

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
\_\_-CVS-\_\_

UNITED COMMUNITY BANK, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NEST HOMES, LLC, ZENO BRENT )  
 HAWKINS, and ERIC MATTHEW )  
 WOOD, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**VERIFIED COMPLAINT**

Plaintiff United Community Bank, by and through its undersigned counsel, complain of Defendants Nest Homes, LLC, Zeno Brent Hawkins, and Eric Matthew Wood, and allege as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff United Community Bank (“Lender” or “Plaintiff”) is a South Carolina state-charted bank with a principal place of business in Marietta, Georgia.
2. Defendant Nest Homes, LLC (“Nest Homes” or “Borrower”) is a North Carolina limited liability company with its principal place of business in Mooresville, North Carolina.
3. Defendant Zeno Brent Hawkins (“Hawkins”) is an individual resident of the State of North Carolina, residing in Mecklenburg County, North Carolina.
4. Defendant Eric Matthew Wood (“Wood”) is an individual resident of the State of the North Carolina, residing in Iredell County, North Carolina.
5. Collectively Hawkins and Wood shall be referred to herein as “Guarantors.”
6. The Court has jurisdiction over Defendants pursuant to, *inter alia*, N.C. Gen. Stat. § 1-75.4 because Borrower maintains its place of business in the State of North Carolina and Guarantors are residents of the State of North Carolina.

7. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-82.

### **FACTUAL BACKGROUND**

8. On or about December 14, 2021, Borrower entered into that certain Master Residential Construction Line Agreement dated December 14, 2021 (as amended by that certain Master Residential Construction Line Loan Modification Agreement dated October 6, 2022, as further amended by that certain Master Residential Construction Line Loan Modification Agreement dated March 21, 2023, and as may be further amended, modified, renewed, extended, restated, or supplemented) (the “Loan Agreement”). A true and accurate copy of the Loan Agreement is attached hereto as Exhibit A.

9. Pursuant to the Loan Agreement, Borrower obtained a loan from Lender in the original principal amount of up to \$12,000,000.00 (the “Loan”) for the acquisition and development of certain real property and the construction of certain improvements thereon.

10. The Loan is evidenced by that certain Promissory Note dated December 14, 2021 (as amended by that certain Amended and Restated Promissory Note dated October 6, 2022) executed by Borrower in favor of Lender (the “Note”). A true and accurate copy of the Note is attached hereto as Exhibit B.

11. In connection with the Loan, Guarantors individually executed certain Guaranty Agreements dated December 14, 2021 (separately a “Guaranty” and collectively, the “Guaranties”) in which each Guarantor unconditionally and absolutely guaranteed the full and prompt payment and performance of all Borrower’s obligations under the Note, the Loan Agreement, and the other documents executed in connection therewith. A true and accurate copy of the Guaranties is attached hereto as Exhibit C.

12. The Loan Agreement, the Note, the Guaranties, and all other documents executed in connection therewith are collectively referred to as the “Loan Documents.”

13. Lender is the owner and holder of the Note.

### **The Default**

14. The Loan Documents are in default for, among other things, Borrower’s failure to make payments as and when due under the Note.

15. On or about May 29, 2024, Lender, through counsel, delivered written notice to Borrower and Guarantors (the “Notice of Default”) notifying them of certain events of default under the Loan Documents and demanding that Borrower or Guarantors immediately cure such default by paying Lender all amounts due and owing under the Loan Documents. A true and accurate copy of the Notice of Default is attached hereto as Exhibit D.

16. Borrower and Guarantors have failed to make payment as demanded and within the time period provided in the Loan Documents.

17. The Loan is not the subject of a bona fide dispute.

18. Borrower has failed and refused to pay the outstanding balance due under the Note and remains in default.

19. Guarantors have failed and refused to pay the outstanding balance due under the Note and Guaranties and remain in default.

20. As of July 23, 2024, the outstanding balance due under the Note, exclusive of attorneys’ fees and costs, was \$4,178,828.88, which consists of \$4,033,182.89 in principal, \$140,399.70 in accrued and unpaid interest, and \$5,246.29 in late fees and other charges. Interest continues to accrue at no less than \$1,064.32 per day.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Promissory Note against Borrower)**

21. Plaintiff realleges the allegations in the foregoing paragraphs as if set forth fully herein.

22. The Note is a valid and enforceable contract between Borrower and Lender.

23. In the Note, Borrower promised to pay Lender all amounts due and owing pursuant to the terms of the Loan Agreement and Note.

24. Borrower has defaulted on and breached its payment obligations under the Note, including by failing to pay the entire outstanding principal amount after acceleration.

25. Pursuant to the terms and conditions of the Note, Lender is entitled to recover from Borrower the entire outstanding balance due under the Note, including principal and accrued interest.

26. As a direct and proximate result of Borrower's default and material breach, Plaintiff is entitled to recover from Borrower the sum certain amount of \$4,178,828.88 as of July 23, 2024, which consists of \$4,033,182.89 in principal, \$140,399.70 in accrued and unpaid interest, and \$5,246.29 in late fees and other charges, plus additional interest from July 23, 2024 through the date of judgment at the rate of \$1,064.32 per day.

27. Under the Note, Lender is also entitled to recover from Borrower the costs and expenses incurred in enforcing the Note, including the attorneys' fees incurred in this action.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Guaranty against Hawkins)**

28. Plaintiffs reallege the allegations in the foregoing paragraphs as if set forth fully herein.

29. Lender and Hawkins entered into the Guaranty, a binding contractual agreement for valuable consideration.

30. Pursuant the Guaranty, Hawkins unconditional and irrevocably guaranteed to Lender, among other things, the punctual payment and performance by Borrower of all obligations under the Loan Documents, including the payment, when due, of all outstanding amounts due under the Note.

31. As set forth above, Borrower breached the Note by failing to make payments as and when due.

32. Hawkins breached the Guaranty by failing to make payments as and when due.

33. Lender has been damaged by Hawkins' breach of the Guaranty.

34. As a direct and proximate result of Hawkins' breach of the Guaranty, Plaintiff is entitled to recover from Hawkins the sum certain amount of \$4,178,828.88 as of July 23, 2024, which consists of \$4,033,182.89 in principal, \$140,399.70 in accrued and unpaid interest, and \$5,246.29 in late fees and other charges, plus additional interest from July 23, 2024 through the date of judgment at the rate of \$1,064.32 per day.

35. Under the Guaranty, Lender is also entitled to recover from Hawkins the costs and expenses incurred in enforcing the Note and Guaranty, including the attorneys' fees incurred in this action.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Guaranty against Wood)**

36. Plaintiffs reallege the allegations in the foregoing paragraphs as if set forth fully herein.

37. Lender and Wood entered into the Guaranty, a binding contractual agreement for valuable consideration.

38. Pursuant the Guaranty, Wood unconditional and irrevocably guaranteed to Lender, among other things, the punctual payment and performance by Borrower of all obligations under

the Loan Documents, including the payment, when due, of all outstanding amounts due under the Note.

39. As set forth above, Borrower breached the Note by failing to make payments as and when due.

40. Wood breached the Guaranty by failing to make payments as and when due.

41. Lender has been damaged by Wood's breach of the Guaranty.

42. As a direct and proximate result of Wood's breach of the Guaranty, Plaintiff is entitled to recover from Wood the sum certain amount of \$4,178,828.88 as of July 23, 2024, which consists of \$4,033,182.89 in principal, \$140,399.70 in accrued and unpaid interest, and \$5,246.29 in late fees and other charges, plus additional interest from July 23, 2024 through the date of judgment at the rate of \$1,064.32 per day.

43. Under the Guaranty, Lender is also entitled to recover from Wood the costs and expenses incurred in enforcing the Note and Guaranty, including the attorneys' fees incurred in this action.

**WHEREFORE**, Plaintiff requests that:

44. Judgment be entered against Borrower and Guarantors an amount no less than (i) \$4,178,828.88, which represents the total outstanding balance of principal, interest, late fees and other costs due under the Note and Guaranties as of July 23, 2024; plus (ii) interest at the rate of \$1,064.32 per day from July 23, 2024 through the date of judgment; plus (iii) the costs and expenses, including attorneys' fees, incurred in this action; plus (iv) post-judgment interest at the legal rate from the date of judgment until it is satisfied in full; and

45. The Court award Plaintiffs such other and further relief as the Court deems just, reasonable, and proper.

This the 8th day of August, 2024.

/s/ Benjamin E. Shook

Benjamin E. Shook

NC Bar No. 44793

MOORE & VAN ALLEN, PLLC

100 North Tryon Street, Suite 4700

Charlotte, NC 28202-4003

(704) 331-1000

christomlinson@mvalaw.com

ATTORNEYS FOR PLAINTIFF

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

**VERIFICATION**

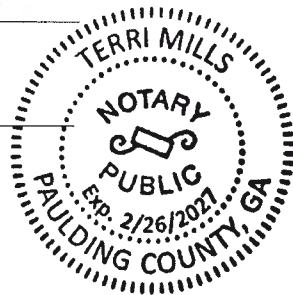
The undersigned, being first duly sworn, deposes and says that he is the President, Builder Finance of United Community Bank, and, as such, he is authorized to make this oath; that he has read the foregoing Verified Complaint; and to his personal knowledge the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those she believes them to be true.

  
\_\_\_\_\_  
Gary Guthrie

Sworn to and subscribed before  
me this 7 day of August, 2024.

  
\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_





# EXHIBIT A

## MASTER RESIDENTIAL CONSTRUCTION LINE AGREEMENT

THIS MASTER RESIDENTIAL CONSTRUCTION LINE AGREEMENT (the "*Credit Agreement*" or the "*Agreement*") dated as of December 14, 2021 (the "*Effective Date*"), is made by NEST HOMES, LLC, a North Carolina limited liability company ("*Borrower*"), with an address of 236 Raceway Drive, Suite 7, Mooresville, NC 28117-6518; and

UNITED COMMUNITY BANK, a South Carolina state-chartered bank ("*Lender*" or "*Bank*"); with an address of 1001 Polk Street, Marietta, GA 30064.

### RECITALS

- A. Lender has approved a loan facility (the "*Loan*" or the "*Facility*") for Borrower under which Borrower may request funding for the purchase of Finished Lots, if applicable, and the construction of Units located in one or more Approved Subdivisions in a maximum aggregate principal amount committed and outstanding of \$10,000,000.00 (the "*Maximum Facility Amount*").
- B. The Facility is further evidenced by a Master Residential Construction Line Promissory Note of even date herewith (the "*Master Note*" or "*Note*") made by Borrower in the Maximum Facility Amount, for funding Unit Allocations for Finished Lots, if applicable, and for one or more Units, the availability of which for funding of new construction starts is subject to the **Residential Line Expiration Date** identified in SCHEDULE 1 and certain other restrictions as set forth on SCHEDULE 1.
- C. All capitalized terms are defined herein or in the SCHEDULES attached.

NOW, THEREFORE, in consideration of \$100 in hand paid, the mutual promises made herein, in order to induce Bank to enter into this Credit Agreement, and to consider extending credit requested by Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **CERTAIN DEFINITIONS.** As used herein, certain terms are defined in Schedule I attached hereto, or in other parts of this Credit Agreement including the following terms, which shall have the meanings set forth below:

1.1. "*Affiliate*" shall mean: (a) any Person owned, in whole or in part, directly or indirectly through one or more intermediaries, by the specified Person; (b) any Person who owns, directly or indirectly, any of the outstanding ownership interest in the specified Person; (c) any Person under common ownership, in whole or in part, directly or indirectly, with the specified Person; (d) any Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person.

1.2. "*Appraisal*" means (a) an appraisal, from an independent appraiser acceptable to Lender, that complies with all applicable state and federal laws and regulations and with the Uniform Standards of Professional Appraisal Practice, *provided, however*, that the value shown in any such Appraisal shall be subject to review and potential adjustment by Lender's in-house appraisal review department, in its sole discretion; or (b) at Lender's sole discretion, an in-house evaluation prepared by Lender.

1.3. "*Approved Subdivision*" means one or more subdivisions approved by Lender in its sole discretion for funding of Finished Lots, if applicable, and residential construction, under this Facility. Borrower shall provide all information requested by Lender for each potential Approved Subdivision, including without limitation: appraisals, surveys, recorded plats, plans and specifications, copies of all applicable permits and governmental approvals obtained for the project, insurance policies in form and amount acceptable to Lender and issued by insurance companies acceptable to Lender, environmental audits, project budgets and all other documents and information that Lender may require and otherwise satisfy the requirements for approval of a subdivision set forth in Section 4 below or on SCHEDULE 1.

1.4. **“Authorized Person”** means a person authorized to execute and deliver the Loan Documents in connection with this Facility, as set forth in a borrowing resolution or otherwise designated by Borrower in writing from time to time in a form acceptable to Lender.

1.5. **“Borrower”** means, individually and collectively if more than one, those entities identified above and on SCHEDULE 1 attached hereto.

1.6. **“Borrowing Formula”** means the percentages set forth in SCHEDULE 1 hereto, which represent the maximum rates at which Draws will be made hereunder pursuant to the terms of the Loan.

1.7. **“Budget”** means a budget or series of budgets that cover all costs for each Unit scheduled to be constructed on the Property from time to time; that identify the source and use of all funds necessary to pay costs; and that have been reviewed and approved, in its sole discretion, by Lender or any third-party consultant retained by Lender to review such Budget prior to any Draws hereunder for construction of the Units covered thereby.

1.8. **“Construction Documents”** means the general construction contract between Borrower and any Lender-approved general contractor for the rendering of all services and the furnishing of all materials for the construction at the Property, together with any other or additional construction contracts entered into in connection with the construction of the improvements on the Property, and all subcontracts, Plans and Specifications and related documents, in all cases satisfactory in form and substance to Lender.

1.9. **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a specified Person, whether through ownership of voting stock, by contract or otherwise.

1.10. **“Draw”** means a disbursement of funds hereunder in accordance with Section 5 below and the other terms of the Loan Documents.

1.11. **“Draw Schedule”** means a schedule of various stages of construction, together with the respective amounts or percentages of such stages of construction, in the form set forth in SCHEDULE 3 hereto, or in such other form as may be acceptable to the Bank.

1.12. **“Draw Affidavit”** means, if the Bank requests, Borrower’s request for a Draw, in the form required by Lender, which shall be provided by Borrower to Lender in connection with each request for a Draw, that summarizes the status of construction and sets forth such additional information as Lender may require related to each Unit. The Draw Affidavit, at Bank’s request, shall be certified as correct and signed by an Authorized Person.

1.13. **“Equity Funds”** means an amount to be contributed from Borrower’s own funds equal to the difference between the Budget and the amounts available for borrowing under the Facility.

1.14. **“Event of Default”** shall have the meaning given in Section 11.1 of this Credit Agreement.

1.15. **“Financial Covenant Party”** and, collectively, **“Financial Covenant Parties”** means each of the individuals and entities whose financial performance determines Borrower’s compliance with one or more of the financial covenants set forth on SCHEDULE 2 attached hereto, as such parties are identified in that Schedule.

1.16. **“Finished Lot”** means a lot that has been or is being acquired for purposes of constructing a Unit, but on which Borrower does not intend to proceed with construction immediately and with respect to which: (a) water, sewer, electrical power, telephone, natural gas and all other utilities required by Lender in its sole discretion are available for connection at the property line within public rights-of-way or duly recorded easements; and (b) all governmental permits and approvals required for subdivision of the lot and construction and occupation of a 1-to-4 family residential dwelling thereon, except a building permit and certificate of occupancy, have been duly and irrevocably issued and are in effect. In its sole discretion, Lender may deem a lot that does not have water and/or sewer available for connection at the Property line to be a Finished Lot if Lender is satisfied that the lot may be served adequately by well water and/or a septic system, as applicable. Without limitation of the foregoing Lender may require

a percolation test and/or approval by the applicable local government, in either case establishing that the lot may support a septic system for the number of bedrooms contemplated on the lot.

1.17. **“GAAP”** means Generally Accepted Accounting Principles, consistently applied.

1.18. **“Global Spec Ratio”** means the total number of Global Spec Units and Global Model Units under construction or completed at the time in question, divided by the total number of Global Units at the time in question.

1.19. **“Global Unit”** means a separately conveyable lot and 1-to-4 family residential dwelling thereon that is under construction or completed, and that is owned by any Borrower, in any location, regardless of whether in an Approved Subdivision or whether financed by Lender, including any of the following:

(i) **“Global Model Unit”** means a Global Unit that is used or to be used as a model for marketing purposes.

(ii) **“Global Spec Unit”** means a Global Unit that is not pre-sold (or as to which a Qualified Sales Contract has lapsed or terminated) and that is available for sale on the open market.

1.20. **“Guarantor”** and/or **“Guarantors”** shall have the meaning given in Section 3.3 and SCHEDULE 1 of this Credit Agreement.

1.21. **“Guaranty”** shall have the meaning given in Section 3.3 and SCHEDULE 1 of this Credit Agreement.

1.22. **“Hard Cost”** shall mean total cost less marketing and advertising expense, model home expense, sales commission, permanent loan closing costs, home-buyer warranty, superintendent bonus and lot true-up.

1.23. **“Hedge Agreement”** means any agreement between Borrower and Bank or any Affiliate of Bank (or Bank and any other entities related to Borrower) now existing or hereafter entered into, which provides for an interest rate, credit, commodity or equity swap, cap, floor, collar, spot or forward foreign exchange transaction, currency swap, cross-currency rate swap, currency option or any similar transaction or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging Borrower’s exposure to fluctuations in interest or exchange rates, loan, credit, exchange, security or currency valuations or commodity prices.

1.24. **“Liabilities”** means any liabilities of the specified Financial Covenant Party(ies), determined in accordance with GAAP, including without limitation: (a) all reserves for deferred taxes and all deferred sums entered in the liabilities section of a balance sheet; and (b) all obligations as lessee under capital leases or off-balance sheet synthetic leases.

1.25. **“Loan Documents”** means the Note, the Mortgage Instrument, the Guaranty, this Credit Agreement and all other agreements and documents evidencing, securing or otherwise relating to this Facility or any Draw under this Facility, all of which shall be in the form required by Lender.

1.26. **“Master Note”** shall have the meaning given in the Recitals of this Credit Agreement.

1.27. **“Material Adverse Effect”** means any action, suit, proceeding or occurrence that has a material adverse effect on the business, operations, management, profitability or financial condition of the Person impacted, or that has a material adverse effect on the value of the Property or any other collateral that secures the Facility or any Draw.

