

CONSTRUCTION LOAN AGREEMENT

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4.10.4 No condition exists that would excuse Lender from disbursing funds under Paragraph 4.7 of this agreement.

4.11 At the option of the Lender, each request for an advance shall be submitted to Lender at least ten (10) business days prior to the date of the requested advance. All such advances, regardless of to whom made, shall satisfy, to the extent possible, the obligations of Lender hereunder and shall be secured by the Security Instrument and other Loan Documents as fully as it made to Borrower.

4.12 Any waiver by Lender of any condition of disbursement must be expressly made in writing. The making of a disbursement prior to fulfillment of one or more conditions thereto shall not be construed as a waiver of such conditions, and Lender reserves the right to require their fulfillment prior to making any subsequent disbursements.

5. COVENANTS OF BORROWER. Borrower covenants with and warrants to Lender as follows:

5.1 Borrower shall provide Lender with a detailed Construction Schedule (which shall be in such detail as Lender shall require) prior to the execution of this Agreement and shall meet all deadlines described herein. Borrower shall commence construction of the Improvements within 10 days from the date of this Agreement. Borrower shall substantially complete construction by the Completion Date. All construction work shall be performed in substantial compliance with the approved Plans and Specifications, any change orders approved by Lender and with this Agreement. All construction work shall be completed without liens, claims, or assessments (actual or contingent) asserted against the Premises for any material, labor or other items furnished in connection therewith (except as such liens, claims or assessments are insured or bonded to Lender's satisfaction), and all are in full compliance with all construction, use, building, zoning and other similar requirements of any governmental jurisdiction. Borrower shall provide Lender with satisfactory evidence of such compliance upon request by Lender.

5.2 Borrower agrees that no modification of or amendments to the Plans and Specifications shall be made without first obtaining the approval in writing of Lender and all necessary governmental authorities. In addition, Borrower agrees to deposit with Lender such additional sums or take such action as Lender may require to insure payment of the cost of any such changes.

5.3 Borrower shall not, without the prior written consent of Lender, mortgage, assign, convey, transfer, sell or otherwise dispose of or encumber its interest in the Property or any part thereof or the income to be derived therefrom.

5.4 Borrower shall comply with and keep in effect all permits and approvals obtained from any governmental bodies that relate to the lawful construction of the Improvements. Borrower shall comply with all existing and future laws, regulations, orders and requirements of all governmental, judicial or legal authorities having jurisdiction over the Property or Improvements. Borrower shall comply with all existing or future recorded restrictions affecting the Property. The Improvements shall be constructed entirely on the Property and shall not encroach upon or over any known easement or right-of-way, nor upon the land of others, and when erected shall be wholly within any building restriction lines.

5.5 Borrower shall furnish from time to time upon request by Lender, in a form acceptable to Lender, a correct list of all Contractors and subcontractors employed in connection with construction of the Improvements and true and correct copies of all executed contracts and subcontracts. Lender may contact any Contractor or subcontractor to verify any facts disclosed in the list, and all contracts and subcontracts relating to construction of the Improvements must require the disclosure of the listed information to Lender.

5.6 No materials, equipment, fixtures or articles of personal property of Borrower placed in the improvements shall be purchased or installed under any security agreement or other agreement where the seller reserves or purports to reserve title or the right to remove or repossess the items, or the right

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to consider such items as personal property after their incorporation in the work of construction, unless authorized by Lender in writing.

5.7 Lender and its agents and representatives shall have the right at any reasonable time to enter the Property and inspect the construction of the Improvements and all plans, specifications, change orders, and other matters pertaining thereto. Lender shall also have the right to examine, copy and audit the books, records, accounting data and other documents of Borrower and its Contractors relating to the Property or construction of the Improvements. If Lender in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, Borrower shall promptly correct the work to Lender's satisfaction. No such action by Lender shall affect Borrower's obligation to complete the Improvements of any phase of construction before the dates designated in Paragraph 5.1. Any inspection or examination by Lender of books and records of Borrower is for the sole purpose of protecting Lender's collateral and preserving Lender's rights under this Agreement. No default of Borrower shall be waived by any inspection by Lender, and no inspection by Lender shall be construed as a representation that there has been or shall be compliance with the Plans and Specifications or that construction is free from defective materials or workmanship.

5.8 Borrower shall indemnify and hold Lender harmless from and against all liabilities, claims, damages, costs and expenses (including, but not limited to, reasonable legal fees and costs) arising out of or resulting from any defective workmanship or materials occurring in the construction of the Improvements. Upon demand by Lender, Borrower shall defend any action or proceeding brought against Lender alleging any defective workmanship or materials or Lender may elect to conduct its own defense at the expense of Borrower. The provisions of this Paragraph shall survive the termination of this Agreement and repayment of the Loan.

5.9 If Borrower is a corporation, limited liability company or partnership, it shall not amend or modify or permit any amendment or modification of, its Articles of Incorporation or its partnership or operating agreement during the term of the Loan without the prior written approval of Lender. As an entity, Borrower shall maintain active status with the State of Florida by paying and filing necessary annual reports.

5.10 Borrower shall not without the prior written consent of Lender (i) commit any default under the terms of the Construction Contract (as hereinafter defined), (ii) waive any of the obligations of the Contractor thereunder, (iii) do any act which would relieve the Contractor from its obligation to construct the improvements according to the Plans and Specifications, or (iv) make any amendment to the Construction Contract resulting in additional costs which by themselves or in conjunction with other amendments exceed the Construction Budget, or (v) take any action which would cause the cost of completing construction of the Improvements to exceed the undisbursed Loan funds by a factor of more than five percent (5.0%) or \$5,000.00, whichever is less.

5.11 Borrower shall not without the prior written consent of Lender (i) commit any default under the terms of the Engineer's Contract (as hereinafter defined) (ii) waive any of the obligations of Engineer thereunder, (iii) do any act which would relieve the Engineer from its obligations thereunder, or (iv) make an amendment to the Engineer's Contract.

5.12 Borrower shall obtain such insurance or evidence of insurance as Lender may require, including but not limited to, the following:

5.12.1 Title Insurance. An ALTA (or equivalent) mortgagee's title insurance policy in amount, form and substance and written by a title insurance company satisfactory to Lender and insuring the lien of the Security Instrument as a first priority lien on the Premises subject only to the matters listed in Schedule B to the Security Instrument, the original of which

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policy shall be promptly delivered to Lender. The policy shall contain no exceptions except those approved by Lender and shall include any disbursement protection provisions which Lender may require.

5.12.2 An all peril builder's risk and liability insurance policy in an amount, form and substance as Lender may require and with standard noncontributing mortgagee clauses and standard waiver of subrogation clauses shall be promptly delivered to Lender. This insurance shall be issued by such companies as shall be approved by Lender, and the originals of such policies (together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by the insurer or insurers therein to give Lender thirty (30) days' prior written notice of (intention to cancel) shall be promptly delivered to Lender. Such insurance coverage shall be kept in full force and effect at all times until construction of the Improvements has been completed.

5.12.3 An all-risk policy of casualty insurance, and such other hazard insurance as Lender may require, with an agreed amount endorsement, standard noncontributing mortgagee clauses and standard waiver of subrogation clauses. This insurance shall be in such amounts and forms including loss payee and other endorsements issued by such companies as shall be approved by Lender, and the originals of such policies together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by the insurer and insurers therein to give Lender thirty (30) days' prior written notice of intention to cancel shall be promptly delivered to Lender. This insurance shall be kept in full force and effect at all times thereafter until the Loan has been paid in full.

5.12.4 A certificate from an insurance company indicating that Borrower and Contractor are covered (at all times until the Promissory Note has been paid in full) by public liability and workers' compensation insurance and that Lender is named as an additional insured under such policy to the reasonable satisfaction of Lender.

5.13 Borrower shall cooperate with Lender in obtaining the benefits of any insurance or other proceeds lawfully or equitably payable to it in connection with the transactions contemplated hereby and shall pay or reimburse Lender for any expenses incurred in connection therewith (including the expense of an independent appraisal in case of fire or other casualty affecting the Improvements).

