of Durham
Office of the County Manager
200 East Main Street
2nd Floor, Old Courthouse
Durham, North Carolina 27701
Attn: [Claudia Hager]

With a copy to:

County of Durham
Office of the County Attorney
200 East Main Street
2nd Floor, Old Courthouse
Attn: Curtis Massey, Esq., County Attorney

or to such other address within the continental United States of America as may be from time to time designated by the parties. Each notice or communication shall be deemed to have been given on the date of personal delivery or the date of mailing, as the case may be.

7. Amendment. This Declaration shall not be amended or, except as otherwise provided herein, terminated except by a written instrument, executed by the County and Borrower, or their successors or assigns, which amendment or termination shall be duly recorded in the Office of the Register of Deeds for the county in which the Property is located.

8. Severability. If any portion of this Declaration shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

9. Construction. Unless the context clearly requires otherwise, as used in this Declaration words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and

words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Declaration and all the terms and provisions hereof shall be construed to effectuate the purposes set forth and to sustain the validity hereof.

10. Successors and Assigns. This Declaration shall be binding on Borrower, its successors and assigns and shall inure to the benefit of County, its successors and assigns and may be enforced by County or any other persons specifically given enforcement rights herein.

11. Headings. The titles and headings of the sections of this Declaration have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof, nor be considered or given any effect in construing this Declaration or any provisions hereof, or in ascertaining intent if any questions or intent shall arise.

12. Governing Law. This Declaration shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, Borrower has executed this Declaration by its duly authorized representative, all on the date first above written.

STATE OF NORTH CAROLINA

COUNTY OF _____

500 EAST MAIN, LLC, a North Carolina limited liability company

By: LSR 500 East Main, LLC
a North Carolina limited liability company
Its Managing Member

By: LSR Manager, LLC
a North Carolina limited liability company
Its Managing Member

By: _____ (Seal)
Name: Lee M. Cochran
Title: Vice President

I, _____ a Notary Public of the County and State aforesaid, certify that Lee M. Cochran, either being personally known to me or proven by satisfactory evidence, personally came before me this day and acknowledged that he is Vice President of LSR Manager, LLC, which is Managing Member of LSR 500 East Main, LLC, which is Managing Member of 500 East Main, LLC, a North Carolina limited liability company, and that he, being authorized to do so, executed the foregoing on behalf of the companies.

Witness my hand and official stamp or seal this _____ day of _____, 202__.

Notary Public

(Seal-Stamp)

My Commission Expires: _____

**EXHIBIT A TO DECLARATION OF DEED RESTRICTIONS
LEGAL DESCRIPTION**

EXHIBIT D

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The undersigned certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Agreement, or persons or entities holding a greater than 10% equity interest in it (collectively "Principals"):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
2. Have within a three-year period preceding this certification been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three-year period preceding this certification had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

I hereby certify as stated above:

500 EAST MAIN, LLC, a North Carolina limited liability company

By: **LSR 500 EAST MAIN, LLC**, a North Carolina limited liability company, its manager

By: **LSR Manager, LLC**, a North Carolina limited liability company, its manager

By: **Lee M. Cochran**, Vice President

I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]

(Print Name)

Signature

Title

Date

EXHIBIT E
MASTER DEVELOPMENT AGREEMENT

EXHIBIT F

BYRD ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

500 EAST MAIN, LLC (the “Organization”) certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

500 EAST MAIN, LLC, a North Carolina limited liability company

By: **LSR 500 EAST MAIN, LLC**, a North Carolina limited liability company, its manager

By: **LSR Manager, LLC**, a North Carolina limited liability company, its manager

By: **Lee M. Cochran**, Vice President

Date

Address/City/State/Zip