1.28. **“Maximum Facility Amount”** shall have the meaning given in the Recitals of this Credit Agreement.

1.29. **“Maximum Holding Period”** means, for each Unit, the time period specified in SCHEDULE 1 that advances made by Lender in connection with the purchase of the lot and the construction of a particular type of Unit may remain outstanding. The Maximum Holding Period for such Unit shall be calculated from the date of the applicable New Unit Financing Confirmation.

1.30. **“Mortgage Instrument”** shall have the meaning given in Schedule 1, Part A. of this Credit Agreement.

1.31. **“Net Worth”** means, for the specified Financial Covenant Party(ies), total shareholders' or members' (as applicable) equity.

1.32. **“New Unit Financing Confirmation”** means a written statement sent by Lender to Borrower that confirms the approval of a Unit Allocation and the terms thereof, including without limitation, the principal amount available under the Unit Allocation, the Unit Maturity Date, the amount of any required Equity Funds and such other information that Lender deems appropriate.

1.33. **“Obligations”** shall mean all indebtedness of Borrower for borrowed money and all other obligations of Borrower to Bank for payment or performance, however evidenced, pursuant to the Note, the Loan Documents or otherwise, now or later existing, and any indebtedness arising under any Rate Obligations or Hedge Agreement.

1.34. **“Par”** means that portion of the Unit Allocation for a particular Unit actually disbursed to Borrower by Lender that remains outstanding at the time such Unit is to be released from the lien of the Mortgage Instrument.

1.35. **“Person”** means an individual, a trust, an estate, a corporation, a partnership, a limited partnership, a limited liability company, an unincorporated association, any governmental or quasi-governmental body or any other legal entity.

1.36. **“Plans and Specifications”** means a full set of engineering and architectural plans and specifications for the construction of the Project, all as reviewed and approved by Lender.

1.37. **“Project”** means, from time to time, all residential construction work scheduled to be completed with proceeds of the Facility.

1.38. **“Property”** shall have the meaning given in SCHEDULE 1, Part A of this Credit Agreement.

1.39. **“Purchase Price”** means the cash purchase price of a Unit payable to Borrower as seller, as described in a Qualified Sales Contract.

1.40. **“Qualified Sales Contract”** means a standard purchase agreement pursuant to which Borrower, as seller, agrees to sell a Pre-Sold Unit to a buyer, with qualifications and on terms, including contingencies, approved by Lender in its sole discretion.

1.41. **“Rate Obligations”** means any and all indebtedness, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), relating to any Hedge Agreements given in connection with the Note or Obligations.

1.42. **“Related Loan”** means any indebtedness, now or later arising, and however evidenced (whether a Master Note or any other type of indebtedness) of Borrower and/or any of its Affiliates to Lender and/or any of its Affiliates.

1.43. **“Residential Line Expiration Date”** shall have the meaning given in SCHEDULE 1, Part A of this Credit Agreement.

1.44. **“Senior Liabilities”** means all Liabilities of the specified Financial Covenant Party(ies) less all Subordinated Debt of the specified Financial Covenant Party(ies).

1.45. **“Subordinated Debt”** means, for the specified Financial Covenant Party(ies), all Liabilities that have been subordinated to indebtedness owed by Borrower to Lender by written agreement in form and substance acceptable to Lender.

1.46. **“Tangible Net Worth”** means, for the specified Financial Covenant Party(ies), total shareholders’ or members’ (as applicable) equity plus Subordinated Debt, less: (a) goodwill, contract rights and other intangibles, (b) claims of shareholders or members (as applicable) or Affiliates of the specified Financial Covenant Party(ies) against the specified Financial Covenant Party(ies), and (c) deferred assets, charges or expenses.

1.47. **“Total Tangible Assets”** means the total assets of the specified Financial Covenant Party(ies), determined in accordance with GAAP, excluding: (a) all intangible assets, including but not limited to goodwill, franchises, licenses, patents, trademarks, trade names, copyrights, service marks, brand names and organizational expenses; and (b) all indebtedness of any Affiliate of the specified Financial Covenant Party(ies) to the specified Financial Covenant Party(ies).

1.48. **“Unencumbered Liquidity”** means the sum of cash, cash equivalents and publicly traded and quoted marketable securities acceptable to Bank in its sole discretion held by the specified Financial Covenant Party(ies), free of liens or other encumbrances and immediately available with unimpaired value (which value shall be determined by reference to the quotes for such assets in the current edition of *The Wall Street Journal* or using such other valuation method to determine net value as may be acceptable to Lender in its sole discretion), but excluding IRA, Roth IRA, 401(k), other tax-qualified retirement accounts, annuities or trust accounts. The quality, type and nature of the financial assets used to compute Unencumbered Liquidity shall be acceptable to Lender in its sole discretion, shall not be subject to any alienability or transfer restrictions and shall be owned solely by the specified Financial Covenant Party(ies).

1.49. **“Unit”** means a separately conveyable lot or group of lots in an Approved Subdivision and the 1-to-4 family residential dwelling(s) that is(are) to be constructed or is(are) under construction or that was(were) completed thereon, if applicable, with proceeds of the Facility, including a Finished Lot or any of the following, as determined initially at the time Borrower requests a Unit Allocation for the construction of the particular Unit or as otherwise set forth herein:

(i) **“Model Unit”** means a Unit that is used or to be used as a model for purposes of marketing.

(ii) **“Pre-Sold Unit”** means a Unit with respect to which a “qualified purchaser” has entered into a Qualified Sales Contract (both determined in accordance with Lender’s customary underwriting criteria, including without limitation, mortgage approval, the pro forma purchase price and deposited amount and contingencies, if any, designated by Lender in its sole discretion), subject only to completion, final inspection and closing.

(iii) **“Spec Unit”** means a Unit that is not pre-sold (or as to which a Qualified Sales Contract has lapsed or terminated) and that is available for sale on the open market.

1.50. **“Unit Allocation”** means that portion of the principal amount of the Loan, whether disbursed and outstanding or undisbursed, allocated by Lender for Draws to pay costs associated with an individual Unit in accordance with the applicable Borrowing Formula.

**1.51. "Unit Maturity Date"** means the last day of the Maximum Holding Period, as defined in SCHEDULE 1 hereto, for each Unit Allocation, at which time the full principal balance funded for the Unit Allocation, together with all accrued interest and fees thereon, shall be due and payable in full.

**2. USE OF LOAN PROCEEDS.** The purpose of this Facility is to fund the acquisition of residential lots and the construction of Units located in one or more Approved Subdivisions, and Borrower shall not use Draws for any other purpose. Subject to the terms and conditions of this Agreement, upon Borrower's request and subject to Lender's approval in its sole discretion, Lender will review requests for funding under the Facility and may authorize funding under specific Unit Allocations. Borrower shall make requests for Draws of amounts available under approved Unit Allocations in accordance with Section 5 below, which shall be further subject to an outstanding amount not at any time to exceed the Maximum Facility Amount. Lender will maintain records reflecting the maximum amounts available under individual Unit Allocations, the unallocated portion of the Maximum Facility Amount, amounts disbursed, payments received, interest accrued and other matters related to the Facility and the Note, which shall be conclusive evidence of amounts owing thereunder absent manifest error.

**3. LOAN TERMS.**

**3.1. Interest and Payment Provisions.** The applicable interest rate, loan term and other payment provisions are set forth in the Note, as the Note may be amended.

**3.2. Loan Fees and Costs.** Borrower shall pay a nonrefundable Loan Fee (as defined in SCHEDULE 1) in the amount and in the manner specified in SCHEDULE 1. Except as otherwise set forth on SCHEDULE 1, Borrower shall also pay on demand all out-of-pocket costs of Lender related to the Loan, including without limitation: title insurance premiums, appraisal fees, recording costs, budget review fees, third-party architect/engineer fees, inspection fees, fees for budget reviews, if any, by third-party consultants, attorneys' fees and all costs and expenses identified in Section 12 below.

**3.3. Guaranty and Indemnity Agreements.** Borrower shall furnish to Lender, on Lender's forms and in the amounts required by Lender as set forth in SCHEDULE 1 hereto, guaranty agreements (collectively, the "*Guaranty*") executed and delivered by each of the persons and entities (if any) identified in such Schedule (each a "*Guarantor*" and, collectively, the "*Guarantors*") guaranteeing all obligations of Borrower to Lender, and such environmental, building laws or other indemnities from Borrower and Guarantors relating to the Property as Lender may reasonably require.

**4. CONDITIONS TO CLOSING AND ADVANCEMENT OF FUNDS.** Lender's obligation to close the Loan, to establish particular Unit Allocations or to allow any requested Draws hereunder shall be subject to the satisfaction, at Borrower's sole cost and expense, of each of the following conditions for the particular property in relation to which Borrower is requesting funds:

**4.1. Approved Subdivision.** If the affected property is not in an existing Approved Subdivision, Borrower may request that Lender approve the subdivision in which the property is located for construction under the Facility by submitting such documentation as Lender shall reasonably require, including without limitation the materials identified on SCHEDULE 1 hereto, at which time Lender shall have sole discretion to approve or reject such proposed subdivision for construction funding hereunder. In the event Lender approves the subdivision for construction funding hereunder in writing, Lender shall have sole discretion to establish the terms upon which such new subdivision is approved, including but not limited to the imposition of limitations on the number of Model Units and Spec Units.

**4.2. Recording of Mortgage Instrument.** The Mortgage Instrument and any other documents necessary to perfect Lender's security interest in the Property shall have been recorded in the appropriate jurisdiction and Borrower shall have paid all recording fees and removed all encumbrances necessary to perfect the Mortgage Instrument as a first lien on the property for which Unit Allocations are requested.

**4.3. Project Information.** Borrower shall provide all information requested by Lender, in form and content satisfactory to Lender, sufficient for Lender to determine if it will approve a new Unit Allocation, and to

allow it to timely review any future Draw requests for such Units, including without limitation: surveys, recorded plats, Plans and Specifications, copies of all applicable permits and governmental approvals obtained for the Unit, copies of all recorded declarations or covenants affecting the Unit, hazard and liability insurance, including builders risk (to be followed by permanent all hazard insurance on completion) and liability insurance policies in form and amount acceptable to Lender and issued by insurance companies acceptable to Lender, information on any environmental issues at the Project, the Unit, project Budgets, borrowing resolutions, evidence of corporate or other status; current contractor's licenses; lien waivers or subordinations; evidence of all required surety bonding and insurance coverages and all other documents and information that Lender may require.

**4.4. Borrower Equity.** Borrower shall, at Lender's request, have provided evidence acceptable to Lender of prepaid expenses, non-cash contributions or available funds to be contributed toward the purchase of the Property and the construction of individual Units thereon, which Equity Funds, when added to the aggregate amount of the Loan funds available for disbursement, will provide sufficient funds to complete construction on the Property in accordance with the Plans and Specifications.

**4.5. Title Policy.** Borrower shall have procured, before any Draw is made in relation to particular property in an Approved Subdivision initially securing the Facility, an ALTA extended coverage lender's policy of title insurance (or its equivalent) and/or, where title insurance is already in place as to specific property, modification or other applicable endorsements to all existing policies, in a form and issued by a title company satisfactory to Lender, for the Maximum Facility Amount or such portion thereof as Lender may require, insuring Lender's Mortgage Instrument as a first lien on all of the Property securing the Facility, subject only to such exceptions as may be approved in writing by Lender, and including such endorsements as Lender may require. Without limitation of the foregoing, if Borrower provides multiple title insurance policies insuring the lien of Lender's Mortgage Instrument on different portions of the Property, then unless otherwise agreed in writing by Lender each such title policy shall at all times provide an amount of coverage on the portion of the Property insured thereby no less than the Maximum Facility Amount, through ALTA 12 ("aggregation") endorsements or otherwise. *No work of any character is to be commenced or materials delivered before such title policy is furnished to Lender and Lender has advised Borrower that such policy has been received and is acceptable to Lender, except to the extent that any title policy or endorsement provided to Lender insures the first lien priority of Lender's Mortgage Instrument despite any such prior work and without exception for mechanics' or materialmen's liens.* If any material is delivered or work performed before Lender has received such policy and/or modification endorsement, Lender may, at its option, refuse to make any Draws hereunder other than to pay Lender's expenses incurred in connection with the Facility until Borrower has provided such policy or endorsement in a form acceptable to Lender. The intention of the parties hereto is that Lender's Mortgage Instrument is and shall continue to be a first lien security interest in the Property, prior to any labor or materialmen's liens against the Property.

**4.6. Plans/Permits.** Borrower shall have provided Lender a full set of Plans and Specifications for the Project together with evidence satisfactory to Lender that Borrower has obtained all permits and approvals necessary to allow Borrower to proceed with the construction of individual Units in accordance with the Plans and Specifications.

**4.7. Insurance.** Borrower shall have provided Lender evidence acceptable to Lender of the insurance required to be maintained under any of the Loan Documents, which insurance shall be in form and amount (but not less than the Unit Allocation amount for the construction of Units or the full insurable value of the improvements), and shall include hazard (builders risk and permanent upon completion of construction), liability insurance, flood insurance, and such other insurance as may be required by Lender, all of which shall be issued by companies satisfactory to Lender.

**4.8. Utilities.** Borrower shall have delivered to Lender evidence satisfactory to Lender that all utilities, including water, electric, gas and telephone and all storm and sanitary sewer drainage facilities are available at the Property for utilization by Borrower for the development and use of the Project, and that the respective lines and treatment or generating plants are of adequate size and capacity to serve the Project. Without limitation of the foregoing, with respect to any Units that will be served by well water and/or a septic system, Borrower shall have delivered to Lender, in all respects satisfactory to Lender, the following: (a) a diagram of the septic field and well location (as applicable) for the Unit; (b) all applicable permits for the septic field and well (as applicable) for the Unit; and (c) a detailed summary in the Budget of all well and/or septic costs (as applicable) for the Project.



**4.9. Fees and Expenses.** Borrower shall have paid all legal, appraisal and inspection fees; title insurance and survey costs; recording and filing fees; real estate commissions; hazard and liability insurance and property taxes on the Property; and any and all other charges or expenses incurred by Lender in connection with the Loan or the preparation of the Loan Documents. Borrower shall indemnify and hold Lender harmless against any and all claims for such fees, charges, commissions, taxes or other expenses of any kind in any way connected with the Loan.

**4.10. Authority Documents.**

**4.10.1. Organizational Documents.** As applicable, Borrower shall have provided Lender with a certified copy of each limited partnership agreement, limited partnership or limited liability company certificate, partnership agreement, charter documents, bylaws, shareholder agreements, articles of organization and operating agreement of Borrower, each Guarantor (when not an individual) and each general partner, member or shareholder of Borrower and each Guarantor (when not an individual), together with all amendments and modifications thereto and such other organizational documents as Lender may reasonably request, and a certified copy of each assumed name certificate of Borrower and any Guarantor doing business under an assumed name.

**4.10.2. Good Standing Certificates.** Borrower shall have provided Lender with good standing certificates, or their equivalent, issued by the Secretary of State or other appropriate offices within the state of organization of Borrower and each Guarantor (when not an individual) and evidence satisfactory to Lender of Borrower's and each such Guarantor's authorization to do business in the state if the state of Borrower's and each such Guarantor's organization is other than the state of the location of the Property.

**4.10.3. Resolutions and Consents.** Borrower shall have provided Lender with certified resolutions and/or consents authorizing Borrower and each Guarantor (when not an individual) to enter into the Loan Documents.

**4.11. Representations.** All representations and warranties contained in this Agreement or any of the other Loan Documents shall be true, correct and complete.

**4.12. Delivery of Loan Documents.** Borrower shall have executed and delivered to Lender all Loan Documents required by Lender and such other documentation as Lender may require to carry out the provisions and purposes of this Agreement and the Loan.

**4.13. Opinion Letter.** If requested by Lender in its sole discretion, Borrower shall have delivered to Lender an opinion of counsel satisfactory to Lender.

**4.14. Other Conditions.** Borrower shall have fulfilled each and every other condition to closing set forth in SCHEDULE I attached hereto, or of which Borrower was otherwise advised by Lender.

**5. CONSTRUCTION DRAWS.**

**5.1. Draw Procedures.** Borrower shall make periodic Draw requests at such frequency as Lender, in its sole discretion, may allow, which shall cover all amounts being requested hereunder, by providing Lender with all necessary Draw Affidavits (if required by Lender), accompanied by all information, authorizations and documents as Lender may request. Borrower shall also have executed and delivered to Lender either an amendment to the Mortgage Instrument or an additional Mortgage Instrument if the Draw is being requested under a new Unit Allocation relating to property in an existing or newly Approved Subdivision not previously securing the Facility. If Lender is satisfied, based on its own inspections and other reliable information, that the development of the Project is progressing satisfactorily and in conformance with all applicable Laws and other requirements, and that all other conditions to Draws set forth in this Agreement have been satisfied, including each of the conditions set forth in Section 4 above, Lender will disburse the requested Draw into an account of Borrower maintained with Lender for such purpose, unless Lender and Borrower have mutually agreed upon some other disbursement method. Lender shall not be required to fund any Draw unless, on the date such Draw is requested and to be made, Borrower has fulfilled the following requirements to the satisfaction of Lender: (i) Borrower shall have contributed such portion of the

Equity Funds as required by Lender; (ii) all representations and warranties contained herein or in any of the other applicable Loan Documents shall be true and correct; (iii) Borrower shall be in full compliance with all terms, conditions and covenants herein and or in any of the applicable Loan Documents; and (iv) any guaranties required by Lender shall be in effect.

**5.2. Unit Allocations.** The proceeds of the Loan, or so much thereof as may be necessary, shall be used exclusively for the purposes set forth in the Loan Documents, including the construction of Units in accordance with this Agreement. Borrower shall not be entitled to any Unit Allocations or related Draws hereunder for construction of individual Units until Borrower has obtained all permits and approvals necessary to allow it to proceed with the construction of such Units in accordance with the Plans and Specifications approved by Lender.

**5.2.1. Establishment of Unit Allocations.** Provided no default exists under the Loan Documents and there remains a sufficient unfunded, unallocated amount within the Facility, Borrower may request funds to proceed with construction of individual Units at the Property, including, where applicable, the purchase of individual Finished Lots. Upon receipt of all information required under the Loan Documents and Lender's review of the same to confirm compliance with the terms hereof, Lender shall make one or more Unit Allocations and provide Borrower with the associated New Unit Financing Confirmations to allocate the portion of the Loan Amount that will be available to pay costs associated with the purchase of the applicable property and the financing and construction of each such Unit under Lender's standard disbursement procedures or, where applicable, the costs associated with the purchase of individual Finished Lots. The Borrowing Formula percentages used to calculate the maximum available Unit Allocation for a particular type of Unit are set forth in SCHEDULE 1 hereto, with such percentages calculated in accordance with Lender's standard underwriting procedures, as such procedures may be revised from time to time.