5.14 Borrower shall use the proceeds of the Loan solely for the purpose of paying for the cost of constructing the Improvements and the other purposes described in this Agreement.

5.15 Borrower shall pay all of Lender's out of pocket costs (including, but not limited to, attorneys fees and legal expenses) pertaining to the preparation of the Loan Documents and the closing and administration of the Loan. Additional examples of such costs are architectural, engineering, and other consultant fees, survey costs, appraisal costs, filing and recording expenses, long distance telephone charges, hand delivery and telefax charges, overnight and other mail charges, and similar items.

5.16 If and only if so directed by Lender, Borrower shall promptly erect and maintain on a suitable site on the Premises a sign approved by Lender regarding the financing of Improvements to the Property. Borrower shall prevent the destruction or removal of such sign without the prior written approval of Lender.

5.17 Borrower shall permit no deviation from the Plans and Specifications which by itself or in conjunction with other changes or deviations would result in additional costs in excess of the Construction Budget or cause the cost of completing construction of the Improvements to at any time exceed the amount of undisbursed Loan funds by a factor of more than five percent (5.0%) or \$5,000.00, whichever is less, without the prior written approval of Lender.

5.18 Borrower shall keep and maintain proper and accurate books, records and accounts reflecting all items of income and expense of Borrower in connection with the Premises and the construction

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thereon and, upon the request of Lender, shall make such books, records and amounts immediately available to Lender for its inspection or independent audit.

5.19 Within thirty (30) days after the end of Borrower's accounting period, Borrower shall deliver to Lender financial statements including its balance sheet and statement of earnings as of the end of such period in such detail as Lender may require and all such records shall be certified as accurate as of the date specified by Lender, and shall deliver to Lender all tax returns within thirty (30) days after filing.

5.20 Borrower shall immediately advise Lender in writing if Borrower receives any written notice from any laborers, subcontractors or materialmen to the effect that such laborers, subcontractors or materialmen have not been paid when due for any labor or materials furnished in connection with the construction of the Improvements.

5.21 Borrower shall, at Borrower's expense, furnish to Lender copies of all environmental assessments, surveys, certificates, Plans and Specifications, appraisals, title and other insurance, reports and other documents and instruments pertaining to the Premises.

5.22 Borrower shall provide promptly to Lender at Borrower's expense such reports of soil tests of the Property as Lender may hereafter request.

5.23 Borrower and Contractor shall not be entitled to store any materials on or adjacent to the Property without first complying with all requirements which may be imposed relating to the nature and manner of such storage.

5.24 At the time of the making of any advance hereunder, no Event of Default shall have occurred, nor shall any circumstance exist which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

5.25 Borrower and the Property are and shall be in compliance with all environmental, health and safety laws, rules and regulations and Borrower alone is or shall be subject to any liability or obligation for remedial action in the event of any action thereunder. No investigation or inquiry by any governmental authority is or shall be pending or, to the knowledge of Borrower, threatened against Borrower or the Property with respect to any toxic waste, toxic substance or Hazardous Material as defined herein. No Hazardous Materials are or shall be located on or under Borrower's Property. Borrower has not caused or permitted nor shall cause or permit any toxic or hazardous waste or substance to be stored, transported, or disposed of on or under or released from the Property. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to: (i) petroleum; (ii) friable or nonfriable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes (v) those substances materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; (vi) those substances, materials or wastes defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute; or (vii) those substances, materials or wastes defined as "hazardous waste" or a "hazardous substance" pursuant to applicable state law.

5.26 Borrower has not violated and shall not violate any federal, state, county or municipal statute, regulation or ordinance which may materially and adversely affect its respective business operations or financial condition or the Property. No event or default (or circumstance which, with notice or the passage of time or both, would constitute an Event of Default) has occurred or shall occur under this Agreement or the Loan Documents.

5.27 Additional Covenants of Borrower: During the term of the Loan, Borrower shall maintain a \$300,000.00 liquid asset account (separate from Borrower's Equity Account) that shall be pledged

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to Lender in addition to the Equity Account. This covenant is specifically required by Lender in lieu of a bond.

6. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender that:

6.1 Borrower's social security number or federal taxpayer identification number is: 81-4332332.

6.2 Borrower's Residency. Borrower is an individual(s) and a resident of the State of _____. a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida and licensed to conduct business in all of the jurisdictions in which its business is conducted.

6.3 Borrower's chief executive office, chief place of business, office where its business records are located, or residence is the address identified on page one of this Agreement. Borrower's other executive offices, places of business, locations of its business records, or domiciles are described on Schedule D attached hereto and incorporated herein by this reference. Borrower shall immediately advise Lender in writing of any change in or addition to the foregoing addresses.

6.4 Borrower shall not become a party to any restructuring of its business or participate in any consolidation, merger, liquidation or dissolution without providing Lender with thirty (30) days prior written notice thereof.

6.5 Borrower shall notify Lender of the nature of any intended change of Borrower's name, or the use of any trade name, and when such change or use shall become effective.

6.6 Borrower possesses and shall possess good and marketable title to the Property and any and all improvements thereon free and clear of all liens and encumbrances except for the lien for general real estate taxes for the current calendar year, the lien and security interest belonging to Lender and any permitted mortgages or deeds of trust and any other permitted exceptions to title as described in Schedule B hereto.

6.7 All tax returns and reports of the Borrower required by law to be filed have been duly filed, and all taxes, assessments, and other governmental charges upon Borrower or upon its properties or assets or income which are due and payable have been paid and shall continue to be so paid.

6.8 All financial statements previously delivered to Lender by Borrower and the Guarantors are true and correct in all respects, have been prepared in a format acceptable to Lender, and accurately represent the financial condition of Borrower and the Guarantors as of the respective dates thereof, or in such form as requested by Lender. No materially adverse change has occurred in the financial condition reflected in any such financial statements since the respective dates thereof, and no additional borrowings have been made by Borrower since that date thereof other than this Loan.

6.9 Borrower and Contractor have entered into a contract ("Construction Contract") whereby Contractor has agreed to construct the Improvements in accordance with the Plans and Specifications and to pay for all labor and materials used in connection with such construction, and (i) Lender has been provided a copy of the Construction Contract and any amendments or modifications thereto, (ii) there are in existence no defaults or grounds for default thereunder, (iii) the Construction Contract is in full force and effect, and (iv) Contractor has obtained all necessary building permits.

6.10 Borrower and Engineer have entered into a contract ("Engineer's Contract") relating to the design, construction, supervision of work on and inspection of the Improvements, and (i) Lender has been provided with a copy of the Engineer's Contract and any amendments or modifications thereto, (ii) there are in existence no default or grounds for default thereunder, and (iii) the Engineer's Contract is in full force and effect.

6.11 The Loan Documents are in all respects the legal, valid, binding and enforceable obligation of the Borrower in accordance with their respective terms and conditions, and grant Lender a duly perfected first lien on and security interest in the Premises.

6.12 No chattel mortgage, bill of sale, security agreement, financing statement or other title retention

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agreement (except those executed in favor of Lender) has been or shall be executed with respect to any personal property, chattel or fixture used in conjunction with the construction, operation or maintenance of the Improvements without the prior written consent of Lender.

6.13 All public utility services necessary for the construction of the Improvements and the operation thereof for their intended purposes are available within the boundaries of the Property, including water supply, storm and sanitary sewer facilities, and natural gas, electric and telephone facilities.

6.14 The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty.

6.15 Any brokerage commissions due in connection with the purchase by Borrower of the Property have been paid in full, and any such commissions coming due in the future shall be promptly paid by Borrower. Borrower shall indemnify and hold Lender harmless from any liability, claim or loss, including attorney's fees and legal expenses, arising by reason of the claim of any person for any such brokerage commissions. This provision shall survive the repayment of the Loan made in connection herewith and shall continue in full force and effect so long as the possibility of such liability, claim or loss exists.

6.16 Notwithstanding any provision of any document or agreement pursuant to which Borrower is formed or any provision of any other agreement to which Borrower may be or become a party, until all of Borrower's indebtedness to Lender under the Loan Documents has been paid in full, Borrower shall make no disbursement of funds from the rental or sale of any part of the Premises to any of Borrower's officers, stockholders or similar persons or to any other person, whether by way of debt repayment, return of capital, dividend, distribution of income or otherwise, without the prior written consent of Lender.

6.17 Borrower has the right and is duly authorized to execute, enter into and perform its obligations under the Construction Contract, Engineer's Contract, the Agreement and the other Loan Documents. Borrower's execution and performance of its obligations under the Construction Contract, this Agreement and the other Loan Documents does not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may now or hereafter be binding on Borrower.

6.18 No action or proceeding is or shall be pending or threatened against Borrower or which affects the Premises that might result in any material or adverse change in Borrower's business operations or financial condition or materially affect the Premises.

6.19 Borrower has not violated and shall not violate any applicable federal, state, county or municipal statute, regulation or zoning or other ordinance, any environmental laws, or any land use laws which might materially and adversely affect its business operations or financial condition or the Premises.

6.20 Borrower represents that construction of the Improvements to the Premises has not yet begun as of the effective date of this Agreement.

6.21 The foregoing representations and warranties will be true at the date of the first disbursement and at the dates of all subsequent disbursements of this Loan proceeds:

7. EVENTS OF DEFAULT. An Event of Default shall occur under this Agreement and the other Loan Documents if:

7.1 Borrower or any Guarantor fails to pay any amount under this Agreement or the other Loan Documents or any other indebtedness to Lender when due;

7.2 Borrower or any Guarantor fails to perform any obligation or breaches any warranty or covenant to Lender contained in this Agreement, the other Loan Documents, or any other present or future agreement;

7.3 Borrower or any Guarantor provides or causes any false or misleading signature or representation or warranty to be provided to Lender;

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- 7.4 Borrower or any Guarantor allows or causes the Premises to be damaged, destroyed, lost or stolen in any material respect;
- 7.5 Construction of the Improvements is halted prior to the Completion Date for any period of thirty (30) consecutive days for any cause;
- 7.6 Construction of the Improvements is abandoned or is not completed on or before the Completion Date for any cause;
- 7.7 Any lien for labor, services, materials or otherwise is filed against the Premises;
- 7.8 Lender believes in good faith that the financial condition of Borrower or any Guarantor has undergone a material adverse change or that the prospects for the successful and profitable sale of the Improvements upon completion have materially declined;
- 7.9 Without first having obtained the written consent of Lender, Borrower transfers, sells, conveys, encumbers or assigns all or any portion of the Premises;
- 7.10 If Borrower is a corporation, partnership, limited liability company or joint venture, the controlling interest in Borrower or any constituent entity thereof is transferred, sold or assigned without the prior written approval of Lender;
- 7.11 If the Improvements are partially or totally damaged or destroyed by fire or any other cause and Lender believes in good faith the Improvements shall not be completed on or before the Completion Date;
- 7.12 Any Guarantor seeks to revoke, terminate or otherwise limit its liability to Lender;
- 7.13 Any litigation is filed against Borrower or any Guarantor with respect to the Premises which, if adversely determined, could materially impair their abilities to perform their respective obligations under the Loan Documents or impair the value of the Premises;
- 7.14 Borrower or any Guarantor permits the entry or service of any garnishment, judgment, tax levy, attachment or lien against them or any Guarantor, or any of their property;
- 7.15 Borrower or any Guarantor is dissolved or terminated, ceases to operate its business, becomes insolvent, makes an assignment for the benefit of creditors, or becomes the subject of any bankruptcy, insolvency or debtor rehabilitation proceeding;
- 7.16 Borrower or any Guarantor causes Lender to deem itself insecure in good faith for any reason;
- or
- 7.17 Lender reasonably believes that one or more Events of Default described in this Paragraph 7 have occurred and Borrower, after Lender's request, fails to provide evidence reasonably satisfactory to Lender that such Event or Events of Default have not in fact occurred.

8. RIGHTS OF LENDER ON EVENT OF DEFAULT. If there is a default under this Agreement, Lender shall be entitled to exercise one or more of the following remedies without notice or demand:

- 8.1 To exercise any of the remedies described in this Agreement or the other Loan Documents;
- 8.2 To declare the Promissory Note to be, and the Promissory Note shall thereafter become, forthwith due and payable without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby expressly waived;
- 8.3 To terminate the agreements of the Lender to extend credit of any kind hereunder; whereupon the commitment and obligation of the Lender to make disbursements or make loans hereunder shall terminate;
- 8.4 To enter into possession of the Premises and take all actions necessary in its judgement to complete construction of the Improvements in accordance with the Plans and Specifications. Lender shall also have the right to make changes in the Plans and Specifications, work or materials as it may deem appropriate and to enter into, modify or terminate any contractual arrangements, subject to Lender's right at any time to discontinue work without liability. Such action shall be taken at the sole risk, cost and expense of Borrower. Lender shall not assume liability to Borrower or any other person

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or entity for completing the Improvements or for the manner of quality of construction of the Improvements. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to complete the Improvements, at the option of Lender, in Borrower's name. Lender shall have the right to disburse any portion of the Loan not previously disbursed, and to use any other funds of Borrower, including any funds held in escrow accounts, to the extent necessary or desirable: to complete or finish construction of the Improvements; and to pay, compromise or settle all existing or future bills and claims that are or may be or become liens against the Premises, or may be necessary or desirable for the completion of the Improvements or the clearance of title to the Premises. All sums expended by Lender in completing construction shall be considered to have been disbursed to the Borrower, and Borrower and all Guarantors shall be liable thereto. Such sums shall be secured by the Security Instrument Security Agreement and any other documents securing the Loan. In the event such sums exceed the principal amount of the Promissory Note, the amount of the excess funds shall be considered to be an additional Loan to Borrower bearing interest at the rate provided in the Promissory Note and shall be secured by the Security Instrument, Security Agreement and any other documents securing the Loan; and

8.5 To exercise all other rights available to Lender under any other written agreement or law or in equity.

Lender's rights are cumulative and may be exercised together, separately, and in any order. Lender may, at its option, appoint a receiver without bond without first bringing suit on Borrower's obligations and without meeting any statutory conditions regarding receivers, it being intended that Lender shall have this contractual right to appoint a receiver.

9. ASSIGNMENT OF CONTRACTS TO LENDER. Borrower hereby conditionally assigns to Lender all of its interest in and to the Plans and Specifications along with all studies, data and drawings prepared by or for Borrower and the contracts and agreements relating to the Plans and Specifications or to the construction of the Improvements, including but not limited to both the Contractor's Contract and Engineer's Contract. Lender shall not assume any obligations under such contracts and agreements unless it agrees otherwise in writing. Lender shall have the right to take over and use at any time the labor, materials, supplies and equipment contracted for by or on behalf of Borrower, including such equipment and supplies that have theretofore been delivered to the Premises or stored in any facility for incorporation into the Improvements, all in the sole and absolute discretion of the Lender.

10. ACTIONS. Lender shall have the right, but not the obligation, to commence, appear in and defend any action or proceeding which might affect the Premises or its rights, duties or liabilities under this Agreement or the other Loan Documents. Borrower shall reimburse Lender upon demand for Lender's out-of-pocket costs, expenses and legal fees and disbursements incurred in those actions or proceedings.

11. APPLICATION OF PAYMENTS. Whether or not a default has occurred under this Agreement, all payments made by or on behalf of Borrower and all credits due to Borrower from the disposition of the Premises or otherwise may be applied against the amounts paid by Lender (including attorneys' fees and legal expenses) in connection with the exercise of its rights or remedies described in the Agreement and any interest thereon and then to the payment of the Borrower's Obligations to Lender under the Loan Documents in whatever order Lender chooses.