**5.2.2. Limit on Unit Allocations.** The portion of the Loan for which a Unit Allocation has been made shall be available only for the Unit for which such allocation has been made, regardless of the amount of such Unit Allocation that has been or is subsequently advanced, and not for any other purpose.

**5.2.3. Repayment of Unit Allocations.** Borrower shall repay the aggregate disbursements under each Unit Allocation on the first to occur of (i) the closing of the sale of such Unit; or (ii) the Unit Maturity Date for the applicable Unit, as such period may be extended with Lender's written consent, which consent may be granted or withheld at Lender's sole discretion.

**5.3. Draw Amounts.** The allowed amount of each Draw shall be determined, at Lender's option: (i) by Lender's review of receipted invoices provided by Borrower and Lender's confirming physical inspection, (ii) on a percentage completion basis with reference to the Lender's Draw Schedule, as established by a physical inspection of the construction conducted by Lender or its agent, or (iii) by a combination of the foregoing methods. Draw inspections will be made by in-house Lender personnel or by a third-party architect/engineer, as required by Lender. Borrower shall pay inspection costs on demand. Date down endorsements to title insurance policies and/or lien waivers or releases may be required as a condition to making any Draw. Lender may also require the establishment or replenishment of any interest reserve account prior to making any Draw.

**5.4. Start Limitation.** Borrower shall not begin construction of any additional Units on the Property or be entitled to any new Unit Allocations hereunder on or after the Residential Line Expiration Date. Lender is under no obligation to extend the Residential Line Expiration Date.

**5.5. Application of Draws.** Lender shall have no obligation to ensure that proceeds of the Loan are properly applied to purposes of the Loan as set forth herein. Borrower shall have the sole obligation to ensure proper allocation of the Draws hereunder. Lender shall nevertheless have the right, but not the obligation, to disburse Loan proceeds directly to any unpaid supplier of labor, materials, equipment, services or supplies whose claim has or may become a lien against the Property, or to require that Draws be made in the form of dual-payee checks or other restricted form of transfer.

**5.6. Inspections.** Borrower will cooperate with Lender in arranging for inspections by representatives of Lender or any third-party consultant retained by Lender of the progress of the construction from time to time, including an examination of (i) the improvements, (ii) all materials to be used in the construction, (iii)

all Plans and Specifications that are or may be kept at the construction site, (iv) any contracts, bills of sale, statements, receipts or vouchers in connection with the Improvements, (v) all work done, labor performed, materials furnished in and about the Project, (vi) all books, contracts and records with respect to the Project, and (vii) any other Construction Documents. Borrower shall cooperate with Lender to enable Lender to perform its functions hereunder and will promptly comply with Lender's requirements and correct any deficiency regarding the construction of the Project or the progress thereof. Borrower shall pay a reasonable and customary inspection fee for each inspection conducted by Lender or any third-party consultant retained by Lender. The inspection fees shall be payable with the Draw for which the inspection is conducted.

**5.7. Set-Asides.** Lender may, at Borrower's request and in Lender's sole discretion, enter into agreements with municipalities and other governmental entities for the purpose of providing assurance that funds are available under the Facility to construct specific improvements for which Lender has agreed to provide financing. Such agreements shall be in form and content satisfactory to Lender. Lender shall establish a reserve against the Loan for any funds committed in such agreements for the purposes specified therein until Lender's obligations thereunder have been released and discharged. If any required set-aside will not terminate prior to the maturity (whether at the end of the loan term or by acceleration) or earlier payoff of the Loan, on or before such maturity or payoff date, Borrower shall deposit cash in an amount equal to the total of any such outstanding set-aside in a restricted account with Lender in Lender's name, for the benefit of Borrower (a "*Restricted Account*"). Lender will hold those funds as security for the outstanding set-aside until such set-aside commitment has been released and fully discharged. Should Borrower fail to establish any required Restricted Account from its own funds on or before the maturity or payoff date of the Loan, Lender may, in its sole discretion, advance the amounts necessary to fund such account and such advance shall be immediately due and owing, shall bear interest from the date of such advance until paid at the default rate under the Note, shall be deemed an advance by Lender to protect its security, separate and distinct from advances of proceeds of the Loan, and shall be evidenced and secured by the Loan Documents. Borrower hereby grants Lender a security interest in any Restricted Account established hereunder as security for such outstanding set-aside obligation. Lender will hold the funds in a Restricted Account as security for the outstanding set-aside until such set-aside commitment has been released and fully discharged. Notwithstanding the above, Lender may require that Borrower enter into a separate agreement with Lender establishing such terms for a specific set-aside as Lender, in the sole exercise of its discretion, may require.

## **6. MANNER OF CONSTRUCTION.**

**6.1. Conformance with Plans and Laws.** All work shall be performed and the individual Units shall be constructed in a good and workmanlike manner, free from all material defects in materials or workmanship. Construction and use of the Units shall conform to the Plans and Specifications and all federal, state and local laws, ordinances, regulations and rules relating to the construction and occupancy of the Units ("*Laws*"), including, without limitation, all building, zoning, planning, subdivision, fire, traffic, safety, health, disability, labor, discrimination, environmental, air quality, wetlands, shoreline and flood plain laws, ordinances, regulations and rules. The Laws shall also include all government and private covenants, conditions and restrictions applicable to the Units. Prior to any Draw hereunder, Lender may require Borrower to supply evidence satisfactory to Lender that it has complied with the Plans and Specifications and the requirements of all Laws.

**6.2. Right of Entry.** Lender or its agents shall at all times have the right to enter upon the Property during the period of construction. If the construction work is not satisfactory to Lender, Lender shall have the right to stop such work and order its replacement, whether or not the unsatisfactory work has theretofore been incorporated in the improvements.

**6.3. Rights in Personal Property.** No materials, equipment, fixtures or any other part of such improvements or apparatus to be used in connection therewith shall be purchased and/or installed under conditional sale agreements or other arrangements wherein the right is reserved or may accrue to anyone to remove and/or to repossess any such items.

**6.4. No Changes in the Construction Documents.** Borrower shall make no changes in the Plans and Specifications or the other Construction Documents after the same have been approved by Lender without first obtaining the written consent of Lender to such changes.

**6.5. Lender's Right to Complete Construction.** If (i) construction is at any time abandoned, discontinued or not carried on with reasonable dispatch; (ii) the work is not properly performed, as determined by Lender, and such failure is not corrected within five (5) days from the date of written notice from Lender (both (i) and (ii) constituting additional Events of Default hereunder); or (iii) an Event of Default otherwise occurs under the Loan Documents, then Lender may, at its option and in addition to any and all other remedies available to Lender under the Loan Documents, without further notice, take possession of the Property and enter into contracts for or proceed with the finishing of such improvements according to the Plans and Specifications and pay the cost thereof.

**6.6. Recorded Covenants.** Prior to funding any new Property, Lender may review any existing declarations, covenants, conditions and restrictions, any condominium declaration or any other restrictive covenants or amendments thereto affecting the Property. After funding any Property under a Unit Allocation, if Borrower is a declarant, then it will submit to Lender for comment a copy of any material declarations, covenants, conditions and restrictions, any condominium declaration or any other material restrictive covenants or amendments thereto affecting the Property prior to recording, and Lender shall be given an opportunity to approve and comment on such documents, which approval shall not be unreasonably withheld. Further, upon request of Lender Borrower shall execute in favor of Lender, in form satisfactory to Lender, a collateral assignment of any special declarant rights and/or development rights conferred upon Borrower under any such documents, as security for the Obligations.

**6.7. Actions Required by Lien Laws.** In those states where such action is required, Borrower shall (i) diligently record or procure the recordation of a valid Notice of Completion upon completion of construction of a Unit, (ii) diligently record or procure for recordation a Notice of Cessation in the event of a cessation of work on any Unit for a continuous period of thirty (30) days or more, and (iii) take all other steps necessary under the laws of the state governing any construction projects funded hereunder to prevent or shorten the time for the assertion of claims or liens against property securing Borrower's obligations to Lender or any part thereof or right or interest appurtenant thereto, or of claims against Lender or any Loans made hereunder. Without limiting the foregoing, if any of the Property is located in North Carolina, Borrower shall comply with the requirements of N.C.G.S. Section 44A-7, *et seq.*, as amended or modified from time to time, including without limitation the provisions of 44A-11.1 to appoint a Lien Agent prior to procuring or entering into any contract for services or materials that may confer upon any Person a right to a lien on any portion of the Property, to timely identify the Lien Agent to any potential lien claimant required by such statutes and to identify the Lien Agent to Lender.

**6.8. Costs Incurred by Lender.** Borrower shall be liable to Lender for all sums paid or incurred by Lender in finishing the improvements or otherwise protecting its security hereunder, whether the same shall be paid or incurred pursuant to the provisions of this Section 6 or otherwise in accordance with the Loan Documents, and all payments made or liabilities incurred by Lender of any kind whatsoever shall be paid by Borrower to Lender upon demand, together with interest at the default rate under the Note to the date of payment to Lender, and all of the foregoing sums, including interest thereon, shall be deemed advances by Lender to protect its security, separate and distinct from advances of proceeds of the Loan, and shall be evidenced and secured by the Mortgage Instrument and other Loan Documents.

**7. UNIT RELEASES.** So long as there does not exist: (i) any uncured default by Borrower under the Loan Documents or by Borrower or any of its Affiliates under any Related Loan; or (ii) any event which, following notice and/or the expiration of any applicable cure period without a cure, would constitute a default thereunder, Borrower shall be entitled to a partial reconveyance of the Mortgage Instrument as against a particular Unit, only upon Borrower's fulfillment of all conditions to such partial reconveyance set forth in the Mortgage Instrument, this Agreement or any of the other Loan Documents and payment of the following:

**7.1. Interest and Reimbursable Advances.** Any delinquent monthly interest payments and any advances by Lender that are reimbursable by Borrower under any of the Loan Documents, whether or not Borrower is then in default with respect to such reimbursement.

**7.2. Unit Release Price.** A reduction in the outstanding principal balance owing under the Loan in an amount equal to the release price for the particular Unit, as set forth on SCHEDULE 1 attached hereto (the "Release Price"), together with interest thereon through the date paid.

**7.3. Costs and Expenses.** The demand fees, reconveyance fees, servicing fees and other reasonable costs of preparing and delivering the partial reconveyance, the premium for any special title insurance endorsements required by Lender and any and all other escrow, legal, closing and recording costs incurred by Lender in connection with such partial reconveyance. If at any time Lender has a commitment or other obligation to disburse proceeds of the Loan, Lender receives any funds ("*Additional Funds*") in connection with the release of a Unit in excess of the sum of (i) all accrued but unpaid interest and other charges and amounts due under the Note and this Agreement, and (ii) the then outstanding unpaid principal balance under the Note, Lender shall immediately deposit such Additional Funds into a Restricted Account. Lender shall use the Additional Funds to repay subsequent disbursements under the Loan or for such other purposes under the Loan Documents as Lender may elect in its sole discretion.

**8. GENERAL REPRESENTATIONS AND WARRANTIES.** Borrower, as of the Effective Date and as of the date of each request for a Draw hereunder, represents and warrants to Lender that:

**8.1. Payment of Taxes and Proper Books and Records.** Borrower has filed all required tax returns and paid all federal and state taxes, FICA payments and similar taxes now due and owing, and maintains proper books and records relating to all Borrower's operations.

**8.2. No Liens or Encumbrances.** There are no claims for social security, unemployment compensation, unpaid taxes, construction work or materials or other obligations to or claims by any governmental body or any private Person that are or could become liens upon the Property.

**8.3. Condemnation.** Borrower has not received any notice of any eminent domain or condemnation proceeding that in any way affects the Property or the Project and, to the best of Borrower's knowledge, no such action or proceeding is pending or threatened.

**8.4. Improvement Districts.** Except as disclosed to Lender in writing, the Property is not situated within any metropolitan, local, special or other improvement district and Borrower has no knowledge of any proposal under which the Property or the Project is to be placed in any such improvement district. Borrower shall not consent or agree to the inclusion of the Property in an improvement district of any kind without the written consent of Lender so long as any portion of the Loan remains unpaid.

**8.5. Access.** The Property has full and free access to and from public highways, streets and/or roads, and Borrower has no knowledge of any fact or condition that would result in the termination of such access.

**8.6. Existence and Authority.** Borrower is duly organized, validly existing and in good standing under the laws of the state in which it is organized. Borrower has taken all necessary action on the part of Borrower relating to the authorization, execution, delivery and performance of this Agreement and the other Loan Documents, and this Agreement and all related documents, when executed and delivered, will be valid and enforceable against Borrower in accordance with their terms.

**8.7. Litigation.** There are no pending or threatened actions or proceedings by or against Borrower or any Guarantor before any court or administrative agency, federal, state or local, that might have a Material Adverse Effect on Borrower or any Guarantor or their ability to perform under this Agreement or any of the Loan Documents, except as disclosed to Lender in writing.

**8.8. Financial Statements; Taxes; Indebtedness.** Borrower and each Guarantor have furnished to Lender (i) current financial statements that have been prepared in accordance with GAAP (or such variations thereof as may have been explained to and approved by Lender in writing) and (ii) such other financial information as may be required hereunder, and such information fairly presents the financial condition of Borrower and each Guarantor as of the applicable date and the results of its operations for the applicable period, and since such date there has been no material change in such Borrower's or any Guarantor's condition or operations. Borrower and each Guarantor have filed all federal, state and other tax returns required to be filed by it. The Internal Revenue Service has not asserted any liability for taxes in excess of those already paid by each Borrower and Guarantor and their assets are free of any federal or state tax liens. Neither Borrower nor any Guarantor has indebtedness in existence as of the

applicable date other than the indebtedness reflected on the financial statements referred to above, except as has been disclosed in writing to Lender.

**8.9. Compliance with Other Instruments.** The execution, delivery and performance of this Agreement and all other Loan Documents will not violate the provisions of any applicable law, order or regulation of any governmental authority having jurisdiction over Borrower, and will not conflict with or result in a breach of any of the terms, conditions or provisions of Borrower's organizational documents or any other agreement or instrument to which Borrower is a party, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Borrower, except for the security interests created hereunder.

**8.10. Business Location.** Borrower keeps all of its records pertaining to its assets and accounts at the office located at the address indicated on the first page of this Agreement, which address is either Borrower's principal place of business or the place of business from which Borrower manages the main part of its business operations. Borrower shall give Lender prior written notice of any change in such location or the location of any asset in which Lender has a security interest.

**8.11. OFAC.** Neither Borrower nor any Guarantor is (or will be) a person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("*OFAC*") of the Department of the Treasury of the United States of America (including those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide Lender with any additional information that Lender may deem necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

**9. AFFIRMATIVE COVENANTS.** While any sums remain outstanding hereunder, Borrower will:

**9.1. In Balance.** Take those actions necessary to ensure that the Facility remains "in balance" at all times. The Facility shall be deemed to be "in balance" only at such times as Lender determines, in its reasonable discretion, that the then-undisbursed portion of each outstanding Unit Allocation hereunder equals or exceeds the amount necessary to pay all work done and not theretofore paid for or to be done in connection with the completion of the applicable Units in accordance with the Plans and Specifications, or otherwise to be incurred in connection with completion of such Units. If Lender determines that the Facility is not "in balance", Borrower shall, after written request by Lender as set forth below, deposit the amount of the deficiency with Lender, which shall then be disbursed before any further disbursements of proceeds of the applicable Unit Allocation. Unless otherwise indicated in the applicable Budget, all sums provided by Borrower shall be deposited in standard non-interest bearing account with Lender in the name of Borrower (the "*Borrower's Funds Account*"). Borrower's Funds Account and all funds from time to time therein are hereby pledged by Borrower to Lender as security for the obligations of Borrower to Lender under this Agreement and the other Loan Documents and Borrower shall execute and deliver to Lender such documents as Lender may require in order to evidence and perfect such pledge. All amounts deposited into Borrower's Funds Account shall be delivered by Lender to Borrower on the terms, and subject to the conditions, that are applicable to Draws. While any funds remain on deposit in Borrower's Funds Account, all Draws made by Borrower for construction of the applicable Unit(s) for which such sums were deposited shall first be funded from Borrower's Funds Account prior to the disbursement of any proceeds of the applicable Unit Allocations. Borrower acknowledges that a Unit Allocation may become "out of balance" in numerous ways, not all of which may now be foreseen. Borrower further acknowledges that a Unit Allocation may become "out of balance" from a shortage of funds in any single line item or category of the Budget for such Unit Allocation, even if there are undisbursed funds in other line items or categories. Undisbursed funds in one category or line item (e.g., insurance costs) may not be applied to another category or line item (e.g., interest reserve) unless this Agreement expressly provides otherwise, the Budget specifically allows such use or Lender consents in writing to such use in each instance. Whenever a Unit Allocation is "out of balance," Lender may make written demand on Borrower to deposit funds into Borrower's Funds Account in an amount sufficient in Lender's reasonable judgment to cause the Unit Allocation to be "in balance." Borrower must deposit all funds required by Lender's demand within five (5) days after such demand. Also, if required by Lender, Borrower must submit, for Lender's approval as determined in its sole discretion, a revised Budget within fifteen (15) days after any such demand. At any time, Lender may evaluate the sufficiency of undisbursed Unit

Allocations and amounts then on deposit in Borrower's Funds Account allocated for payment of scheduled interest payments on the Note during the term of the Note, exercising its reasonable judgment in light of (without limitation): (i) Lender's projections of the interest rates applicable to the Note for period(s) up to and including the full remaining term of the Note (and permitted extensions, if any); (ii) cost overruns or change orders applicable to the Project; and (iii) failure of the Units to be completed or sold as projected by Lender. Based on Lender's evaluation of these data and projections, one or more Unit Allocations may be "out of balance." If this happens, at its sole election and discretion, Lender may exercise its rights under this Section. Lender shall not be obligated to make any Draw at any time that the any Unit Allocation is not "in balance."