12. REIMBURSEMENT OF AMOUNTS EXPENDED BY LENDER. Borrower shall reimburse Lender for all amounts (including attorneys' fees and legal expenses) expended by Lender in the performance of any action required to be taken by Borrower or the exercise of any right or remedy belonging to Lender under this Agreement, together with interest thereon at the lower of the highest rate described in any promissory note

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or credit agreement executed by Borrower or the highest rate allowed by law from the date of payment until the date of reimbursement. These sums shall be payable upon demand and shall be secured by the liens and security interests described in the Agreement and the other Loan Documents.

13. TERMINATION. This Agreement shall survive the making of the Loan and shall remain in full force and effect until Lender provides Borrower with written notice of the termination hereof.

14. ASSIGNMENT. Borrower shall not be entitled to assign any of its rights, remedies or obligations described in this Agreement without the prior written consent of Lender which may be withheld by Lender in its sole discretion. Lender shall be entitled to assign some or all of its rights and remedies described in this Agreement without notice to or the prior consent of Borrower or any third party in any manner.

15. MODIFICATION AND WAIVER. The modification or waiver of any of Borrower's obligations or Lender's rights under this Agreement or the other Loan Documents must be contained in a writing signed by Lender. Lender may perform any of Borrower's obligations or delay or fail to exercise any of its rights without causing a waiver of these obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Borrower's obligations under this Agreement and the other Loan Documents shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the obligations belonging to any Borrower or Guarantor or any of its rights against any Borrower, Guarantor, Collateral, or any other property securing any of Borrower's indebtedness or obligations.

16. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees, and devisees.

17. NOTICE. Any notice or other communication to be provided under this Agreement shall be in writing and sent to the parties at the addresses described in this Agreement or such other address as the parties may designate in writing from time to time.

18. SEVERABILITY. If any provision of this Agreement violates the law or is unenforceable, the rest of the Agreement shall remain valid.

19. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Florida. Unless applicable law provides otherwise, Borrower consents to the jurisdiction of any court selected by Lender in its discretion located in that state.

20. COLLECTION COSTS. If Lender hires an attorney to assist in collecting any amount due or enforcing any right or remedy under this Agreement, Owner agrees to pay Lender's reasonable attorney's fees and collection costs, including, but not limited to, all fees and costs incurred on appeal, in bankruptcy, and for post-judgment collection actions to the extent permitted by law.

21. MISCELLANEOUS. Borrower and Lender agree that time is of the essence. Borrower waives presentment demand for payment notice of dishonor and protest except as required by law. All references to Borrower in the Agreement shall include all persons signing herein. If there is more than one Borrower, their obligations shall be joint and several. This Agreement represents the complete and integrated understanding between Borrower and Lender regarding the terms hereof.

22. RIGHTS OF THIRD PARTIES. BUT FOR THE LIMITED EXCEPTIONS OF THE RIGHTS AND

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PRIVILEGES GRANTED TO THE CITY OF GAINESVILLE PURSUANT TO THE SECURITY AGREEMENT FOR PUBLIC IMPROVEMENTS, THE SECURITY AGREEMENT FOR CONSTRUCTION OF SIDEWALKS, AND MAINTENANCE SECURITY AGREEMENT FOR PUBLIC IMPROVEMENTS, all conditions of the obligations of Lender hereunder, including the obligation to make advances are imposed solely and exclusively for the benefit of Lender and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof. No other person shall, under any circumstance, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender at any time in Lender's sole discretion. Lender makes no representations and assumes no obligations to Borrower or to any third party concerning the quality of the construction by Borrower of the Improvements or the absence thereof of defects. In this connection Borrower agrees to indemnify Lender from any liability, claim or loss resulting from the disbursement of the loan proceeds or from the condition of the Premises, whether related to the quality of construction or otherwise and whether arising during or after the term of the Loan. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claim or loss exists.

23. JURY TRIAL WAIVER. BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS AGREEMENT.

24. ADDITIONAL TERMS: Any additional terms and conditions of the Commitment Letter for this loan dated February 5, 2019, which have not been otherwise described within this Agreement are by reference incorporated herein. The terms of the Commitment Letter shall be binding within the reasonable discretion of the Lender if any conflict exists between the terms of the Commitment Letter and this Agreement.

BORROWER ACKNOWLEDGES THAT BORROWER HAS READ, UNDERSTANDS AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Dated: February 15, 2019

BORROWER: Weseman Development, LLC, a Florida limited liability company assigned document #L16000201066

By: Gary W. Weseman
Gary W. Weseman, Its Manager

LENDER: Renasant Bank

BY: David C. Wilson
David C. Wilson, Gainesville Market President

CONSTRUCTION LOAN AGREEMENT

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SCHEDULE A

Legal Description Labeled Exhibit "A" Attached
Hereto and by Reference Incorporated Herein

SCHEDULE B

As listed in Mortgagee's Title Insurance Policy, issued by Fidelity National Title Insurance Company.

SCHEDULE C

All development site improvements at Grand Oaks at Tower - Phase 1, Gainesville, Alachua County, Florida per the plans and specifications by the engineer, Causseaux, Hewitt, and Walpole, Inc., and as approved and required by the City of Gainesville.

SCHEDULE D

None.

CONSTRUCTION LOAN AGREEMENT

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DRAW REQUEST

TO: _____

Date: _____

You are hereby requested and authorized to pay the sum of \$ _____ to Pinnacle Site Solutions, LLC, a Florida limited liability company, as a disbursement of loan proceeds under our Construction Loan Agreement dated _____. Such funds are to be applied to pay for labor and materials furnished under the Construction Contract between Weseman Development, LLC and Pinnacle Site Solutions, LLC dated _____. The undersigned further requests that you disburse to the undersigned the sum of \$ _____, which the undersigned will pay to you to cover accrued interest on such loan.

The undersigned does hereby CERTIFY that: (i) work is progressing on schedule and in accordance with the Construction Contract and the Plans and Specifications referred to therein, (ii) there is no default under the Construction Loan Agreement or the Construction Contract, and (iii) there are sufficient undisbursed loan proceeds to complete construction in accordance with the Construction Contract and such Plan and Specifications.

BORROWER: Weseman Development, LLC

By: _____
Gary Weseman, Manager

FOR COMPLETION BY CONTRACTOR

Date: _____

The undersigned, as Contractor under the Construction Contract with the Borrowers signing above, does hereby, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, waive and release any and all mechanic's liens which the undersigned has or to which the undersigned may be entitled by reason of materials furnished or labor performed to Weseman Development, LLC under the Construction Contract, and the undersigned does hereby CERTIFY that: (i) all persons, firms and corporations which have furnished material or labor with respect to the construction or any other work provided for in the Construction Contract have been paid in full for all such material furnished or labor performed to Weseman Development, LLC, as evidenced by the mechanic's lien waivers attached to this Draw Request, (ii) there is no default under the Construction Contract or any subcontract or other agreement for material or labor with respect thereto, and (iii) to date the undersigned has received (exclusive of the above amount requested by the Borrowers) the total sum of \$ _____ under the Construction Contract.

CONTRACTOR: Pinnacle Site Solutions, LLC

By: _____
Concept Companies, Inc., its Manager,
by Brian S. Crawford, its President



DATE: February 1, 2019
PROJECT NAME: GRAND OAKS AT TOWER – PHASE 1
PROJECT NO: 17-0500
DESCRIPTION FOR: BOUNDARY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOTS 3, AND 4 IN SECTION 9, TOWNSHIP 10 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 9; THENCE SOUTH $00^{\circ}51'18''$ EAST, ALONG THE WEST LINE OF SAID SECTION 9, A DISTANCE OF 1518.24 FEET TO THE NORTHWEST CORNER OF SAID LOT 3 IN SECTION 9; THENCE NORTH $88^{\circ}56'39''$ EAST, ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 48.87 FEET TO AN INTERSECTION WITH THE EAST RIGHT OF WAY LINE OF SW 75TH STREET (100' RIGHT OF WAY); THENCE SOUTH $0^{\circ}51'18''$ EAST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 405.78 FEET TO THE CENTERLINE OF 100 FOOT WIDE POWER LINE EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 106, PAGE 48 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA; THENCE DEPARTING SAID EAST RIGHT OF WAY LINE, NORTH $89^{\circ}22'57''$ EAST, ALONG SAID POWER LINE EASEMENT CENTERLINE, A DISTANCE OF 800.01 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID POWER LINE EASEMENT CENTERLINE, NORTH $89^{\circ}22'57''$ EAST, A DISTANCE OF 1321.26 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 125.00 FEET AND BEING SUBTENDED BY A CHORD HAVING A BEARING AND DISTANCE OF NORTH $0^{\circ}05'03''$ EAST, 0.36 FEET; THENCE DEPARTING FROM SAID POWER LINE EASEMENT CENTERLINE, NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $0^{\circ}10'02''$, AN ARC LENGTH OF 0.36 FEET; THENCE NORTH $00^{\circ}00'00''$ EAST, A DISTANCE OF 49.64 FEET TO THE NORTH LINE OF SAID POWER LINE EASEMENT CENTERLINE; THENCE NORTH $00^{\circ}00'00''$ EAST, A DISTANCE OF 29.70 FEET; THENCE NORTH $90^{\circ}00'00''$ WEST, A DISTANCE OF 77.72 FEET; THENCE NORTH $00^{\circ}00'00''$ EAST, A DISTANCE OF 50.00 FEET; THENCE NORTH $90^{\circ}00'00''$ EAST, A DISTANCE OF 77.72 FEET; THENCE NORTH $00^{\circ}00'00''$ EAST, A DISTANCE OF 15.50 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 85.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH $44^{\circ}45'10''$ EAST, 119.69 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $89^{\circ}30'21''$, AN ARC DISTANCE OF 132.78 FEET; THENCE SOUTH $0^{\circ}29'39''$ EAST, A DISTANCE OF 60.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH $44^{\circ}45'10''$ WEST, 35.20 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURE, THROUGH A CENTRAL ANGLE OF $89^{\circ}30'21''$, AN ARC DISTANCE OF 39.05' FEET; THENCE SOUTH $00^{\circ}00'00''$ EAST, A DISTANCE OF 144.84 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 185.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH $12^{\circ}57'45''$ WEST, 83.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $25^{\circ}55'30''$, AN ARC DISTANCE OF 83.71 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 90.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH $12^{\circ}57'45''$ WEST, 40.38 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $25^{\circ}55'30''$, AN ARC DISTANCE OF 40.72 FEET; THENCE SOUTH $00^{\circ}00'00''$ EAST, A DISTANCE OF 16.96 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH $45^{\circ}00'00''$ EAST, 28.28 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $90^{\circ}00'00''$, AN ARC DISTANCE OF 31.42 FEET; THENCE NORTH $90^{\circ}00'00''$ EAST, A DISTANCE OF 5.00 FEET; THENCE SOUTH $00^{\circ}00'00''$ EAST, A DISTANCE OF 60.00 FEET; THENCE NORTH $90^{\circ}00'00''$ EAST, A DISTANCE OF 84.21 FEET; THENCE SOUTH $0^{\circ}22'24''$ EAST, A DISTANCE OF 397.40 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 537.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH

72°29'34" EAST, 168.53 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°03'24", AN ARC DISTANCE OF 169.23 FEET; THENCE SOUTH 63°27'52" EAST, A DISTANCE OF 105.91 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 25.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 71°32'08" EAST, 35.36 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 39.27 FEET; THENCE SOUTH 63°27'52" EAST, A DISTANCE OF 60.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 18°27'52" EAST, 28.28 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'01", AN ARC DISTANCE OF 31.42 FEET; THENCE SOUTH 63°27'52" EAST, A DISTANCE OF 339.89 FEET; THENCE NORTH 68°22'27" EAST, A DISTANCE OF 10.24 FEET TO A POINT LYING 15 FEET WESTERLY AS MEASURED PERPENDICULAR TO THE NORTHWESTERLY RIGHT OF WAY OF SW 24TH AVENUE (HAVING A RIGHT OF WAY WIDTH OF 100 FEET) SAID POINT BEING ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1974.86 FEET AND BEING SUBTENDED BY A CHORD HAVING A BEARING AND DISTANCE OF SOUTH 26°18'08" WEST, 64.78 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND PARALLEL TO SAID NORTHWESTERLY RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 1°52'44", AN ARC LENGTH OF 64.78 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 25°22'50" WEST, PARALLEL TO SAID NORTHWESTERLY RIGHT OF WAY LINE, A DISTANCE OF 43.90 FEET; THENCE NORTH 26°45'49" WEST, A DISTANCE OF 8.39 FEET; THENCE NORTH 63°27'52" WEST, A DISTANCE OF 341.14 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 20.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 71°32'08" WEST, 28.28 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 31.42 FEET; THENCE SOUTH 26°32'08" WEST, A DISTANCE OF 42.20 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 85.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 58°16'04" WEST, 89.41 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 63°27'52", AN ARC DISTANCE OF 94.15 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 69.93 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 145.00 FEET AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 89°23'56" WEST, 3.04 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 1°12'08", AN ARC DISTANCE OF 3.04 FEET; THENCE SOUTH 01°01'10" EAST, A DISTANCE OF 158.75 FEET TO THE SOUTH LINE OF AFOREMENTIONED LOT 4 IN SECTION 9; THENCE SOUTH 88°58'50" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 1815.94 FEET; THENCE DEPARTING SAID SOUTH LINE, NORTH 00°51'18" WEST, A DISTANCE OF 497.61 FEET; THENCE NORTH 89°08'42" EAST, A DISTANCE OF 250.00 FEET; THENCE NORTH 00°51'18" WEST, A DISTANCE OF 609.89 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 42.687 ACRES, MORE OR LESS.

MAINTENANCE SECURITY AGREEMENT FOR PUBLIC IMPROVEMENTS

THIS AGREEMENT ("Agreement") is entered into on the ____ day of _____, 20____, by and between the **City of Gainesville, Florida**, a municipal corporation ("City"), and **Weseman Development, LLC**, a Florida limited liability company ("Developer"), and **Renasant Bank**, a Mississippi state-chartered bank ("Issuer").

WITNESSETH

WHEREAS, the Developer is the fee simple owner and developer of the subdivision named **Grand Oaks at Tower – Phase 1**, which is located in the City of Gainesville, as per Plat thereof recorded in Plat Book _____, Page _____, of the Public Records of Alachua County, Florida ("Subdivision"); and

WHEREAS, pursuant to Section 30-3.39 of the City of Gainesville Land Development Code, a subdivision final plat shall not be approved by the City unless the Developer has provided the City with security in one of the forms allowed for in Section 30-3.39 to secure the construction and completion, within 12 months from the date of final plat approval, of all the subdivision public improvements required by the City-approved subdivision development plans and specifications, the Land Development Code and all other applicable local, state, and federal regulations ("Public Improvements"); and

WHEREAS, the Developer's final plat was approved by the City and in accordance with Section 30-3.37 of the Land Development Code, the Developer provided security and entered into a security agreement with the City on the ____ day of _____, 20____, ("Security Agreement") to secure the construction and completion of the Subdivision Public Improvements; and

WHEREAS, following construction of the Subdivision Public Improvements, the Developer shall provide the City with maintenance security in accordance with Section 30-3.39 of the Land Development Code to be used by the City to pay the costs of any necessary repairs and maintenance on the Subdivision Public Improvements for a period of one year following the date the City has approved and accepted for maintenance the Subdivision Public Improvements ("Maintenance Period"); and

WHEREAS, the maintenance security provided by the Developer shall be enforceable by and payable to the City in a sum at least equal to 15 percent of the total cost to construct and complete the required Public Improvements. The total cost of construction shall be indicated in an executed, itemized contract verified by a private engineer acting for the Developer or in a professional engineer's signed and sealed estimate, and shall be verified and approved by the Public Works Director or designee. Improvements otherwise covered by a separate security agreement between the Developer and the City and those improvements already constructed and approved by the Public Works Director or designee shall not be included when determining the cost of improvements subject to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the parties agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective on the date the last of the parties executes this Agreement as indicated below ("Effective Date") and shall remain in effect until the Maintenance Security has been released in accordance with Section 3 of this Agreement.