**9.2. No Liens.** Make all necessary payments so that at all times the Property shall be completely free of any lien or claim of any governmental department or agency or of any private Person not specifically permitted by Lender in writing and that no stop notice is served upon Lender. Borrower shall, upon request, furnish full information to Lender and permit inspection of its books and records by Lender, so as to satisfy Lender of full compliance with the provisions of this paragraph.

**9.3. Legal Entity, Business, etc.** (a) Maintain its existence in the form under which it currently operates, and preserve in full force and effect all its rights and franchises having a material effect upon its business or the ownership of its properties; and (b) give prompt notice to Lender of any material change in Borrower's or any Guarantor's business or financial position, any change in any location where Borrower's or any Guarantor's accounts and/or assets are to be maintained, the location of any new places of business of Borrower or any Guarantor and the changing or closing of any of its existing places of business, and any change in Borrower's or any Guarantor's name.

**9.4. Financial Reports, Information and Covenants.** Furnish to Lender all reasonably available information concerning the condition of Borrower and each other Financial Covenant Party and their current operations, including balance sheets and income statements and such other financial information at such reasonable times as Lender may require. Such information shall be certified by a duly authorized officer or agent of Borrower and each other Financial Covenant Party. Without limiting the foregoing, Borrower agrees to comply, and, where applicable, to cause each other Financial Covenant Party to comply, with the specific financial reporting requirements and to maintain and satisfy, and, where applicable, to cause each other Financial Covenant Party to maintain and satisfy, the financial ratios and covenants set forth on SCHEDULE 2 to this Agreement, as such covenants may subsequently be amended.

**9.5. Inspection.** Permit any authorized representative of Lender to visit Borrower's business location and project sites to inspect and make copies of its books, accounts and records and to discuss its business, finances and accounts with its officers and authorized representatives. Borrower acknowledges that Lender will perform collateral audits on a regular basis (i.e., at least semi-annually).

**9.6. Payment of Taxes.** Pay all taxes, assessments and governmental charges upon Borrower or levied against any of its properties prior to the date on which penalties will attach, unless and to the extent the same shall be contested in good faith and by appropriate lawful proceedings by Borrower, subject to such further requirements as may be set forth in the Loan Documents.

**9.7. Use of Proceeds.** Use each Draw hereunder only for payment of the costs of the project for which that Draw is approved and for no other purpose.

**9.8. Compliance With Laws.** Comply, and cause each Guarantor to comply, with all applicable requirements (including applicable Laws) of any governmental authority having jurisdiction over Borrower, each Guarantor, the Project or the Property.

**9.9. Furnishing Notices.** Provide Lender with copies of all material notices and communications pertaining to the Project or the Property that are received by Borrower, including notices from any governmental authority or insurance company, notices of any change order, notices of any dispute with a contractor, claim of lien or notice of any other suit, litigation or other act which could have a Material Adverse Effect within seven (7) days after such notice is received.

**10. NEGATIVE COVENANTS.** While any sums remain outstanding hereunder, Borrower will not, without Lender's prior written consent:

**10.1. Liens and Encumbrances.** Create or permit to exist any mortgage, pledge, lien or other encumbrance with respect to any of the Property or other collateral pledged to Lender.

**10.2. Guaranties.** Guarantee or otherwise become a surety with respect to the obligations of any other Person, except by endorsement of negotiable instruments for collection in the ordinary course of business or in connection with indebtedness for development and construction activities relating to loans obtained by Borrower in the ordinary course of business.

**10.3. Assignment or Sale of Assets.** Assign or sell any of its assets, except in the ordinary course of its business consistent with its past practices or in connection with any indebtedness consented to by Lender.

**10.4. Change of Management and Control.** There shall be no change in the management, Control or ownership of Borrower. The current management and control of the policies and management of Borrower by its current ownership and officers is material to Bank in extending credit and financing the Loan pursuant to the Loan Documents.

## **11. EVENTS OF DEFAULT.**

**11.1. Events of Default Defined.** Borrower shall be in default under this Agreement upon the occurrence of any one or more of the events of default described below (each an "*Event of Default*"): (a) failure to pay any principal reduction or interest payment when and as the same shall become due and payable under any of the Loan Documents or under any other indebtedness of Borrower or its Affiliates to Lender, whether at its scheduled payment date or otherwise, including any Related Loan, the Rate Obligations or any other Obligations, which failure continues for a period of ten (10) days after the due date thereof; (b) any representation or warranty made now or hereafter by any Borrower or Guarantor pursuant to this Agreement or any other Loan Document, or any statement, report or certificate provided to Lender by any Borrower or Guarantor in connection therewith, proves to be false in any material respect as of the date made; (c) any individual Borrower, Guarantor or Financial Covenant Party shall die or become incapacitated; (d) Borrower or any Guarantor shall become involved in financial difficulties as evidenced by failing generally to pay debts as they become due, or filing a petition under any chapter of the Bankruptcy Code, or filing any answer or admission asking for such relief, or making an assignment for the benefit of creditors, or consent to appointment of a trustee or receiver for any of such party's assets, or the entry of an order for relief against such party as a debtor under any chapter of the Bankruptcy Code, or the entry of a court order appointing a receiver or trustee for all or a major portion of such party's property without its consent (each an "Insolvency Proceeding"), which order shall not be vacated or stayed within thirty (30) days of its entry (provided upon filing of any Insolvency Proceeding, then Bank shall not be required to fund any additional Draws, and shall be permitted to exercise remedies necessary to protect its interest, including to file proofs of claim, seek adequate protection of cash collateral, and to take other actions reasonable necessary to protect Liens given to secure any of the Obligations); (e) any Guarantor fails to perform or observe any term, obligation, covenant or agreement under any Guaranty of Borrower's obligations hereunder (subject to the notice and cure rights under subsection (j) below), or any such Guaranty is repudiated, revoked or terminated without Lender's prior written consent, or any Guarantor or Borrower claims that the Loan Documents including the Guaranty is ineffective or unenforceable, in whole or in part and for any reason, with respect to amounts then outstanding or amounts that might in the future be outstanding; (f) Bank fails to have a legal, valid, binding and enforceable first priority lien on the Unit financed or other collateral for the full amount of the Loan; (g) construction of a dwelling as part of a Unit is not performed in a good and workmanlike manner or fails to continue to meet the requirements of all applicable federal, state, county, municipal or other government regulations, or the requirements of any public utility provider; (h) Borrower fails to make timely payments to contractors, subcontractors, laborers, materialmen and suppliers, and if such failure results in the filing of a lien or stop notice against the Unit financed under the Loan that is not cured within the time required and according to the provisions of Section 13 of this Credit Agreement and is still outstanding after the day such lien is required to be removed by Section 13 below, or in the event the holder of any lien against any Unit (other than Bank) initiates any execution or other process to foreclose or enforce a lien against a Unit; (i) if cost overruns occur and Borrower fails to deposit sufficient additional funds into Borrower's Funds Account with Bank as required by Section 9 of this Credit Agreement to cover the additional costs within ten (10) days; (j) Borrower or any Guarantor fails to perform any other



term, provision or covenant in this Agreement or in any other Loan Document and any applicable cure period for such non-performance has elapsed, or an Event of Default otherwise occurs as defined under any of the other Loan Documents; provided that if no cure period is provided with respect to such default then Borrower or the applicable Guarantor shall have a period of fifteen (15) days after it has notice of such default in which to cure such failure; or (k) the occurrence of an event which has a Material Adverse Effect on Borrower or any Guarantor. Notwithstanding the above, upon the death of any Guarantor (each a "Deceased Guarantor", collectively the "Deceased Guarantors"), then, prior to enforcing any remedies as holder of the Loan, Lender agrees to review any proposal to substitute a new guarantor (each, a "New Guarantor", collectively the "New Guarantors") for any Deceased Guarantor, and if such New Guarantor is satisfactory to Bank and new guaranty agreements are executed in favor of Bank on terms acceptable to Bank in its discretion within sixty (60) days of the death of the Guarantor, then the Event of Default shall be cured. The decision as to whether the proposed substitute Guarantor is acceptable shall be made by Bank in its sole discretion consistent with its normal underwriting standards.

**11.2. Remedies.** Upon the occurrence of any Event of Default, Lender shall have no obligation to make further disbursements or Unit Allocations hereunder and any and all liabilities of Borrower to Lender, including the Obligations, may be accelerated and the outstanding principal balance of the Loan shall become immediately due and payable, at Lender's option, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower (unless prohibited by applicable law). Lender may exercise, at its option, any of the rights and remedies available to it hereunder or otherwise available under law or equity, including without limitation, electing (i) to perform any defaulted covenant or provision to such extent as Lender shall elect in its sole discretion, and/or to disburse funds under any Note for such purpose (including, without limitation, payment of insurance premiums, taxes or assessments), which amounts, together with interest thereon from the disbursement date until paid at a rate per annum equal to the rate of interest payable for the same period applicable to the Note, shall be secured by the Mortgage Instrument; (ii) to take control of any or all collateral; (iii) to exercise all rights and remedies of Lender under this Agreement, under any other Loan Documents, such as foreclosure of all real and personal property, appointment of a receiver, collection of rents, exercise of power of sale or otherwise under applicable law or equity in such order, concurrently, consecutively or otherwise, as Lender deems appropriate in its discretion.

**12. PAYMENT OF EXPENSES.** Borrower shall pay all costs and expenses of Lender in connection with the underwriting, processing, closing and funding of the Loan and the preparation, negotiation, execution and delivery of the Loan Documents or otherwise related to the Loan, as well as any amendments, modifications, consents or waivers relating thereto, including, without limitation, attorneys' fees (including reasonable fees of Lender's in-house counsel, if used) and costs, upon demand by Lender. Lender shall provide Borrower with documentation of such costs and expenses. In addition, Lender shall be entitled to recover any reasonable costs and expenses incurred in connection with the preservation of rights under and enforcement of the Loan Documents, or the protection of its collateral thereunder, whether or not any lawsuit is commenced, in all such cases including, without limitation, reasonable attorneys' fees (including reasonable fees of Lender's in-house counsel, if used) and costs, and all such fees and costs incurred by Lender in connection with any bankruptcy proceeding affecting the Loan or Lender's security therefor in any manner.

**13. UNAUTHORIZED LIENS OR ENCUMBRANCES.** If any claim of lien, lien, attachment or similar process is filed or recorded, or any stop notice or other notice of lien is served upon Lender, in connection with any Unit or other portion of the Property, or if any judgment or other encumbrance is placed against any such property, it shall constitute an Event of Default unless Borrower, within thirty (30) days of written notice by Lender to Borrower of the existence of such claim, lien or encumbrance: (i) pays the related judgment or claim and obtains the release and satisfaction of such lien, claim of lien, judgment or encumbrance, (ii) obtains the release of such lien, judgment or other encumbrance by recording and/or serving a surety bond in accordance with applicable law; or (iii) provides Lender with a bond or such other security or assurance as Lender, in its sole discretion, may require in an amount equal to at least 150% of the amount of the lien, claim of lien, judgment or other encumbrance, to ensure payment of such lien, claim of lien, judgment or other encumbrance or otherwise protect Lender and the Property. If Borrower does not resolve the lien, claim of lien, stop notice, judgment or other encumbrance in a manner satisfactory to Lender within said thirty (30) days, Lender may, at its option, disburse proceeds from the Loan to pay such lien, claim of lien, judgment or other encumbrance; withhold from subsequent Draws an amount equal to up to 150% of the amount of the encumbrance; or exercise any other rights and remedies available to Lender upon the occurrence of an Event of Default. Lender's rights under this paragraph shall not be affected by any claim of Borrower that the lien, claim, stop

notice, judgment or other encumbrance is invalid, it being understood that the decision of Lender to pay or withhold is to be made by Lender in its sole discretion, subject only to Borrower's right to provide a bond or other security satisfactory to Lender as provided above.

**14. OFFSET RIGHTS.** Lender may take from any funds of Borrower in its possession at any time or, at the option of Lender, from any of the proceeds of the Loan, any amounts that Borrower has agreed to pay or is liable for under any of the Loan Documents, but Borrower shall nevertheless remain liable to Lender until all Obligations provided for in this Agreement have been fully paid and discharged, notwithstanding Lender may not have elected to take payment from such funds.

**15. DISCLAIMER OF LIABILITY.** The execution of this Agreement or any of the other Loan Documents by Lender and Borrower does not constitute a joint venture and no provision of this Agreement or any of the other Loan Documents is made or shall be construed for the benefit of any third party. Borrower has accepted and hereby accepts the sole responsibility for the selection of its own contractors, subcontractors and all materials, supplies and equipment to be used in the development and construction work at the Property, and Lender assumes no responsibility to Borrower, any contractors, subcontractors or any other person for the completion of the improvements or for the quality thereof, nor does Lender assume any responsibility for the application of Draws or payment of contractors, subcontractors or suppliers. Inspection by Lender of development and construction work is for the purpose of protecting the security of Lender and is not to be construed as a representation by Lender that such work will be free from faulty material or workmanship. In no event shall Lender be liable to Borrower for punitive, exemplary or consequential damages, including, without limitation, lost profits, whatever the nature of a breach by Lender of its Obligations under this Agreement or any of the Loan Documents, and Borrower waives all claims for punitive, exemplary or consequential damages.

**16. REQUIRED NOTICE OF DEFAULT TO LENDER.** Lender 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 Lender within three (3) months after Borrower first had knowledge of the occurrence of the event that Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any, promptly thereafter. Borrower waives any claim, set-off or defense against Lender arising by reason of any alleged default by Lender as to which Borrower does not give such notice as set forth herein. Borrower acknowledges that such waiver is or may be essential to Lender's ability to enforce its remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Lender and Borrower with regard to the Loan.

**17. GENERAL PROVISIONS.**

**17.1. Captions; Severability.** Captions and headings are used for convenience only and are not intended to modify or limit the textual provisions of this Agreement. If any one or more of the provisions of this Agreement are determined to be invalid, illegal or unenforceable, such unenforceability shall not affect the other provisions thereof.

**17.2. Notices.** Any notice or demand to any Borrower shall be deemed to have been given when mailed, first class, postage prepaid or personally delivered to Borrower at Borrower's address set forth above or to such other address as Borrower may furnish in writing to Lender for such purpose.

**17.3. Governing Law and Venue.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina without regard to its conflicts of law principles. Venue of any action to enforce or interpret, or otherwise relating to, this Agreement shall lie with the state and federal courts of North Carolina, as applicable in connection with pursuit of remedies. As such, Lender may pursue its remedies in the courts in which the Project is located or in the courts residing in the State of North Carolina in its discretion.

**17.4. Entire Agreement; Amendment.** This Agreement is intended to set forth the entire and final agreement of the parties concerning the subject matter hereof. This Agreement may not be amended or modified except by written agreement of Borrower and Lender.

**17.5. Publicity.** If Lender desires, it may announce and publicize the fact that it is providing financing, and may (at Lender's expense) place signs on the Property, as long as such property remains subject to Lender's security interest.

**17.6. WAIVER OF JURY TRIAL.** LENDER AND BORROWER EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY LENDER AND BORROWER, AND LENDER AND BORROWER ACKNOWLEDGE THAT NO PERSON ACTING ON BEHALF OF THE OTHER PARTY TO THIS AGREEMENT HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER AND LENDER FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**17.7. Confidential Nature.** The terms and provisions of this Agreement and the other Loan Documents, other than the provisions of the Mortgage Instrument and any UCC-1 or other instrument recorded to confirm or perfect a lien in favor of Lender (collectively, the "Confidential Information") are confidential and proprietary information for the benefit of Borrower and Guarantors, if any, who agree to keep the Confidential Information in strict confidence, subject to the terms hereof. Except pursuant to a subpoena, court order or judicial process (and for such subpoena, court order or judicial process Bank will be given reasonable notice and an opportunity to object and intervene) or pursuant to enforcing the terms of the Loan Documents due to breach, such Confidential Information shall be kept confidential and private, and shall not be shared or disclosed by Borrower or any Guarantors with any other person or entity other than banking regulators, banking consultants required by laws and regulations, their attorneys and accountants who have a need to know the Confidential Information, and each of whom shall also (to the extent permitted by law), be subject the terms of this confidentiality provision. Except as permitted, prior to sharing the Confidential Information with any other Person, Borrower and each Guarantor, if any, shall obtain express written consent from Bank.

**17.8. Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**17.9. Errors and Omissions.** Upon request of Lender, Borrower shall fully cooperate, and shall cause all Guarantors to fully cooperate, in the correction of any and all errors in the preparation, execution or acknowledgment of any Loan Documents, if necessary in the reasonable discretion of Lender, so that all Loan Documents are properly executed and acknowledged (as appropriate) and accurately describe the terms of the Loan. Borrower shall reimburse Lender for any and all expenses, attorney's fees and damages resulting from any failure of Borrower to comply with this Section 17.9 within thirty (30) days of Lender's request.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.


**BORROWER:**

**NEST HOMES, LLC,**  
a North Carolina limited liability company

By:  (SEAL)  
Name: Eric M. Wood  
Title: Manager

**LENDER:**

**UNITED COMMUNITY BANK,**  
a South Carolina state-chartered bank

By:   
Name: Scott K. Ernest  
Title: Senior Vice President

**Attachments:**

- SCHEDULE 1: Basic Loan Terms
- SCHEDULE 2: Financial Covenants
- SCHEDULE 3: Draw Schedule/Construction Inspection Request
- EXHIBIT A: Certificate of Compliance

SCHEDULE I  
Basic Loan Terms

Borrower: NEST HOMES, LLC, a North Carolina limited liability company

THIS SCHEDULE sets forth the Basic Loan Terms and certain other provisions applicable to funding under the Master Residential Construction Line Agreement between Lender and Borrower.

**A. Purpose of Loan and Master Note Structure:**

The proceeds of the Loan shall be used exclusively to finance the purchase of Finished Lots, if applicable, and the construction of various Units in Approved Subdivisions, which Loan will be secured by one or more Mortgage Instruments on the individual lots located on the Property, and to pay costs and fees associated with the Loan approved by Lender.

Lender has agreed to advance funds under the Facility only in connection with Approved Subdivisions. Lender's approval of advancement of funds in connection therewith shall be upon Borrower's request and at Lender's sole discretion.

Funds advanced under the Facility to fund a Unit Allocation approved by Lender shall be evidenced by the Master Note. The Master Note evidences all advances and disbursements made for funding Unit Allocations for one or more Units approved by Lender.

The aggregate principal amount outstanding under and committed for funding all Unit Allocations shall not exceed the maximum amount of the Master Note, or the Maximum Facility Amount.