2. **Maintenance Security.** The Developer shall provide, on the same date as the Effective Date of this Agreement, the following form(s) of Maintenance Security for the Subdivision Public Improvements. The Maintenance Security provided by the Developer shall be enforceable by and payable to the City in a sum at least equal to 15 percent of the total cost to construct and complete the Subdivision Public Improvements, which sum shall be verified and approved by the City Manager or designee. Any surety bond, letter of credit, or construction loan agreement provided in accordance with this section shall be attached to this Agreement as **Exhibit A** and shall be incorporated herein as if set forth in full. In the event of any conflict or inconsistency between this Agreement and the Maintenance Security forms attached as **Exhibit A**, the terms of this Agreement shall prevail. *(Complete the applicable below.)*

Cash Deposit: Developer shall deposit with the City Director of Management and Budget a cash deposit in the amount of _____, lawful money of the United States of America. Interest earned on the cash deposit shall be for the account and to the credit of the person or persons making such deposit.

Surety Bond: Developer shall cause Issuer to issue to the City, as beneficiary, a Surety Bond in the amount of _____, lawful money of the United States of America. The Issuer shall be a surety company authorized to do business in the state of Florida with a rating of not lower or less than A-XII as rated by A.M. Best Company, Inc.

Irrevocable and Unconditional Letter of Credit: Developer shall cause Issuer to issue to the City, as beneficiary, an Irrevocable and Unconditional Letter of Credit in the amount of _____, lawful money of the United States of America. The Issuer shall be a Florida bank. The Security Issued shall, by its terms, be irrevocable, unconditional, and provide for drafts to be honored at a banking location within Alachua County, Florida.

Construction Loan Agreement: Developer shall deposit with the City a certified copy of a Construction Loan Agreement between Issuer and the Developer evidencing the terms of a construction development loan by Issuer to Developer in the amount of Three Million Four Hundred Sixty Thousand and 00/100 Dollars (\$3,460,000.00), upon condition that Developer maintain its existing account with Issuer containing Two Million and 00/100 Dollars (\$2,000,000.00) as Developer's cash equity toward the project costs and from which the initial development costs shall be paid. Under the terms and conditions of Developer's Construction Loan Agreement with Issuer, Developer's total available funds are Five Million Four Hundred Sixty Thousand and 00/100 Dollars (\$5,460,000.00), lawful money of the United States of America. The Construction Loan Agreement, by its terms, shall be for the benefit of and satisfactory to the City. The Issuer shall make payments on the proceeds of the loan to the City in accordance with Section 3 of this Agreement.

3. **Terms of Security.** In accordance with Section 30-3.39 of the Land Development Code, the Developer warrants the completed Subdivision Public Improvements against all defects in materials and construction workmanship and also against design defects for a period of one year from the date the City has, in writing, accepted for maintenance the Subdivision Public Improvements ("Maintenance Period"). During the Maintenance Period, the City shall document in writing and

notify the Developer of any defects in design, materials, or construction workmanship. The Developer shall have thirty (30) calendar days from notification to make all repairs and improvements to correct any documented defects, as evidenced by inspection and written approval by the City. If the Developer fails to correct all documented defects within thirty (30) calendar days of notification, the Developer shall be deemed in default and the City shall have the right, without prior notice to Developer, to draw on the Maintenance Security to pay the costs of such repairs and maintenance on the Subdivision Public Improvements. The Maintenance Security shall remain valid until, and shall be released upon, the occurrence of one of the following two events, as applicable:

- a. the City has not provided the Developer with written notification in accordance with this section of any defects in design, materials, or construction workmanship for the Subdivision Public Improvements within fifteen (15) calendar days following the expiration of the Maintenance Period, or
 - b. the City has provided the Developer with written notification in accordance with this section of defects in design, materials, or construction workmanship for the Subdivision Public Improvements within fifteen (15) calendar days following the expiration of the Maintenance Period and all defects have been corrected, by either the Developer or the City, as evidenced by inspection and written approval by the City.
4. **Issuer's Responsibilities.** This section is applicable only if the Developer provided Maintenance Security to the City in the form of a surety bond, an irrevocable and unconditional letter of credit, or a construction loan agreement. The Issuer agrees that the Maintenance Security shall remain valid for the term of this Agreement and shall be maintained and administered in accordance with this Agreement, including the provisions specified in Section 2 of this Agreement, and that any disbursement or release of the Maintenance Security during the term of this Agreement shall not be made without the express written approval and certification of the City. In the event the Maintenance Security can only be issued for a limited term, the Maintenance Security shall provide for automatic extensions, without requiring written amendment, for successive periods as necessary to include the full term of this Agreement. In addition, the Issuer shall provide written notice to the City at least 60 calendar days in advance of any expiration date, in the event the term of the Maintenance Security will not be extended beyond the then current expiration date.
5. **Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the City and the Developer or the Issuer. The Developer or the Issuer cannot create any obligation or responsibility on behalf of the City or bind the City in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that the other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.
6. **Bankruptcy.** The filing by the Developer or the Issuer of a petition for relief under federal bankruptcy laws or any other similar law or statute of the United States, or the entry of an order or decree appointing a receiver of the Developer or the Issuer or their respective assets, shall not affect the Maintenance Security or the City's rights under this Agreement.
7. **Modification and Waiver.** This Agreement may only be modified or waived in writing signed by all the parties. No course of dealing shall be deemed a waiver of rights or a modification of this

Agreement. The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right. No waiver of a provision of this Agreement shall apply to any other portion of this Agreement. A waiver on one occasion shall not be deemed to be a waiver on other occasions.

8. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Any legal action, in equity or law, with respect to this Agreement shall be brought and heard in Alachua County, Florida.
9. **Sovereign Immunity.** Nothing in this Agreement shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28, Florida Statutes.
10. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.
11. **Captions.** The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Agreement.
12. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein.
13. **Successors and Assigns.** No parties to this Agreement shall assign or transfer any interest in this Agreement without the prior written consent of the other parties. The parties each bind the others and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Agreement.
14. **Time.** Time is of the essence in this Agreement. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it shall be postponed to the next business day.
15. **Notices.** Any notices pursuant to this Agreement shall be effective upon receipt and sent by either certified mail, return receipt requested, overnight courier service, or delivered in person to the following addresses:

To the City: City Manager
 City of Gainesville
 P.O. Box 490, Station 6
 Gainesville, FL 32602-0490

With a copy to: Director of Public Works
 City of Gainesville
 P.O. Box 490, Station 58
 Gainesville, FL 32602-0490

To the Developer: Weseman Development, LLC

c/o Gary Weseman, Manager
1501 NW 98th Street
Gainesville, FL 32606

Phone: _____

Fax: _____

To the Issuer:

Renasant Bank
c/o David Wilson, Market President
4373 W. Newberry Road
Gainesville, FL 32607

Phone: _____

Fax: _____

[REMAINDER OF THIS PAGE BLANK. SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officials on the dates written below.

WITNESSES:

CITY OF GAINESVILLE

Sign: _____

Print Name: _____

Sign: _____

Print Name: _____

By: _____

Deborah Bowie
City Manager

**STATE OF FLORIDA
COUNTY OF ALACHUA**

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by Deborah Bowie, City Manager of the City of Gainesville. He or she personally appeared before me and is: (check one of the below)

_____ personally known to me, or

_____ produced the following type of identification: _____

Executed and sealed by me on _____, _____.

Notary Public

Print Name: _____

My Commission expires: __/__/__

WITNESSES:

Sign: [Signature]
Print Name: **JONATHAN M. TURNER**

Sign: [Signature]
Print Name: **Pamela K. O'Steen**

DEVELOPER:

Weseman Development, LLC

By: [Signature]
Print Name: **Gary Weseman**
Title: **Manager**

STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing Instrument was acknowledged by Gary Weseman, as Manager for and on behalf of Weseman Development, LLC. He/she personally appeared before me and is: (check one of the below)

personally known to me, or
 produced the following type of identification: _____

Executed and sealed by me on February 13, 2019.



[Signature]
Notary Public
Print Name: _____
My Commission expires: / /

WITNESSES:

Sign: [Signature]
Print Name: JONATHAN M. TURNER

Sign: [Signature]
Print Name: Pamela K. O'Steert

ISSUER:

Renasant Bank

By: [Signature]
Print Name: David Wilson
Title: Market President

STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by David Wilson, as Market President, for and on behalf of Renasant Bank. He/she personally appeared before me and is: (check one of the below)

personally known to me, or
 produced the following type of identification: _____

Executed and sealed by me on February 15, 2019.

[Signature]
Notary Public
Print Name: _____
My Commission expires: / /



I CERTIFY THIS TO BE A TRUE

& EXACT COPY OF THE ORIGINAL



JONATHAN M. TURNER

This instrument prepared by:
Jonathan M. Turner, Esq.
Scruggs, Carmichael & Wershow, P.A.
2234 N.W. 40th Terrace, Suite B
Gainesville, FL 32605
JMT 19-2075

CONSTRUCTION LOAN AGREEMENT

<u>BORROWER</u>	
Weseman Development, LLC, a Florida limited liability company assigned document #L16000201066	
<u>ADDRESS</u>	
1501 N.W. 98th Street, Gainesville, FL 32606	
<u>TELEPHONE NUMBER</u>	<u>IDENTIFICATION NUMBER</u>
(352) 333-9333	47-3809983

<u>OFFICER IDENTIFICATION</u>	<u>INTEREST RATE</u>	<u>PRINCIPAL AMOUNT</u>	<u>FUNDING DATE</u>	<u>MATURITY DATE</u>	<u>CUSTOMER NUMBER</u>	<u>LOAN NUMBER</u>
David Wilson	ARM	\$3,460,000.00	February 15, 2019	February 15, 2021		

LOCATION OF REAL PROPERTY SECURING THE LOAN: Grand Oaks at Tower - Phase I, Gainesville, Alachua County, Florida

1. DEFINITIONS. In this Agreement, the following words and phrases shall have the following meanings:

- 1.1 "Engineer" shall mean the person or entity who has prepared Plans and Specifications for the construction of the Improvements;
- 1.2 "Assignment of Leases" shall mean the Assignments of Rents and Leases executed by Borrower which creates a first lien on the leases of, and rents from, the Property;
- 1.3 "Borrower" shall mean the borrower identified above;
- 1.4 "City" shall mean the City of Gainesville, Florida, a municipal corporation
- 1.5 "Code" shall mean the Uniform Commercial Code as currently enacted in the state where the Property is located;
- 1.6 "Completion Date" shall mean one year from the date of final plat approval by the City of Gainesville for all Public Improvements, or the issuance of a Certificate of Occupancy for any single family residence, as the context so requires.
- 1.7 "Construction Budget" shall mean the estimated cost of the construction of the Improvements in accordance with the Plans and Specifications as approved by Lender;
- 1.8 "Contractor" shall mean the general contractor hired by Borrower to complete construction of the Improvements;
- 1.9 "Guarantor" shall mean any accommodation maker, guarantor or other party liable for the payment of Borrower's obligations under the Loan;
- 1.10 "Improvements" shall mean the proposed structure(s) to be placed or constructed upon or within the Property by Borrower, the cost of which shall be funded in whole or in part by periodic disbursements of the proceeds of the Loan, which proposed structure(s) is (are) more fully described in Schedule C hereto;
 - 1.10.1 "Public Improvements" shall mean all Improvements specifically for the public and common areas in the Grand Oaks at Tower Phase I subdivision approved design plat, and improvements required by Sections 30-3.38 and 30-6.6 of the City of Gainesville Land Development Code, the Public Works Design Manual, and all other applicable local, state, and federal regulations as referenced in the Surety Agreement for Construction of Public Improvements, dated _____.
- 1.11 "Lender" shall mean: **Renasant Bank, 4373 W. Newberry Road, Gainesville, FL 32607.**

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1.12 "Loan" shall mean the construction loan made by Lender to Borrower in the principal amount described above;

1.13 "Loan Documents" shall collectively mean the Promissory Note, Security Instrument (as defined herein), Security Agreement, consent of contractor, consent of Engineer, the construction schedule, this Agreement and any other instrument executed in connection with or evidencing the Loan;

1.14 "Plans and Specifications" shall mean the plans and specification approved by Lender pertaining to the construction of Improvements upon the Property and approved by the City pertaining to the construction of Public Improvements;

1.15 "Premises" shall mean the Property, together with the Improvements, fixtures and personal property located upon or within the property;

1.16 "Promissory Note" shall mean that certain Promissory Note in the aggregate principal amount of the Loan payable to the order of the Lender, executed by Borrower, evidencing the Loan;

1.17 "Property" shall mean the real property located at the location described above and legally described in Schedule A, attached hereto and incorporated herein by reference;

1.18 "Security Agreement" shall mean that certain security agreement executed by Borrower that creates a first lien on all chattels, furniture, furnishings, fixtures, machinery, equipment, appliances and other personal property owned by Borrower and used or to be used in the operation of the Premises; and

1.19 "Security Instrument" shall mean the mortgage or deed of trust executed by Borrower/ Grantor/ Mortgagor which evidences a first lien on the Property and secures the Promissory Note.

2. AMOUNTS AND TERMS OF LOAN.

2.1 Lender shall make the Loan to Borrower to construct the Improvements on the terms and conditions set forth herein. Borrower, and any co-makers, agree to execute and deliver the Promissory Note in the principal amount of the Loan. Advances under the Loan shall be made to Borrower or others from time to time pursuant to the terms and conditions described in the Promissory Note and this Agreement. Interest shall be imposed on all sums advanced from the date of each advance at the rate of interest described in the Promissory Note. Principal, interest and any other sums owing under the Loan Documents shall be repaid to Lender in the manner described therein.

2.2 Borrower agrees to pay to Lender a loan fee in the amount of \$12,1100.00 on the date of closing of the Loan.

3. COLLATERAL.

3.1 To secure the performance of Borrower's obligations to Lender under the Loan, Borrower agrees promptly to execute and deliver to Lender the Security Instrument, Security Agreements, consent of contractor, consent of Engineer, financing statements, and other appropriate documents deemed necessary or desirable by Lender to provide Lender with the first lien and security interest on the Premises. The Security Instrument, Security Agreements, financing statements, and other documents, shall be in a form and content satisfactory to Lender in its sole discretion.

3.2 Borrower agrees to execute and deliver to Lender an Assignment of Leases in form and content satisfactory to Lender in its sole discretion.

3.3 As additional collateral for the Loan, Borrower hereby grants to Lender a security interest and hereby assigns all of Borrower's right, title and interest in all monies, instruments and deposit accounts of Borrower maintained with Lender.

3.4 In the event partial releases are to be executed by Lender from time to time, Lender shall execute and deliver such partial releases upon the conditions and under the terms described in the Security Instrument. However, no partial release will be executed by Lender if it would otherwise interfere

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with the development of the Property which remains encumbered by the Security Instrument or if Borrower is in default of any obligation under this Agreement or the Loan Documents.

3.5 Borrower shall deposit an equity contribution in the amount of Two Million and 00/100 Dollars (\$2,000,000.00) into an account held by Lender (hereafter, "Equity Account") and execute and deliver to Lender a collateral assignment of said account granting Lender a first-lien security interest for additional collateral to the Loan.

4. DISBURSEMENT PROCEDURES.

4.1 Disbursement of the Loan shall be made by Lender for construction and development costs in accordance with the approved Construction Budget (covering both hard and soft costs) and the approved schedule of estimated monthly disbursements.

4.1.1 Initial disbursements for construction and development costs towards the Improvements shall be made from the existing balance of the Borrower's Equity Account until the balance is zero (\$0.00), at which time the proceeds of the Loan shall be used for further disbursements until the Improvements are completed.