No new advances or disbursements shall be made on the Loan or Facility for new Unit construction starts or new Lot acquisitions on or after the Residential Line Expiration Date, unless extended or renewed by Lender in its sole and absolute discretion.

**"Residential Line Expiration Date"** means September 30, 2022. If Lender elects to extend the Residential Line Expiration Date, then the Borrower and Lender shall promptly enter into an amendment to the Master Note to extend the Master Note Maturity Date to the same date as the new Residential Line Expiration Date. If the Lender elects not to extend the Residential Line Expiration Date, then Borrower and Lender shall promptly enter into an amendment to the Master Note to extend the Master Note Maturity Date to the date which falls twelve months after the commencement date of the most recently established Unit Allocation for the construction of a house or purchase of a Finished Lot, whichever is later.

The principal and interest balance outstanding under the Master Note for each separate Unit Allocation shall be due and payable in full on the Unit Maturity Date.

The Loan is secured by one or more deeds of trust, mortgages or deeds to secure debt (collectively, and as amended, the **"Mortgage Instrument"**) creating a first position lien on the real property in any Approved Subdivision for which the funds are to be advanced hereunder (the **"Property"**). The Mortgage Instrument and the legal description therein shall be modified and amended, or additional Mortgage Instruments shall be recorded, as funds under the Facility are advanced for construction on additional Property in an existing or newly Approved Subdivision.

**B. Loan Fees:**

Upon establishment of each Unit Allocation, Borrower shall pay Lender a loan fee (the **"Loan Fee"**) in an amount equal to one percent (1.00%) of the amount of the applicable approved Unit Allocation.

**C. Borrowing Formula Percentages:**

The Borrowing Formula used to calculate the Unit Allocations available for Draws under the Note shall be the percentage set forth below for the applicable type of Unit that results in the lesser amount available:

<u>Property Type:</u>	<u>Loan-to-Value</u> (as determined by <u>Appraisal</u> ):	<u>Loan-to-Hard Cost:</u>
Finished Lots:	75%	75%
Pre-Sold Units and Construction on Finished Lots: (Draws for Pre-Sold Units are further limited to 75% of the Purchase Price described in a Qualified Sales Contract)	75%	100%
Spec Units:	75%	100%
Model Units:	75%	100%

provided that the amounts determined using the foregoing percentages shall in any event not exceed the applicable maximum Unit Allocation set forth below.

The amount of the initial Draw made by Lender in connection with a Pre-Sold Unit, Spec Unit, or Model Unit, if any, shall equal 100% of Finished Lot Hard Cost. In no event shall Lender be obligated to make any Draw hereunder if to do so would cause the Loan-To-Value ratio, Loan-To-Hard Cost ratio, or Loan-to- Purchase Price ratio for the applicable Unit Allocation to exceed the applicable ratio set forth above.

**D. Maximum Unit Allocations:**

The maximum Unit Allocation available for each type of Unit is set forth in the following table:

<u>Property Type:</u>	<u>Maximum Allocation:</u>
Finished Lots:	\$750,000 maximum committed in the aggregate at any particular time
Pre-Sold Units:	N/A
Spec Units:	\$5,000,000 maximum committed in the aggregate at any particular time
Model Units:	Model Units shall count as Spec Units for all purposes and limits

**Additional Unit Allocation Limits.** Lender reserves the right to limit the number of Spec Units and/or aggregate exposure on a per-subdivision basis.

**Deadline for Start of Construction.** Borrower shall begin construction of a particular Unit within thirty (30) days of the date of the New Unit Financing Confirmation relating to the applicable Unit. If Borrower does not begin construction within such period, Lender may, at Lender's sole discretion, and in addition to such other remedies as

may be available to Lender under the Loan Documents, refuse to make any further disbursements under the Unit Allocation for construction of such Unit and require immediate payoff of that Unit Allocation.

**E. Maximum Holding Periods/Release Prices:**

Individual Unit Allocations shall be outstanding for particular types of Units only for the following maximum holding periods. Individual Units shall be released from the lien of the applicable Mortgage Instrument only upon payment of the following applicable Release Price:

<u>Property Type:</u>	<u>Holding Period/Unit Maturity Date:</u>	<u>Release Price:</u>
Finished Lots:	12 months	Par + accrued interest + fees**
Pre-Sold Units:	12 months	Par + accrued interest + fees
Spec Units:	12 months	Par + accrued interest + fees
Model Units:	12 months	Par + accrued interest + fees

\*\*Notwithstanding the foregoing, for any Unit Allocation that covers more than four (4) Finished Lots, the Release Price for each Finished Lot in such Unit Allocation will be 133% of Par + accrued interest + fees.

The Maximum Holding Period for a Finished Lot assumes no construction has begun on that lot. If Lender approves the construction of a Unit on a Finished Lot pursuant to a New Unit Financing Confirmation, then the Finished Lot becomes a Unit, a new Maximum Holding Period for the applicable type of Unit commences to run and a new Unit Maturity Date applies. Borrower shall be required to repay all advances by Lender associated with the Unit Allocation including those advances made for purchase of and, where applicable, construction of improvements on, the applicable Unit together with interest accrued thereon at the end of the applicable Holding Period (i.e., the Unit Maturity Date). At Lender's option, Borrower may extend the Unit Maturity Date for any Unit Allocation by six (6) month intervals, by written notice to Lender and payment of fee to Lender of \$250 per Unit for which the Unit Maturity Date is extended, provided that such notice and payment must be received by Lender no later than the Residential Line Expiration Date.

**F. Revolving Construction Line.**

The Loan is a revolving obligation, provided, however, that (i) Individual Unit Allocations shall be subject to the Maximum Holding Periods for the particular type of Unit as set forth above and (ii) Borrower shall not be entitled to any new Unit Allocations hereunder on or after the Residential Line Expiration Date without Lender's specific written consent. The aggregate Unit Allocations available for the purchase of lots and the construction of Units hereunder shall be limited by the maximum outstanding principal amount available hereunder.

**G. Sublimits and Covenant re: Unsold Units:**

- (a) Any unused portion of the Spec Unit sublimit (including Model Units) not funded or committed herein may be utilized by Borrower for a Pre-Sold Unit.
- (b) The determination of whether or not a Unit is a Spec Unit or a Model Unit shall be made from time to time in conjunction with Lender's periodic review of Borrower's compliance with the terms of this Credit Agreement.

**H. Completion of Construction.**

Once Borrower has commenced construction of a particular Unit, Borrower shall not cease or substantially cease productive work on that Unit for more than twenty (20) days in the aggregate without the prior written consent of

Lender. Construction of an individual Unit with proceeds of the Loan shall be completed to Lender's satisfaction within nine (9) months of the initial advance under the applicable Unit Allocation(s) relating to such Unit(s) or the commencement of work on such Unit(s), whichever is earlier.

**I. Additional Conditions for Closing and Funding in New Subdivisions:**

Borrower must satisfy the following additional conditions for a particular subdivision prior to such subdivision becoming an Approved Subdivision and Lender making funds available under the Facility in connection with purchase of lots and the construction of single family residences in such subdivision:

- (a) Lender reserves the right to require an environmental report and appraisal for the applicable subdivision, which must be satisfactory in all respects to Lender;
- (b) Lender must have received a lot purchase agreement for the applicable subdivision, which must be satisfactory in all respects to Lender;
- (c) Lender must have received a recorded Plat for the applicable subdivision, in form and substance satisfactory to Lender;
- (d) Borrower shall have executed and delivered to Lender such additional security deeds or an amendment to the Mortgage Instrument, as Lender shall reasonably require, to ensure that Lender holds a first lien position against any portion of the applicable subdivision for which financing is sought under the Facility, including without limitation public roads or private road access and other development rights, as may be required by Lender in its discretion; and
- (e) Lender's review of a request to approve a particular additional subdivision lot or Unit for financing hereunder shall, in any event, remain in Lender's sole and absolute discretion.

**J. Required Guarantor(s):**

As a condition of the Loan, Borrower shall cause each of the following (each a "Guarantor") to execute guaranty agreements in the form required by Lender guaranteeing all Obligations of Borrower to Lender, including completion and payment. Such guaranty agreements must remain in force at all times while amounts are outstanding or available for disbursement under the Loan or under any other loan from Lender to Borrower:

<u>Guarantor Name</u>	<u>Guaranty Amount</u>
Zeno B. Hawkins	Unlimited
Eric M. Wood	Unlimited

**K. Cross-Default/Cross-Collateral:**

Borrower understands that the Loan is cross-defaulted with any Related Loans, such that a default under any one of the Related Loans constitutes a default under the Loan. Additionally, all of the Related Loans are cross-collateralized, such that following an event of default under any of the Related Loans, Lender, in its discretion, may exercise its rights and remedies against any and all of the collateral securing any of the Related Loans. Notwithstanding such cross-collateralization, Lender shall have the sole and exclusive right to segregate the separate security interests granted under the Related Loans so that the Mortgage Instrument given for each particular Related Loan shall act as security only for such Obligations of Borrower as Lender, in its sole discretion, shall determine, and thereby to remove all other Obligations of Borrower from the scope of the Obligations secured thereby. Lender may exercise its right to segregate the different collateral as security for particular Obligations of Borrower unilaterally, and without prior notice to or consent by Borrower or any other party, by providing written notice to Borrower at any time prior to a foreclosure sale of any portion of any of the collateral for the Related Loans. Such notice shall identify by any reasonable means those particular Obligations of Borrower that shall remain secured by each Mortgage Instrument



and provide that any other Obligations of Borrower to Lender shall no longer be secure by such Mortgage Instrument(s). Such notice shall be effective immediately to amend the Loan Documents in accordance therewith. Borrower hereby irrevocably designates and appoints Lender as its attorney in fact, such power of attorney coupled with an interest, for the limited purpose of preparing any amendments required in accordance with this Section.

**L. General Liability Insurance:**

Until the Loan is repaid in full, and in any event until the Residential Line Expiration Date, Borrower shall purchase and keep in effect, at its expense, commercial general liability insurance with a combined single limit of at least \$1,000,000.00 per occurrence and at least \$3,000,000.00 general aggregate. Any such policy shall: (1) name Lender as an additional insured; (2) be issued by an insurance company that is acceptable to Lender; and (3) provide that said insurance may not be cancelled except upon thirty (30) days prior written notice to Lender.

**SCHEDULE 2**  
**Financial Covenants**

**Borrower:** NEST HOMES, LLC, a North Carolina limited liability company

THIS SCHEDULE sets forth the applicable financial reporting requirements and financial covenants required under the Residential Construction Line Agreement between Lender and Borrower.

**A. Reporting Requirements.**

Borrower agrees to provide to Lender the following financial information in form and substance satisfactory to Lender within the applicable deadlines set forth below:

<u>Individual or Entity Required to Provide Information</u>	<u>Information to Be Provided</u>	<u>Frequency</u>
Borrower and its subsidiaries	Consolidated year-end financial statements compiled by an accounting firm selected by Borrower and deemed acceptable by Lender	Annually, within 120 days of the applicable fiscal year end
Borrower	Quarterly financial statements prepared and certified by management	Quarterly, within 45 days of the end of each calendar quarter
Borrower and Guarantors	Federal tax returns together with all schedules, as well as extensions	Annually, no later than 45 days following the earlier of filing of such return or return's last due date
Guarantors	Personal financial statements	No more than one year old at all times

All such financial information shall be in a format approved by Lender, in Lender's sole discretion, and certified as true, complete and correct by its preparer and by Borrower or, in the case of financial information relating to a Guarantor, by the Guarantor to whom it relates. In addition, together with each financial statement to be provided by Borrower to Lender, Borrower shall deliver to Lender a duly executed Certificate of Compliance in the form attached hereto as EXHIBIT A (each a "*Certificate of Compliance*"). Borrower shall also provide such additional information regarding the financial condition of Borrower or any Guarantor, or any Affiliates of Borrower or any Guarantor, as Lender may reasonably request.

**B. Financial Covenants.**

The following financial covenants (which shall be deemed "Financial Covenants" as referred to in the Certificate of Compliance) must be maintained at all times while any Notes or other amounts are outstanding under this Facility or under any other obligation of Borrower to Lender:

<u>Individual or Entity(ies) Required to Comply with Covenant</u>	<u>Financial Covenant</u>	<u>Frequency at Which Compliance Will Be Measured</u>
Borrower	Liabilities to Net Worth ratio equal to or less than 2.50 to 1.00	Quarterly within 45 days after the end of each such period
Borrower	Minimum Tangible Net Worth of \$5,000,000.00	Quarterly within 45 days after the end of each such period

Borrower	Global Spec Ratio of no greater than 65%	Quarterly within 45 days after the end of each such period
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Borrower's and Guarantor's compliance with the applicable financial covenants set forth above shall be determined in accordance with Lender's standard underwriting and financial analysis criteria on the basis of the financial statements and other financial information provided to Lender and disclosed in the Certificates of Compliance provided Lender by Borrower as set forth above, as reviewed and approved by Lender. All terms used in computing all financial covenants shall be defined and calculated in accordance with GAAP unless otherwise consented in writing by Lender.

**C. Revision of Reporting Requirements and Financial Covenants.**

Borrower understands that Lender may, in connection with its approval of subsequent loans to Borrower, in its sole discretion, revise the reporting requirements and financial covenants applicable to Borrower, any Guarantor and any other Financial Covenant Party based on the most current financial information provided by Borrower, any Guarantor and any other Financial Covenant Party. Borrower acknowledges and agrees that the Reporting Requirements and Financial covenants applicable to Borrower, any Guarantor, any other Financial Covenant Party or the Facility shall be those stated in the Schedule of Financial Covenants referenced in Borrower's most recent loan from Lender, and the failure of Borrower, Guarantor, any other Financial Covenant Party or the Loan to comply with such Reporting Requirements and Financial Covenants shall constitute an Event of Default under this Agreement and the other Loan Documents.

**EXHIBIT A**  
**Certificate of Compliance**

UNITED COMMUNITY BANK

Attention: Scott K. Ernest, Senior Vice President

RE: Master Residential Construction Line Agreement dated as of December 14, 2021 (as amended, modified, supplemented, restated or renewed, from time to time, the "*Agreement*"), between NEST HOMES, LLC, a North Carolina limited liability company ("*Borrower*") and UNITED COMMUNITY BANK ("*Lender*").

Reference is hereby made to the Agreement. Capitalized terms used in this Certificate (including schedules and other attachments hereto, this "*Certificate*") without definition have the meanings specified in the Agreement.

Pursuant to applicable provisions of the Agreement, the undersigned, being an Authorized Person designated in the Agreement, hereby certifies to Lender that all of the information provided in this Certificate or attached hereto is true, correct and complete in all material respects as of the last day of the fiscal periods covered by the financial statements delivered to Lender together with this Certificate (such statements the "*Financial Statements*" and the periods covered thereby the "*Reporting Period*").

The undersigned hereby further certifies to Lender that:

1. Compliance with Financial Covenants. Except as otherwise shown below, each Financial Covenant Party is in full compliance with the applicable Financial Covenants contained in the Agreement.

A. **Covenant:** A Liabilities to Net Worth ratio for Borrower equal to or less than 2.50 to 1.00.

**Actual:** Liabilities to Net Worth ratio of \_\_\_\_\_ to 1.00 for Reporting Period ended \_\_\_\_\_.

B. **Covenant:** Minimum Tangible Net Worth of 5,000,000.00.

**Actual:** Tangible Net Worth of \_\_\_\_\_ for Reporting Period ended \_\_\_\_\_.

C. **Covenant:** Global Spec Ratio of not more than 65%

**Actual:** Global Spec Ratio of \_\_\_\_\_ % for reporting Period ended \_\_\_\_\_.

2. Review of Condition. The undersigned has reviewed the terms of the Agreement, including but not limited to the representations and warranties of Borrower and Guarantors set forth in the Agreement and the other Loan Documents and the covenants of Borrower set forth in the Loan Documents, and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of Borrower, Guarantors and other any other Financial Covenant Parties through the applicable Reporting Period(s).

3. Non-Compliance Schedule. To the extent Borrower, any Guarantor or any other Financial Covenant Party is not in compliance with any of the covenants set forth in the Loan Documents or is otherwise in default under any of the terms or conditions of the Loan Documents, or in the event any of the representations and warranties of Borrower or any Guarantor in the Loan Documents are no longer true and accurate, the undersigned has attached as Schedule A to this Certificate an addendum describing and explaining each such default.

4. Representations and Warranties. To the undersigned's actual knowledge, the representations and warranties of Borrower and Guarantors contained in the Loan Documents, including those contained in the Agreement, are true and accurate in all material respects as of the date hereof and were true and accurate in all material respects at all times during the applicable Reporting Period(s) except as expressly noted on any attached Schedule A.

5. Covenants. To the undersigned's actual knowledge, during the Reporting Period, Borrower and each Guarantor has observed and performed all of the respective covenants and other agreements under the Agreement and the Loan Documents, and satisfied each of the conditions contained therein to be observed, performed or satisfied by Borrower or any Guarantor, except as expressly noted on any attached Schedule A.

6. No Event of Default. To the undersigned's actual knowledge, no Default or Event of Default exists as of the date hereof or existed at any time during the Reporting Period, except as expressly noted on any attached Schedule A.

IN WITNESS WHEREOF, this Certificate is executed by the undersigned this 15 day of December, 2021.

NEST HOMES, LLC,  
a North Carolina limited liability company

By:  (SEAL)  
Name: Eric H. Wood  
Title: Manager

**SCHEDULE 3**  
**Draw Schedule / Construction Inspection Request Form**  
**(Attached)**

**MASTER RESIDENTIAL CONSTRUCTION LINE  
LOAN MODIFICATION AGREEMENT**

This Loan Modification Agreement (hereinafter “**Agreement**”) is made and entered as of March 21, 2023, by and between NEST HOMES, LLC, a North Carolina limited liability company (“**Borrower**,” whether one or more), and UNITED COMMUNITY BANK, a South Carolina state-chartered bank (“**Lender**”).

WITNESSETH: Whereas Borrower has previously executed that certain Amended and Restated Promissory Note in favor of Lender dated October 6, 2022 in the maximum principal amount of \$12,000,000.00 (as amended, or modified, restated or renewed, the “**Promissory Note**” or “**Note**”); and

Whereas Borrower and Lender have previously executed that certain Master Residential Construction Line Agreement dated December 14, 2021 relating to advances under the Promissory Note (as amended, or modified, restated or renewed, the “**Credit Agreement**”); and

Whereas Borrower and Lender agree that said Note and/or Credit Agreement shall be modified only to the limited extent as is hereinafter set forth, that all other items, conditions, and covenants of said Note and Credit Agreement remain in full force and effect, and that all other obligations and covenants of Borrower, except as herein modified, shall remain in full force and effect, and binding between Borrower and Lender.