4.2 No extra work or changes in the Plans and Specifications or the Construction Budget shall be ordered or authorized by Borrower without the written consent of Lender. If Lender approves of any extra work or changes, Lender shall have the right to withhold any pending or future disbursement and shall require that Borrower pay the cost of these items from its own funds and not from the Loan proceeds.

4.3 At the time of any disbursement request, Borrower shall complete, execute and deliver to Lender a request for an advance on Lender's standard form draw request, attached hereto as Exhibit 1, or in the standard A1A draw request as directed by Lender. Each request for an advance must be accompanied by evidence in form and content satisfactory to Lender, which may include, but may not necessarily be limited to, invoices and statements, certificates, affidavits and other declarations as Lender may deem necessary of Borrower, Engineer or Contractor, and City, all of which shall show:

4.3.1 The value of the portion of the Improvements completed at that time;

4.3.2 That all outstanding claims for labor, services and materials through the previous draw request have been paid;

4.3.3 That there are no liens outstanding against the Premises except the lien belonging to Lender and inchoate liens for property taxes not yet due; and

4.3.4 That copies of all bills or statements for expenses for which the advance is requested are attached to such request for advance.

4.4 Subject to Paragraph 4.5 below, all disbursements shall be made directly to the Borrower. All Loan funds shall be considered to be advanced to and received by Borrower, and interest on such funds shall be payable by Borrower from and after, their deposit in any disbursement account or direct advance by Lender to the Borrower or charge against Loan funds as provided in Paragraph 4.5 below.

4.5 Notwithstanding the provisions of Paragraph 4.4 above, Lender may elect, without further notice to or authorization by Borrower, to use the Loan funds to pay, as and when due, any Loan fees owing to Lender, accrued, unpaid interest on the Loan, amounts secured by prior liens on the Property, legal fees and expenses of Lender's attorneys which are payable by Borrower, and such other sums as may be owing from time to time by Borrower to Lender with respect to the Loan. On or before each interest payment date, Lender shall invoice Borrower for the amount of the required interest payment. Borrower shall promptly make such payments to Lender as and when due. Notwithstanding any of the provisions of this Paragraph, Lender's agreement to make such advances for interest or loan fees shall be subject to compliance with the conditions precedent set forth in Paragraph 4.9 below.

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4.6 If Lender at any time determines in good faith that the amount of the undisbursed Loan proceeds shall not be sufficient to pay fully for all costs required to complete the Improvements in accordance with the Plans and Specifications as well as all financing and development costs to be incurred by the Borrower, whether such deficiency is attributable to changes in the work or construction or in the Plans and Specifications or to any cause, Lender may make written demand on Borrower to deposit with Lender funds equal to the amount of the projected shortage. Borrower shall deposit the required funds with Lender within ten days after the date of Lender's written demand. No further disbursements need to be made by Lender until those funds are deposited by Borrower with Lender. Whenever Lender has any such funds on deposit, all disbursements shall be made by Lender first from those funds until they are exhausted.

4.7 At no time and in no event shall Lender be obligated to disburse funds:

4.7.1 In excess of the amount recommended by Lender's architectural or engineering representative, who, at the option of Lender, shall make periodic inspections of the Premises at Borrower's expense;

4.7.2 If any event of default under this Agreement, the Security Instrument, or any other Loan Documents has occurred and has not been cured;

4.7.3 If the Improvements have been damaged by fire or other casualty and Lender has not received insurance proceeds sufficient in the sole judgment of Lender to effect the restoration of the Improvements in accordance with Plans and Specifications and to permit the completion of the Improvements on or before the Completion Date described in this Agreement;

4.7.4 For stored materials until they are actually incorporated into the improvements, except on such conditions and such occasions as may be approved by Lender in its sole discretion;

4.7.5 If Lender believes in good faith that the priority of Lender's lien may be adversely affected; or

4.7.6 If the Lender concludes that the construction of the Improvements has fallen behind any construction schedule approved by Lender or the cost of completing construction of the Improvements at any time exceeds the amount remaining to be drawn under the Loan by a factor of more than five percent (5.0%) or \$5,000.00, whichever is less.

4.8 Lender shall not be required to make the first disbursement of the Loan until Borrower has fulfilled to Lender's satisfaction all conditions of Lender's written loan commitment to Borrower and all of Lender's customary and reasonable loan closing and post-loan closing conditions for construction loans have been met, which include, but are not limited to; the following:

4.8.1 Lender has received the executed Loan Documents (including without limitation the Promissory Note and Security Instrument), and the Security Instrument, Security Agreement, Assignment of Leases and financing statements have been duly recorded or filed, as applicable;

4.8.2 After recordation of the Security Instrument, a title insurance company acceptable to Lender must have issued, at the expense of Borrower, an ALTA (or equivalent) Lender's extended coverage policy of title insurance in an amount and form satisfactory to Lender subject only to exceptions approved by Lender in writing, together with any endorsements required by Lender;

4.8.3 Lender's security interest in all personal property and fixtures upon the Premises as described in the Security Agreement must have been duly perfected and has a lien priority in all respects satisfactory to Lender;

4.8.4 If Lender so requests, an environmental questionnaire or assessment has been delivered to Lender and Borrower agrees to indemnify Lender for any violation of any environmental laws which concern the Premises;

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4.8.5 The Plans and Specification must have been approved by Lender and any other persons or agencies whose prior approval is required by law or any covenants, conditions or restrictions applicable to the Property, and all insurance policies, executed general contracts and performance and payment bonds required by Lender must be approved by Lender and be in full force and effect;

4.8.6 Borrower must have satisfied all conditions described in Lender's commitment letter to Borrower pertaining to the Loan;

4.8.7 Lender's loan fee must have been paid or be payable out of the initial disbursement upon recordation of the Security Instrument;

4.8.8 Lender shall have received executed copies of all of Borrower's agreements with the Contractor and the Engineer for the construction of the Improvements and approved same;

4.8.9 If Borrower or any accommodation maker, guarantor, or other party liable for the payment of Borrower's obligations under the Loan (collectively "Guarantors") is a partnership, corporation, limited liability company or non-profit association, such parties must have delivered to Lender one or more opinions of counsel in a form and context acceptable to Lender stating among other things that such party is duly organized, validly existing and is in good standing in the jurisdiction of its incorporation or organization and in each jurisdiction where its failure to so qualify would have a material adverse effect on its business, operations or its ability to carry out its obligations under the Loan Documents, and has duly authorized by all requisite corporate, member/manager or partnership action the execution, delivery and performance of the Loan Documents;

4.8.10 If Borrower or any Guarantor is a partnership, corporation, limited liability company or non-profit association, such parties must have delivered to Lender such certified copies of directors' and stockholders' resolutions, partnership, operating or joint venture agreements, etc., as may be necessary, in the Lender's judgment, to authorize and support the execution and delivery of all documents contemplated by the Loan;

4.8.11 Borrower has satisfied Lender and the title insurance company issuing the policy required under Paragraph 4.8.2 that no work has been commenced prior to the recordation of the Security Instrument; and

4.8.12 Lender is not required to disburse funds under the conditions described in Paragraph 4.7 of this Agreement.

4.9 Lender shall not be required to make any subsequent disbursement under the Loan if:

4.9.1 Lender does not receive, at Borrower's expense, a title endorsement, satisfactory to Lender prior to any disbursement stating that such disbursement shall have priority over mechanic's or materialmen's liens or any other intervening or subordinate liens on the Property; and

4.9.2 Any event or condition described in Paragraph 4.7 of this Agreement exists.

4.10 Lender shall not be obligated to make its final disbursement of Loan proceeds for the improvements hereto unless and until the following conditions are satisfied:

4.10.1 The Lender determines that the Improvements have been substantially completed by the Completion Date in accordance with the Plans and Specifications. Completion must be verified to the reasonable satisfaction of Lender;

4.10.2 Borrower has obtained for Lender at Borrower's expense any title insurance endorsements to the title policy which insures the lien-free completion of the Improvements and any other endorsements required by Lender;

4.10.3 Borrower has obtained and delivered to Lender for its approval copies of all temporary or permanent certificates of occupancy for any portion of the Improvements and Lender has approved such certificates; and