NOW THEREFORE, in mutual consideration of the premises, the sum of Ten Dollars (\$10) and other good and valuable consideration, each to the other parties paid, the parties hereto agree that the Note and/or Credit Agreement are modified as hereinafter described:

Capitalized terms used in this Agreement, not defined herein but defined in the Credit Agreement, shall have the meanings given such terms in the Credit Agreement.

If this Agreement is signed and accepted by Lender, then the terms of the Loan are modified as follows:

1. The table in Section D (entitled “Maximum Unit Allocations”) of Schedule 1 of the Credit Agreement is amended and restated as follows:

<u>Property Type:</u>	<u>Maximum Allocation:</u>
Finished Lots:	\$1,000,000 maximum committed in the aggregate at any particular time
Pre-Sold Units:	N/A
Spec Units:	\$7,200,000 maximum committed in the aggregate at any particular time
Model Units:	Model Units shall count as Spec Units for all purposes and limits

It is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of Borrower as evidenced by the Promissory Note above described is not extinguished hereby. It is also understood and agreed that except for the modification(s) contained herein said Promissory Note, and any other Loan Documents or Agreements evidencing, securing or relating to the Promissory Note and all singular terms and conditions thereof, shall be and remain in full force and effect. This Agreement shall not release or affect the liability of any co-makers, obligors, endorsers or guarantors of said Promissory Note. Borrower consent to the terms of this Agreement, waive any objection thereto, affirm any and all obligations to Lender and expressly waive and surrender any and all defenses or offsets against said obligations or Lender, including without limitation the Promissory Note. Lender expressly reserves all rights as to any party with right of recourse on the aforesaid Promissory Note.

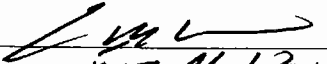
Unless otherwise provided herein, it is expressly understood and agreed by and between Borrower, and Lender that any and all collateral (including but not limited to real property, personal property, fixtures, accounts, instruments, general intangibles, documents, chattel paper, and equipment) given as security to ensure faithful performance by Borrower and any other third party of any and all obligations to Lender, however created, whether now existing or hereafter arising, shall remain as security for the Promissory Note as modified hereby. Borrower agrees to pay all fees and expenses of Lender incurred in connection with any indebtedness of Borrower, or guarantor of any of Borrower indebtedness to Lender, including any fees and expenses incurred in connection with review of documents, modification of documents, and negotiation or collection of such indebtedness either before or after default or maturity and including all asset based review fees, filing fees and attorneys fees. Any default in the payment of any debt of Borrower to Lender shall be an Event of Default under the Promissory Note, the Loan Documents, and any other debt to Lender owed by any Borrower.

Borrower acknowledges that the Promissory Note, the Credit Agreement and the other Loan Documents are fully enforceable in accordance with their terms and that neither Borrower nor any Guarantor holds any defense, offset, objection or claim relating to the Loan, the Promissory Note, the Credit Agreement, the Loan Documents or this Agreement, each of which is hereby waived by Borrower. Borrower expressly releases Lender, its officers, successors and assigns from any claims, causes of action, damages, and costs of any kind or nature related to the Loan, the Promissory Note, the Credit Agreement, the Loan Documents and this Agreement. No delay or omission on the part of Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right of Lender, nor shall any delay, omission on the part of Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right of Lender, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same, or of any other right on any further occasion. Each of the parties signing this Agreement regardless of the time, order or place of signing waives presentment, demand, protest, and notices of every kind, and assents in advance without the necessity of its knowledge or further consent to any one or more extensions or postponements of the time of payment or any other indulgences, to any substitutions, exchanges or releases of collateral if at any time there is available to Lender collateral for the Promissory Note, as amended, and to the additions or releases of any other parties or persons primarily or secondarily liable (collectively, the "Modifications"). Further, none of the Modifications shall in any way reduce or diminish the responsibility or liability for payment or performance to Lender by Borrower; any guarantor; or any other person or legal entity on any indebtedness or obligation to Lender. Whenever possible the provisions of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provisions shall be ineffective to the extent of any such prohibition of invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All rights and obligations arising hereunder shall be governed by and constituted in accordance with the laws of the same state which governs the interpretation and enforcement of the Promissory Note.

For good and valuable consideration received, and with full authority duly given, each of the undersigned has executed this Agreement under seal and adopts as its / his/ her seal the word 'seal' near its signature.

**BORROWER:**

NEST HOMES, LLC,  
a North Carolina limited liability company

By:  (SEAL)  
Name: Erin H. Loran  
Title: Manager



**ACCEPTED:**

**UNITED COMMUNITY BANK**

By: \_\_\_\_\_


Name: Scott K. Ernest

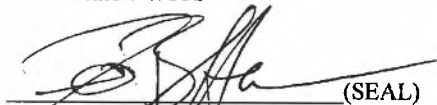
Title: Senior Vice President

**CONSENT OF GUARANTORS**

Each of the undersigned is a guarantor of the obligations evidenced by, and/or incurred pursuant to, the Note and Credit Agreement pursuant to one or more Guaranty Agreements (each, a “**Guaranty**”) executed by the undersigned. The undersigned agree and acknowledge that the Guaranty of each of us is in full force and effect and binding on each of us with regard to the Note and Credit Agreement, as amended by the Agreement (as hereinafter defined). The undersigned each consents to and joins as a party (where applicable) to the terms of the Loan Modification Agreement (the “**Agreement**”) to which this instrument is attached, waives any objection to the Agreement, affirms any and all obligations to Lender (as such obligations may be affected by the Agreement) under the Guaranty and certifies that no defenses or offsets exist with regard to the payment or performance of any obligations to Lender described in the Guaranty. Capitalized terms used herein, not defined herein but defined in the Agreement, shall have the meanings given them in the Agreement.

GUARANTORS:

  
Eric Matthew Wood (SEAL)

  
Zeno Brent Hawkins (SEAL)

**MASTER RESIDENTIAL CONSTRUCTION LINE  
LOAN MODIFICATION AGREEMENT**

This Loan Modification Agreement (hereinafter “**Agreement**”) is made and entered as of October 6, 2022, by and between NEST HOMES, LLC, a North Carolina limited liability company (“**Borrower**,” whether one or more), and UNITED COMMUNITY BANK, a South Carolina state-chartered bank (“**Lender**”).

WITNESSETH: Whereas Borrower has previously executed that certain Master Residential Construction Line Promissory Note in favor of Lender dated December 14, 2021 in the maximum principal amount of \$10,000,000.00 (as amended, or modified, restated or renewed, the “**Promissory Note**” or “**Note**”); and

Whereas Borrower and Lender have previously executed that certain Master Residential Construction Line Agreement dated December 14, 2021 relating to advances under the Promissory Note (as amended, or modified, restated or renewed, the “**Credit Agreement**”); and

Whereas Borrower and Lender agree that said Note and/or Credit Agreement shall be modified only to the limited extent as is hereinafter set forth, that all other items, conditions, and covenants of said Note and Credit Agreement remain in full force and effect, and that all other obligations and covenants of Borrower, except as herein modified, shall remain in full force and effect, and binding between Borrower and Lender.

NOW THEREFORE, in mutual consideration of the premises, the sum of Ten Dollars (\$10) and other good and valuable consideration, each to the other parties paid, the parties hereto agree that the Note and/or Credit Agreement are modified as hereinafter described:

Capitalized terms used in this Agreement, not defined herein but defined in the Credit Agreement, shall have the meanings given such terms in the Credit Agreement.

If this Agreement is signed and accepted by Lender, then the terms of the Loan are modified as follows:

1. The Maximum Facility Amount, as defined in Recital A of the Credit Agreement, is increased to a maximum aggregate principal amount committed and outstanding of \$12,000,000.00.
2. Borrower and Lender agree that the Note is amended and restated in its entirety by the Amended and Restated Promissory Note of even date herewith in the maximum principal amount of \$12,000,000.00 executed by Borrower in favor of Lender contemporaneously with this Agreement (the “**Amended Note**”).
3. Schedule 1 and Schedule 2 attached to the Credit Agreement are amended and restated as set forth on Schedule 1 and Schedule 2 attached to this Agreement. The Certificate of Compliance attached as Exhibit A to the Credit Agreement is amended and restated as set forth on Exhibit A attached to this Agreement.

It is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of Borrower as evidenced by the Promissory Note above described is not extinguished hereby. It is also understood and agreed that except for the modification(s) contained herein or in the Amended Note said Promissory Note, and any other Loan Documents or Agreements evidencing, securing or relating to the Promissory Note and all singular terms and conditions thereof, shall be and remain in full force and effect. This Agreement shall not release or affect the liability of any co-makers, obligors, endorsers or guarantors of said Promissory Note. Borrower consent to the terms of this Agreement, waive any objection thereto, affirm any and all obligations to Lender and expressly waive and surrender any and all defenses or offsets against said obligations or Lender, including without limitation the Promissory Note. Lender expressly reserves all rights as to any party with right of recourse on the aforesaid Promissory Note.

Unless otherwise provided herein, it is expressly understood and agreed by and between Borrower, and Lender that any and all collateral (including but not limited to real property, personal property, fixtures, accounts, instruments, general intangibles, documents, chattel paper, and equipment) given as security to ensure faithful performance by


Borrower and any other third party of any and all obligations to Lender, however created, whether now existing or hereafter arising, shall remain as security for the Promissory Note as modified hereby. Borrower agrees to pay all fees and expenses of Lender incurred in connection with any indebtedness of Borrower, or guarantor of any of Borrower indebtedness to Lender, including any fees and expenses incurred in connection with review of documents, modification of documents, and negotiation or collection of such indebtedness either before or after default or maturity and including all asset based review fees, filing fees and attorneys fees. Any default in the payment of any debt of Borrower to Lender shall be an Event of Default under the Promissory Note, the Loan Documents, and any other debt to Lender owed by any Borrower.

Borrower acknowledges that the Promissory Note, the Credit Agreement and the other Loan Documents are fully enforceable in accordance with their terms and that neither Borrower nor any Guarantor holds any defense, offset, objection or claim relating to the Loan, the Promissory Note, the Credit Agreement, the Loan Documents or this Agreement, each of which is hereby waived by Borrower. Borrower expressly releases Lender, its officers, successors and assigns from any claims, causes of action, damages, and costs of any kind or nature related to the Loan, the Promissory Note, the Credit Agreement, the Loan Documents and this Agreement. No delay or omission on the part of Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right of Lender, nor shall any delay, omission on the part of Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right of Lender, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same, or of any other right on any further occasion. Each of the parties signing this Agreement regardless of the time, order or place of signing waives presentment, demand, protest, and notices of every kind, and assents in advance without the necessity of its knowledge or further consent to any one or more extensions or postponements of the time of payment or any other indulgences, to any substitutions, exchanges or releases of collateral if at any time there is available to Lender collateral for the Promissory Note, as amended, and to the additions or releases of any other parties or persons primarily or secondarily liable (collectively, the "Modifications"). Further, none of the Modifications shall in any way reduce or diminish the responsibility or liability for payment or performance to Lender by Borrower; any guarantor; or any other person or legal entity on any indebtedness or obligation to Lender. Whenever possible the provisions of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provisions shall be ineffective to the extent of any such prohibition of invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All rights and obligations arising hereunder shall be governed by and constituted in accordance with the laws of the same state which governs the interpretation and enforcement of the Promissory Note.

For good and valuable consideration received, and with full authority duly given, each of the undersigned has executed this Agreement under seal and adopts as its / his/ her seal the word 'seal' near its signature.

**BORROWER:**

NEST HOMES, LLC,  
a North Carolina limited liability company

By:  \_\_\_\_\_ (SEAL)  
Name: Eric Wood  
Title: Manager

**ACCEPTED:**

**UNITED COMMUNITY BANK**

By: \_\_\_\_\_  
Name: Scott K. Ernest  
Title: Senior Vice President

SCHEDULE 1  
Basic Loan Terms

Borrower: NEST HOMES, LLC, a North Carolina limited liability company

THIS SCHEDULE sets forth the Basic Loan Terms and certain other provisions applicable to funding under the Master Residential Construction Line Agreement between Lender and Borrower.

**A. Purpose of Loan and Master Note Structure:**

The proceeds of the Loan shall be used exclusively to finance the purchase of Finished Lots, if applicable, and the construction of various Units in Approved Subdivisions, which Loan will be secured by one or more Mortgage Instruments on the individual lots located on the Property, and to pay costs and fees associated with the Loan approved by Lender.

Lender has agreed to advance funds under the Facility only in connection with Approved Subdivisions. Lender's approval of advancement of funds in connection therewith shall be upon Borrower's request and at Lender's sole discretion.

Funds advanced under the Facility to fund a Unit Allocation approved by Lender shall be evidenced by the Master Note. The Master Note evidences all advances and disbursements made for funding Unit Allocations for one or more Units approved by Lender.

The aggregate principal amount outstanding under and committed for funding all Unit Allocations shall not exceed the maximum amount of the Master Note, or the Maximum Facility Amount.

No new advances or disbursements shall be made on the Loan or Facility for new Unit construction starts or new Lot acquisitions on or after the Residential Line Expiration Date, unless extended or renewed by Lender in its sole and absolute discretion.

**"Residential Line Expiration Date"** means September 30, 2023. If Lender elects to extend the Residential Line Expiration Date, then the Borrower and Lender shall promptly enter into an amendment to the Master Note to extend the Master Note Maturity Date to the same date as the new Residential Line Expiration Date. If the Lender elects not to extend the Residential Line Expiration Date, then Borrower and Lender shall promptly enter into an amendment to the Master Note to extend the Master Note Maturity Date to the date which falls twelve months after the commencement date of the most recently established Unit Allocation for the construction of a house or purchase of a Finished Lot, whichever is later.

The principal and interest balance outstanding under the Master Note for each separate Unit Allocation shall be due and payable in full on the Unit Maturity Date.

The Loan is secured by one or more deeds of trust, mortgages or deeds to secure debt (collectively, and as amended, the **"Mortgage Instrument"**) creating a first position lien on the real property in any Approved Subdivision for which the funds are to be advanced hereunder (the **"Property"**). The Mortgage Instrument and the legal description therein shall be modified and amended, or additional Mortgage Instruments shall be recorded, as funds under the Facility are advanced for construction on additional Property in an existing or newly Approved Subdivision.

**B. Loan Fees:**

Upon establishment of each Unit Allocation, Borrower shall pay Lender a loan fee (the **"Loan Fee"**) in an amount equal to one percent (1.00%) of the amount of the applicable approved Unit Allocation.

**C. Borrowing Formula Percentages:**

The Borrowing Formula used to calculate the Unit Allocations available for Draws under the Note shall be the percentage set forth below for the applicable type of Unit that results in the lesser amount available:

<u>Property Type:</u>	<u>Loan-to-Value (as determined by Appraisal):</u>	<u>Loan-to-Hard Cost:</u>
Finished Lots:	75%	75%
Pre-Sold Units and Construction on Finished Lots: (Draws for Pre-Sold Units are further limited to 75% of the Purchase Price described in a Qualified Sales Contract)	75%	100%
Spec Units:	75%	100%
Model Units:	75%	100%

provided that the amounts determined using the foregoing percentages shall in any event not exceed the applicable maximum Unit Allocation set forth below.

The amount of the initial Draw made by Lender in connection with a Pre-Sold Unit, Spec Unit, or Model Unit, if any, shall equal 100% of Finished Lot Hard Cost. In no event shall Lender be obligated to make any Draw hereunder if to do so would cause the Loan-To-Value ratio, Loan-To-Hard Cost ratio, or Loan-to- Purchase Price ratio for the applicable Unit Allocation to exceed the applicable ratio set forth above.

**D. Maximum Unit Allocations:**

The maximum Unit Allocation available for each type of Unit is set forth in the following table:

<u>Property Type:</u>	<u>Maximum Allocation:</u>
Finished Lots:	\$1,000,000 maximum committed in the aggregate at any particular time
Pre-Sold Units:	N/A
Spec Units:	\$6,000,000 maximum committed in the aggregate at any particular time
Model Units:	Model Units shall count as Spec Units for all purposes and limits

**Additional Unit Allocation Limits.** Lender reserves the right to limit the number of Spec Units and/or aggregate exposure on a per-subdivision basis.

**Deadline for Start of Construction.** Borrower shall begin construction of a particular Unit within thirty (30) days of the date of the New Unit Financing Confirmation relating to the applicable Unit. If Borrower does not begin construction within such period, Lender may, at Lender's sole discretion, and in addition to such other remedies as

may be available to Lender under the Loan Documents, refuse to make any further disbursements under the Unit Allocation for construction of such Unit and require immediate payoff of that Unit Allocation.

**E. Maximum Holding Periods/Release Prices:**

Individual Unit Allocations shall be outstanding for particular types of Units only for the following maximum holding periods. Individual Units shall be released from the lien of the applicable Mortgage Instrument only upon payment of the following applicable Release Price:

<u>Property Type:</u>	<u>Holding Period/Unit Maturity Date:</u>	<u>Release Price:</u>
Finished Lots:	12 months	Par + accrued interest + fees**
Pre-Sold Units:	12 months	Par + accrued interest + fees
Spec Units:	12 months	Par + accrued interest + fees
Model Units:	12 months	Par + accrued interest + fees

\*\*Notwithstanding the foregoing, for any Unit Allocation that covers more than four (4) Finished Lots, the Release Price for each Finished Lot in such Unit Allocation will be 133% of Par + accrued interest + fees.

The Maximum Holding Period for a Finished Lot assumes no construction has begun on that lot. If Lender approves the construction of a Unit on a Finished Lot pursuant to a New Unit Financing Confirmation, then the Finished Lot becomes a Unit, a new Maximum Holding Period for the applicable type of Unit commences to run and a new Unit Maturity Date applies. Borrower shall be required to repay all advances by Lender associated with the Unit Allocation including those advances made for purchase of and, where applicable, construction of improvements on, the applicable Unit together with interest accrued thereon at the end of the applicable Holding Period (i.e., the Unit Maturity Date). At Lender's option, Borrower may extend the Unit Maturity Date for any Unit Allocation by six (6) month intervals, by written notice to Lender and payment of fee to Lender of \$250 per Unit for which the Unit Maturity Date is extended, provided that such notice and payment must be received by Lender no later than the Residential Line Expiration Date.

**F. Revolving Construction Line.**

The Loan is a revolving obligation, provided, however, that (i) Individual Unit Allocations shall be subject to the Maximum Holding Periods for the particular type of Unit as set forth above and (ii) Borrower shall not be entitled to any new Unit Allocations hereunder on or after the Residential Line Expiration Date without Lender's specific written consent. The aggregate Unit Allocations available for the purchase of lots and the construction of Units hereunder shall be limited by the maximum outstanding principal amount available hereunder.

**G. Sublimits and Covenant re: Unsold Units:**

- (a) Any unused portion of the Spec Unit sublimit (including Model Units) not funded or committed herein may be utilized by Borrower for a Pre-Sold Unit.
- (b) The determination of whether or not a Unit is a Spec Unit or a Model Unit shall be made from time to time in conjunction with Lender's periodic review of Borrower's compliance with the terms of this Credit Agreement.

**H. Completion of Construction.**

Once Borrower has commenced construction of a particular Unit, Borrower shall not cease or substantially cease productive work on that Unit for more than twenty (20) days in the aggregate without the prior written consent of



Lender. Construction of an individual Unit with proceeds of the Loan shall be completed to Lender's satisfaction within nine (9) months of the initial advance under the applicable Unit Allocation(s) relating to such Unit(s) or the commencement of work on such Unit(s), whichever is earlier.

**I. Additional Conditions for Closing and Funding in New Subdivisions:**

Borrower must satisfy the following additional conditions for a particular subdivision prior to such subdivision becoming an Approved Subdivision and Lender making funds available under the Facility in connection with purchase of lots and the construction of single family residences in such subdivision:

- (a) Lender reserves the right to require an environmental report and appraisal for the applicable subdivision, which must be satisfactory in all respects to Lender;
- (b) Lender must have received a lot purchase agreement for the applicable subdivision, which must be satisfactory in all respects to Lender;
- (c) Lender must have received a recorded Plat for the applicable subdivision, in form and substance satisfactory to Lender;
- (d) Borrower shall have executed and delivered to Lender such additional security deeds or an amendment to the Mortgage Instrument, as Lender shall reasonably require, to ensure that Lender holds a first lien position against any portion of the applicable subdivision for which financing is sought under the Facility, including without limitation public roads or private road access and other development rights, as may be required by Lender in its discretion; and
- (e) Lender's review of a request to approve a particular additional subdivision lot or Unit for financing hereunder shall, in any event, remain in Lender's sole and absolute discretion.

**J. Required Guarantor(s):**

As a condition of the Loan, Borrower shall cause each of the following (each a "*Guarantor*") to execute guaranty agreements in the form required by Lender guaranteeing all Obligations of Borrower to Lender, including completion and payment. Such guaranty agreements must remain in force at all times while amounts are outstanding or available for disbursement under the Loan or under any other loan from Lender to Borrower:

<u>Guarantor Name</u>	<u>Guaranty Amount</u>
Zeno B. Hawkins	Unlimited
Eric M. Wood	Unlimited

**K. Cross-Default/Cross-Collateral:**

Borrower understands that the Loan is cross-defaulted with any Related Loans, such that a default under any one of the Related Loans constitutes a default under the Loan. Additionally, all of the Related Loans are cross-collateralized, such that following an event of default under any of the Related Loans, Lender, in its discretion, may exercise its rights and remedies against any and all of the collateral securing any of the Related Loans. Notwithstanding such cross-collateralization, Lender shall have the sole and exclusive right to segregate the separate security interests granted under the Related Loans so that the Mortgage Instrument given for each particular Related Loan shall act as security only for such Obligations of Borrower as Lender, in its sole discretion, shall determine, and thereby to remove all other Obligations of Borrower from the scope of the Obligations secured thereby. Lender may exercise its right to segregate the different collateral as security for particular Obligations of Borrower unilaterally, and without prior notice to or consent by Borrower or any other party, by providing written notice to Borrower at any time prior to a foreclosure sale of any portion of any of the collateral for the Related Loans. Such notice shall identify by any reasonable means those particular Obligations of Borrower that shall remain secured by each Mortgage Instrument

and provide that any other Obligations of Borrower to Lender shall no longer be secure by such Mortgage Instrument(s). Such notice shall be effective immediately to amend the Loan Documents in accordance therewith. Borrower hereby irrevocably designates and appoints Lender as its attorney in fact, such power of attorney coupled with an interest, for the limited purpose of preparing any amendments required in accordance with this Section.

**L. General Liability Insurance:**

Until the Loan is repaid in full, and in any event until the Residential Line Expiration Date, Borrower shall purchase and keep in effect, at its expense, commercial general liability insurance with a combined single limit of at least \$1,000,000.00 per occurrence and at least \$3,000,000.00 general aggregate. Any such policy shall: (1) name Lender as an additional insured; (2) be issued by an insurance company that is acceptable to Lender; and (3) provide that said insurance may not be cancelled except upon thirty (30) days prior written notice to Lender.

**SCHEDULE 2**  
**Financial Covenants**

**Borrower:** NEST HOMES, LLC, a North Carolina limited liability company

THIS SCHEDULE sets forth the applicable financial reporting requirements and financial covenants required under the Residential Construction Line Agreement between Lender and Borrower.

**A. Reporting Requirements.**

Borrower agrees to provide to Lender the following financial information in form and substance satisfactory to Lender within the applicable deadlines set forth below:

<u>Individual or Entity Required to Provide Information</u>	<u>Information to Be Provided</u>	<u>Frequency</u>
Borrower and its subsidiaries	Consolidated year-end financial statements prepared on a review-level basis by an accounting firm selected by Borrower and deemed acceptable by Lender	Annually, within 120 days of the applicable fiscal year end
Borrower	Quarterly financial statements prepared and certified by management	Quarterly, within 45 days of the end of each calendar quarter
Borrower and Guarantors	Federal tax returns together with all schedules, as well as extensions	Annually, no later than 45 days following the earlier of filing of such return or return's last due date
Guarantors	Personal financial statements	No more than one year old at all times

All such financial information shall be in a format approved by Lender, in Lender's sole discretion, and certified as true, complete and correct by its preparer and by Borrower or, in the case of financial information relating to a Guarantor, by the Guarantor to whom it relates. In addition, together with each financial statement to be provided by Borrower to Lender, Borrower shall deliver to Lender a duly executed Certificate of Compliance in the form attached hereto as EXHIBIT A (each a "Certificate of Compliance"). Borrower shall also provide such additional information regarding the financial condition of Borrower or any Guarantor, or any Affiliates of Borrower or any Guarantor, as Lender may reasonably request.

**B. Financial Covenants.**

The following financial covenants (which shall be deemed "Financial Covenants" as referred to in the Certificate of Compliance) must be maintained at all times while any Notes or other amounts are outstanding under this Facility or under any other obligation of Borrower to Lender:

<u>Individual or Entity(ies) Required to Comply with Covenant</u>	<u>Financial Covenant</u>	<u>Frequency at Which Compliance Will Be Measured</u>
Borrower	Liabilities to Net Worth ratio equal to or less than 2.50 to 1.00	Quarterly within 45 days after the end of each such period
Borrower	Minimum Tangible Net Worth of \$10,000,000.00	Quarterly within 45 days after the end of each such period

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Borrower	Global Spec Ratio of no greater than 65%	Quarterly within 45 days after the end of each such period
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Borrower's and Guarantor's compliance with the applicable financial covenants set forth above shall be determined in accordance with Lender's standard underwriting and financial analysis criteria on the basis of the financial statements and other financial information provided to Lender and disclosed in the Certificates of Compliance provided Lender by Borrower as set forth above, as reviewed and approved by Lender. All terms used in computing all financial covenants shall be defined and calculated in accordance with GAAP unless otherwise consented in writing by Lender.

**C. Revision of Reporting Requirements and Financial Covenants.**

Borrower understands that Lender may, in connection with its approval of subsequent loans to Borrower, in its sole discretion, revise the reporting requirements and financial covenants applicable to Borrower, any Guarantor and any other Financial Covenant Party based on the most current financial information provided by Borrower, any Guarantor and any other Financial Covenant Party. Borrower acknowledges and agrees that the Reporting Requirements and Financial covenants applicable to Borrower, any Guarantor, any other Financial Covenant Party or the Facility shall be those stated in the Schedule of Financial Covenants referenced in Borrower's most recent loan from Lender, and the failure of Borrower, Guarantor, any other Financial Covenant Party or the Loan to comply with such Reporting Requirements and Financial Covenants shall constitute an Event of Default under this Agreement and the other Loan Documents.

**EXHIBIT A**  
**Certificate of Compliance**

UNITED COMMUNITY BANK  
Attention: Scott K. Ernest, Senior Vice President

RE: Master Residential Construction Line Agreement dated as of December 14, 2021 (as amended, modified, supplemented, restated or renewed, from time to time, the "*Agreement*"), between NEST HOMES, LLC, a North Carolina limited liability company ("*Borrower*") and UNITED COMMUNITY BANK ("*Lender*").

Reference is hereby made to the Agreement. Capitalized terms used in this Certificate (including schedules and other attachments hereto, this "*Certificate*") without definition have the meanings specified in the Agreement.

Pursuant to applicable provisions of the Agreement, the undersigned, being an Authorized Person designated in the Agreement, hereby certifies to Lender that all of the information provided in this Certificate or attached hereto is true, correct and complete in all material respects as of the last day of the fiscal periods covered by the financial statements delivered to Lender together with this Certificate (such statements the "*Financial Statements*" and the periods covered thereby the "*Reporting Period*").

The undersigned hereby further certifies to Lender that:

1. Compliance with Financial Covenants. Except as otherwise shown below, each Financial Covenant Party is in full compliance with the applicable Financial Covenants contained in the Agreement.

A. **Covenant:** A Liabilities to Net Worth ratio for Borrower equal to or less than 2.50 to 1.00.

Actual: Liabilities to Net Worth ratio of \_\_\_\_\_ to 1.00 for Reporting Period ended \_\_\_\_\_.

B. **Covenant:** Minimum Tangible Net Worth of \$10,000,000.00.

Actual: Tangible Net Worth of \_\_\_\_\_ for Reporting Period ended \_\_\_\_\_.

C. **Covenant:** Global Spec Ratio of not more than 65%

Actual: Global Spec Ratio of \_\_\_\_\_ % for reporting Period ended \_\_\_\_\_.

2. Review of Condition. The undersigned has reviewed the terms of the Agreement, including but not limited to the representations and warranties of Borrower and Guarantors set forth in the Agreement and the other Loan Documents and the covenants of Borrower set forth in the Loan Documents, and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of Borrower, Guarantors and other any other Financial Covenant Parties through the applicable Reporting Period(s).

3. Non-Compliance Schedule. To the extent Borrower, any Guarantor or any other Financial Covenant Party is not in compliance with any of the covenants set forth in the Loan Documents or is otherwise in default under any of the terms or conditions of the Loan Documents, or in the event any of the representations and warranties of Borrower or any Guarantor in the Loan Documents are no longer true and accurate, the undersigned has attached as Schedule A to this Certificate an addendum describing and explaining each such default.


4. Representations and Warranties. To the undersigned's actual knowledge, the representations and warranties of Borrower and Guarantors contained in the Loan Documents, including those contained in the Agreement, are true and accurate in all material respects as of the date hereof and were true and accurate in all material respects at all times during the applicable Reporting Period(s) except as expressly noted on any attached Schedule A.

5. Covenants. To the undersigned's actual knowledge, during the Reporting Period, Borrower and each Guarantor has observed and performed all of the respective covenants and other agreements under the Agreement and the Loan Documents, and satisfied each of the conditions contained therein to be observed, performed or satisfied by Borrower or any Guarantor, except as expressly noted on any attached Schedule A.

6. No Event of Default. To the undersigned's actual knowledge, no Default or Event of Default exists as of the date hereof or existed at any time during the Reporting Period, except as expressly noted on any attached Schedule A.

IN WITNESS WHEREOF, this Certificate is executed by the undersigned this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

NEST HOMES, LLC,  
a North Carolina limited liability company

By:  \_\_\_\_\_ (SEAL)  
Name: Eric Wood  
Title: Manager

# EXHIBIT B

ske

**PROMISSORY NOTE**  
(master residential construction line)

**NEST HOMES, LLC**

Master Line #9912720049

\$10,000,000.00

December 14, 2021

FOR VALUE RECEIVED, **NEST HOMES, LLC**, a North Carolina limited liability company (“**Borrower**”) promises to pay to the order of **UNITED COMMUNITY BANK**, a South Carolina state-chartered bank (“**Lender**”) at 1001 Polk Street, Marietta, GA 30064, or such other place as Lender may designate in writing, the principal sum of Ten Million and 00/100 Dollars (**\$10,000,000.00**), or so much thereof as may be advanced under the terms and conditions of that certain Master Residential Construction Line Agreement (the “**Loan Agreement**”) dated of even date herewith between Borrower and Lender, as amended or modified from time to time, together with interest on the unpaid principal balance from the date of any advance of principal until paid, on the terms described herein. All definitions for capitalized words contained in the Loan Agreement shall have the same meaning when used in this promissory note (the “**Note**”). Any amendment of the Loan Agreement that modifies any such definition likewise shall constitute a modification of the definition of such word as used in this Note.

This Note is a master promissory note that is given in connection with the Loan Agreement, to which reference is hereby made for additional terms and conditions affecting this Note. Any Draw made pursuant to the Loan Agreement will constitute an advance made under this Note and will reduce the amount available under this Note.

Lender has no obligation to fund any Draw request except pursuant to compliance with all of the conditions precedent set forth in the Loan Agreement and approval by the Lender, in its discretion, of the funding of the Unit Allocation(s) for which any Draw is requested, subject to the terms of the Loan Documents.

Principal and interest shall be payable in lawful money of the United States of America as follows:

1. Interest Rate.

The unpaid principal balance of this Note will bear interest at an annual rate equal to the “**Prime Rate**,” as that term is herein defined below, plus one percentage point, with a floor rate of four and one-quarter percent (4.25%). The rate of interest earned on this Note shall change on the same date that the Prime Rate changes. As of the above-stated date of this Note, the Prime Rate is three and one-quarter percent (3.25%) per annum and consequently the initial rate of interest charged on this Note, and stated as simple interest, is four and one-quarter percent (4.25%) per annum.

The “**Prime Rate**” shall mean the rate announced daily in *The Wall Street Journal*, Southeastern Edition. The Prime Rate in effect as of the close of business of each day shall be the applicable rate for that day and for any succeeding non-business day or days of Lender in determining the applicable interest rate. If the Prime Rate is discontinued as a standard or becomes unascertainable, the Holder shall designate in writing to the Borrower a comparable reference rate,



which shall be deemed to be the Prime Rate hereunder. The Borrower acknowledges that the Prime Rate is not necessarily the best rate offered by Lender to all its customers and that the Prime Rate may at times be greater or less than the rate of interest that Lender makes available to its best commercial customers.

2. Repayment Terms.

(a) Beginning January 15, 2022 and continuing on the same day of each calendar month thereafter, Borrower shall pay all outstanding accrued interest to Lender.

(b) All Draws on account of any particular Unit Allocation shall mature, and all outstanding principal of such Draws and accrued interest thereon shall be repayable in full, on the first to occur of: (i) the closing of the sale of the Unit corresponding to such Unit Allocation; (ii) the Unit Maturity Date for such Unit Allocation, or (iii) September 30, 2022, the "Master Note Maturity Date."

(c) Additional principal payments, such as Release Prices, are due and payable as described in the Loan Agreement.

3. Prepayments, Breakage Fees and Costs.

(a) Borrower agrees that all loan fees and other charges have been fully earned as of the date of this Note and will not be subject to refund upon early payment of this Note (whether voluntarily or as a result of default), except as otherwise required by law. Except for the foregoing, and as otherwise provided in Section 3(b), Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest, unless otherwise agreed by Lender in writing. Rather, early payments will be applied to reduce the principal balance due. Borrower further agrees not to send Lender payments marked "paid in full", "without recourse" or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: United Community Bank, 1001 Polk Street, Marietta, GA 30064.

(b) Notwithstanding the above, Borrower promises to pay to Lender and indemnify Lender against any breakage fees, costs, fees and expenses arising out of or related to nonpayment, failure to make timely payment or prepayment of any part of this Note or other Obligations that are subject to any Rate Obligations or Hedge Agreements.

4. Other Note Terms.

**Late Charge:** If any payment due under this Note is more than 15 days late, Borrower will be charged 4.00% of the late payment or \$10.00, whichever is greater. This late charge shall be paid to Lender by Borrower to compensate Lender for its extra costs and expenses caused by the

late payment.

In addition, if payment of all sums due hereunder is accelerated under the terms of the Loan Agreement or other Loan Documents, the then-remaining principal amount and accrued but unpaid interest hereunder shall, at Lender's option, bear interest at a rate equal to the rate charged on this Note plus five percent (5%) per annum until such principal and interest have been paid in full (the "**Default Rate**").

**Interest Calculation Method:** Interest on this Note is computed on a 365/360 basis; that is, by applying the rate in effect on this Note, based upon a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note shall be computed using this method. Interest accrues on this Note at the rate in effect or at the Default Rate, as applicable.

This Note is secured by the collateral described in the Loan Agreement, including, without limitation, one or more Mortgage Instruments in favor of Lender, whether now existing and hereafter arising, which shall include any amendments or modifications thereto.

No delay or omission on the part of Lender or other holder in exercising any right hereunder shall operate as a waiver of such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. Each of the undersigned, and every endorser or Guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest and notice of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgence, to any substitutions, exchanges or releases of collateral, and to any additions or releases of any other parties or persons primarily or secondarily liable on account of this Note.

It is hereby expressly agreed that, in the event that any default occurs in the payment of principal or interest as stipulated above, which default remains uncured beyond any grace or cure period described in the Loan Agreement, or in the event that any other Event of Default shall occur under the Loan Agreement, or any other Loan Document, then, and in such event (i) the entire outstanding principal balance of the indebtedness evidenced by this Note, together with any other sums advanced hereunder, under the Loan Agreement and/or under any other instrument or document now or hereafter evidencing, securing or in any way relating to the indebtedness evidenced hereby, together with all unpaid interest accrued thereon, shall, at the option of Lender and upon notice to Borrower, at once become due and payable and may be collected forthwith, regardless of the stipulated date of maturity, and (ii) Lender may, both before and after acceleration, exercise any and all of its other rights and remedies under this Note and the other Loan Documents, as well as any additional rights and remedies it may have at law or in equity to recover full payment of the balance owing under this Note, including principal, interest, fees, premiums, charges and costs and other expenses. In addition, upon an Event of Default, the balance due hereunder may be charged or offset against any obligation of Lender to any party, including endorsers, sureties or guarantors, after giving any notice required in any other Loan Document to the party whose obligation is charged. The failure by Lender to exercise any of its options shall not constitute a waiver of the right to exercise same in the event of any subsequent default.

All payments made on this Note shall be applied first to escrows, if any, that are due, then to late charges that are due, then to accrued but unpaid interest, then to principal, and finally to any charges due other than escrows, interest, principal and late charges, unless Lender determines in its sole discretion to apply payments in a different order, or applicable law requires a different application of payments.

Borrower waives presentment, demand, protest and notice of dishonor; waives any rights which it may have to require Lender to proceed against any other person or property; agrees that without notice to any person and without affecting any person's liability under this Note, Lender, at any time or times, may grant extensions of the time for payment or other indulgences to any person or permit the renewal, amendment or modification of this Note or any other agreement executed and delivered by any person in connection with this Note, or permit the substitution, exchange or release of any security for this Note and may add or release any person primarily or secondarily liable; and agrees that Lender may apply all moneys made available to it from any part of the proceeds from the disposition of any security for this Note either to this Note or to any other obligation of Borrower to Lender, as Lender may elect from time to time.

This Note shall apply to and bind Borrower's and Lender's heirs, personal representatives, successors and assigns. All references in this Note to Lender shall include the holder hereof and this Note shall inure to the benefit of any holder of this Note, its successors and assigns.

If this Note is placed with an attorney for collection, the undersigned agrees to pay all costs of collection, including but not limited to reasonable attorneys' fees actually incurred based on standard hourly rates and actual hours expended.

All agreements herein made are expressly limited so that in no event whatsoever, whether by reason of advancement of proceeds hereof, acceleration of maturity of the unpaid balance hereof or otherwise, shall the amount paid or agreed to be paid to Lender for the use of the money advanced or to be advanced hereunder exceed the maximum rate of interest allowed to be charged under applicable law (the "**Maximum Legal Rate**"). If, from any circumstances whatsoever, the fulfillment of any provision of this Note or any other agreement or instrument now or hereafter evidencing, securing or in any way relating to the indebtedness evidenced hereby shall involve the payment of interest in excess of the Maximum Legal Rate, then, *ipso facto*, the obligation to pay interest hereunder shall be reduced to the Maximum Legal Rate; and if from any circumstance whatsoever, Lender shall ever receive interest, the amount of which would exceed the amount collectible at the Maximum Legal Rate, such amount as would be excessive interest shall be applied to repay the principal of this Note or to any other indebtedness of Borrower to Lender. This provision shall control every other provision in any and all other agreements and instruments existing or hereafter arising between Borrower and Lender with respect to the indebtedness evidenced hereby.

All rights and obligations hereunder shall be governed by the laws of the State of North Carolina.

If requested by Lender, as necessary in the reasonable discretion of Lender, Borrower shall cooperate fully in the correction of any and all Loan Documents, so that all documents accurately describe the loan evidenced by this Note. Borrower shall bear all expenses associated therewith,

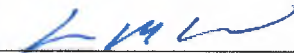
including Lender's attorney's fees in the event that Borrower fails to comply with Lender's requests within thirty (30) days.

**WAIVER OF JURY TRIAL.** LENDER AND BORROWER EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY LENDER AND BORROWER, AND LENDER AND BORROWER ACKNOWLEDGE THAT NO PERSON ACTING ON BEHALF OF THE OTHER PARTY TO THIS AGREEMENT HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER AND LENDER FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the day and year first above written by its authorized officer or manager under seal, and adopts as its seal such indication beside its name. Borrower acknowledges receipt of a copy of this Note.

BORROWER:

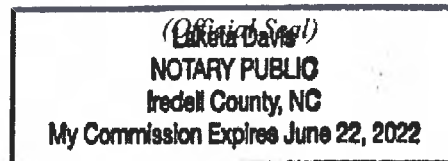
NEST HOMES, LLC,  
a North Carolina limited liability company

By:  (SEAL)  
Name: Eric M. Wood  
Title: Manager

STATE OF North Carolina  
COUNTY OF Wake

I, Laketa Davis, a Notary Public of the County and State aforesaid, do hereby certify that Eric M. Wood personally appeared before me this day and acknowledged that he is Manager of Nest Homes, LLC, a North Carolina limited liability company, and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company. Witness my hand and official seal this the 15<sup>th</sup> day of December, 2021.

  
printed name: Laketa Davis, Notary Public  
My commission expires: JUNE 22, 2022



skc

**AMENDED AND RESTATED PROMISSORY NOTE**  
(master residential construction line)

**NEST HOMES, LLC**

Master Line #9912720049

\$12,000,000.00

October 6, 2022

FOR VALUE RECEIVED, NEST HOMES, LLC, a North Carolina limited liability company ("Borrower") promises to pay to the order of UNITED COMMUNITY BANK, a South Carolina state-chartered bank ("Lender") at 1001 Polk Street, Marietta, GA 30064, or such other place as Lender may designate in writing, the principal sum of Twelve Million and 00/100 Dollars (\$12,000,000.00), or so much thereof as may be advanced under the terms and conditions of that certain Master Residential Construction Line Agreement (the "Loan Agreement") dated December 14, 2021 between Borrower and Lender, as amended or modified from time to time, together with interest on the unpaid principal balance from the date of any advance of principal until paid, on the terms described herein. All definitions for capitalized words contained in the Loan Agreement shall have the same meaning when used in this promissory note (the "Note"). Any amendment of the Loan Agreement that modifies any such definition likewise shall constitute a modification of the definition of such word as used in this Note.

This Note is an amendment and restatement of that certain Promissory Note dated December 14, 2021 made by Borrower in favor of Lender in the maximum principal amount of \$10,000,000.00 (the "Original Note"), which is amended and restated in its entirety by this Note. This Note is a modification only and not a novation. The original obligation of Borrower as evidenced by the Original Note is not extinguished hereby. This Note shall not release or affect the liability of any co-makers, obligors, endorsers or guarantors of the Original Note except as expressly provided herein.

This Note is a master promissory note that is given in connection with the Loan Agreement, to which reference is hereby made for additional terms and conditions affecting this Note. Any Draw made pursuant to the Loan Agreement will constitute an advance made under this Note and will reduce the amount available under this Note.

Lender has no obligation to fund any Draw request except pursuant to compliance with all of the conditions precedent set forth in the Loan Agreement and approval by the Lender, in its discretion, of the funding of the Unit Allocation(s) for which any Draw is requested, subject to the terms of the Loan Documents.

Principal and interest shall be payable in lawful money of the United States of America as follows:

1. Interest Rate.

The unpaid principal balance of this Note will bear interest at an annual rate equal to the "Prime Rate," as that term is herein defined below, plus one percentage point, with a floor rate of four and one-quarter percent (4.25%). The rate of interest earned on this Note shall change on the same date that the Prime Rate changes. As of the above-stated date of this Note, the Prime Rate is six and one-quarter percent (6.25%) per annum and consequently the initial rate of interest charged

on this Note, and stated as simple interest, is seven and one-quarter percent (7.25%) per annum.

The "Prime Rate" shall mean the rate announced daily in *The Wall Street Journal*, Southeastern Edition. The Prime Rate in effect as of the close of business of each day shall be the applicable rate for that day and for any succeeding non-business day or days of Lender in determining the applicable interest rate. If the Prime Rate is discontinued as a standard or becomes unascertainable, the Holder shall designate in writing to the Borrower a comparable reference rate, which shall be deemed to be the Prime Rate hereunder. The Borrower acknowledges that the Prime Rate is not necessarily the best rate offered by Lender to all its customers and that the Prime Rate may at times be greater or less than the rate of interest that Lender makes available to its best commercial customers.

2. Repayment Terms.

(a) Beginning November 15, 2022 and continuing on the same day of each calendar month thereafter, Borrower shall pay all outstanding accrued interest to Lender.

(b) All Draws on account of any particular Unit Allocation shall mature, and all outstanding principal of such Draws and accrued interest thereon shall be repayable in full, on the first to occur of: (i) the closing of the sale of the Unit corresponding to such Unit Allocation; (ii) the Unit Maturity Date for such Unit Allocation, or (iii) September 30, 2023, the "Master Note Maturity Date."

(c) Additional principal payments, such as Release Prices, are due and payable as described in the Loan Agreement.

3. Prepayments, Breakage Fees and Costs.

(a) Borrower agrees that all loan fees and other charges have been fully earned as of the date of this Note and will not be subject to refund upon early payment of this Note (whether voluntarily or as a result of default), except as otherwise required by law. Except for the foregoing, and as otherwise provided in Section 3(b), Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest, unless otherwise agreed by Lender in writing. Rather, early payments will be applied to reduce the principal balance due. Borrower further agrees not to send Lender payments marked "paid in full", "without recourse" or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: United Community Bank, 1001 Polk Street, Marietta, GA 30064.

(b) Notwithstanding the above, Borrower promises to pay to Lender and indemnify Lender against any breakage fees, costs, fees and expenses arising out of or

related to nonpayment, failure to make timely payment or prepayment of any part of this Note or other Obligations that are subject to any Rate Obligations or Hedge Agreements.

4. Other Note Terms.

**Late Charge:** If any payment due under this Note is more than 15 days late, Borrower will be charged 4.00% of the late payment or \$10.00, whichever is greater. This late charge shall be paid to Lender by Borrower to compensate Lender for its extra costs and expenses caused by the late payment.

In addition, if payment of all sums due hereunder is accelerated under the terms of the Loan Agreement or other Loan Documents, the then-remaining principal amount and accrued but unpaid interest hereunder shall, at Lender's option, bear interest at a rate equal to the rate charged on this Note plus five percent (5%) per annum until such principal and interest have been paid in full (the "Default Rate").

**Interest Calculation Method:** Interest on this Note is computed on a 365/360 basis; that is, by applying the rate in effect on this Note, based upon a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note shall be computed using this method. Interest accrues on this Note at the rate in effect or at the Default Rate, as applicable.

This Note is secured by the collateral described in the Loan Agreement, including, without limitation, one or more Mortgage Instruments in favor of Lender, whether now existing and hereafter arising, which shall include any amendments or modifications thereto.

No delay or omission on the part of Lender or other holder in exercising any right hereunder shall operate as a waiver of such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. Each of the undersigned, and every endorser or Guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest and notice of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgence, to any substitutions, exchanges or releases of collateral, and to any additions or releases of any other parties or persons primarily or secondarily liable on account of this Note.

It is hereby expressly agreed that, in the event that any default occurs in the payment of principal or interest as stipulated above, which default remains uncured beyond any grace or cure period described in the Loan Agreement, or in the event that any other Event of Default shall occur under the Loan Agreement, or any other Loan Document, then, and in such event (i) the entire outstanding principal balance of the indebtedness evidenced by this Note, together with any other sums advanced hereunder, under the Loan Agreement and/or under any other instrument or document now or hereafter evidencing, securing or in any way relating to the indebtedness evidenced hereby, together with all unpaid interest accrued thereon, shall, at the option of Lender and upon notice to Borrower, at once become due and payable and may be collected forthwith, regardless of the stipulated date of maturity, and (ii) Lender may, both before and after acceleration, exercise any and all of its other rights and remedies under this Note and the other Loan Documents,

as well as any additional rights and remedies it may have at law or in equity to recover full payment of the balance owing under this Note, including principal, interest, fees, premiums, charges and costs and other expenses. In addition, upon an Event of Default, the balance due hereunder may be charged or offset against any obligation of Lender to any party, including endorsers, sureties or guarantors, after giving any notice required in any other Loan Document to the party whose obligation is charged. The failure by Lender to exercise any of its options shall not constitute a waiver of the right to exercise same in the event of any subsequent default.

All payments made on this Note shall be applied first to escrows, if any, that are due, then to late charges that are due, then to accrued but unpaid interest, then to principal, and finally to any charges due other than escrows, interest, principal and late charges, unless Lender determines in its sole discretion to apply payments in a different order, or applicable law requires a different application of payments.

Borrower waives presentment, demand, protest and notice of dishonor; waives any rights which it may have to require Lender to proceed against any other person or property; agrees that without notice to any person and without affecting any person's liability under this Note, Lender, at any time or times, may grant extensions of the time for payment or other indulgences to any person or permit the renewal, amendment or modification of this Note or any other agreement executed and delivered by any person in connection with this Note, or permit the substitution, exchange or release of any security for this Note and may add or release any person primarily or secondarily liable; and agrees that Lender may apply all moneys made available to it from any part of the proceeds from the disposition of any security for this Note either to this Note or to any other obligation of Borrower to Lender, as Lender may elect from time to time.

This Note shall apply to and bind Borrower's and Lender's heirs, personal representatives, successors and assigns. All references in this Note to Lender shall include the holder hereof and this Note shall inure to the benefit of any holder of this Note, its successors and assigns.

If this Note is placed with an attorney for collection, the undersigned agrees to pay all costs of collection, including but not limited to reasonable attorneys' fees actually incurred based on standard hourly rates and actual hours expended.

All agreements herein made are expressly limited so that in no event whatsoever, whether by reason of advancement of proceeds hereof, acceleration of maturity of the unpaid balance hereof or otherwise, shall the amount paid or agreed to be paid to Lender for the use of the money advanced or to be advanced hereunder exceed the maximum rate of interest allowed to be charged under applicable law (the "Maximum Legal Rate"). If, from any circumstances whatsoever, the fulfillment of any provision of this Note or any other agreement or instrument now or hereafter evidencing, securing or in any way relating to the indebtedness evidenced hereby shall involve the payment of interest in excess of the Maximum Legal Rate, then, *ipso facto*, the obligation to pay interest hereunder shall be reduced to the Maximum Legal Rate; and if from any circumstance whatsoever, Lender shall ever receive interest, the amount of which would exceed the amount collectible at the Maximum Legal Rate, such amount as would be excessive interest shall be applied to repay the principal of this Note or to any other indebtedness of Borrower to Lender. This provision shall control every other provision in any and all other agreements and instruments existing or hereafter arising between Borrower and Lender with respect to the indebtedness



evidenced hereby.

All rights and obligations hereunder shall be governed by the laws of the State of North Carolina.

If requested by Lender, as necessary in the reasonable discretion of Lender, Borrower shall cooperate fully in the correction of any and all Loan Documents, so that all documents accurately describe the loan evidenced by this Note. Borrower shall bear all expenses associated therewith, including Lender's attorney's fees in the event that Borrower fails to comply with Lender's requests within thirty (30) days.

**WAIVER OF JURY TRIAL.** LENDER AND BORROWER EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY LENDER AND BORROWER, AND LENDER AND BORROWER ACKNOWLEDGE THAT NO PERSON ACTING ON BEHALF OF THE OTHER PARTY TO THIS AGREEMENT HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER AND LENDER FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the day and year first above written by its authorized officer or manager under seal, and adopts as its seal such indication beside its name. Borrower acknowledges receipt of a copy of this Note.

BORROWER:

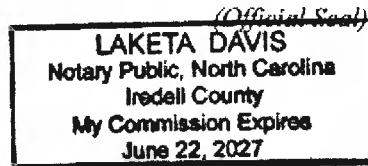
NEST HOMES, LLC,  
a North Carolina limited liability company

By: *Eric M Wood* (SEAL)  
Name: Eric M. Wood  
Title: Manager

STATE OF North Carolina  
COUNTY OF Iredell

I, Laketa Davis, a Notary Public of the County and State aforesaid, do hereby certify that Eric M Wood personally appeared before me this day and acknowledged that he is Manager of Nest Homes, LLC, a North Carolina limited liability company, and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company. Witness my hand and official seal this the 11 day of OCTOBER, 2022

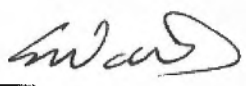
Laketa Davis  
printed name: Laketa Davis Notary Public  
My commission expires: JUNE 22, 2027




CONSENT OF GUARANTORS

Each of the undersigned is a guarantor of the obligations evidenced by, and/or incurred pursuant to, the Note and Credit Agreement pursuant to one or more Guaranty Agreements (each, a "Guaranty") executed by the undersigned. The undersigned agree and acknowledge that the Guaranty of each of us is in full force and effect and binding on each of us with regard to the Note and Credit Agreement, as amended by the Agreement (as hereinafter defined), including but not limited to the Amended Note. The undersigned each consents to and joins as a party (where applicable) to the terms of the Loan Modification Agreement (the "Agreement") to which this instrument is attached, waives any objection to the Agreement, affirms any and all obligations to Lender (as such obligations may be affected by the Agreement) under the Guaranty and certifies that no defenses or offsets exist with regard to the payment or performance of any obligations to Lender described in the Guaranty. Capitalized terms used herein, not defined herein but defined in the Agreement, shall have the meanings given them in the Agreement.

GUARANTORS:

  
\_\_\_\_\_  
Eric Matthew Wood (SEAL)

  
\_\_\_\_\_  
Zane Brent Hawkins (SEAL)

# EXHIBIT C

## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("**Guaranty Agreement**"), entered into December 14, 2021, by the following ("**Guarantor**", whether one or more):

**ERIC MATTHEW WOOD**, a resident of the State of North Carolina, with a mailing address of 129 Homer Lane, Mooresville, NC 28117-8403; to

**UNITED COMMUNITY BANK**, a South Carolina state-chartered bank ("**Lender**"), with a mailing address of 1001 Polk Street, Marietta, GA 30064.

### RECITALS

A. *NEST HOMES, LLC, a North Carolina limited liability company* ("**Borrower**", whether one or more) desires to obtain a loan or other extension of credit from Lender for the purpose of acquisition of developed residential lots and construction of single-family residential dwellings thereon (collectively, the "**Property**"), as set forth in the Master Residential Construction Line Agreement of even date herewith by and among Borrower and Lender (as amended, modified and restated from time to time, the "**Loan Agreement**").

B. The improvements to be constructed on the Property shall be constructed in accordance with plans and specifications (the improvements shall be referred to as the "**Improvements**" and the plans and specifications as the "**Plans and Specifications**") which have been or will be submitted by Borrower to Lender and accepted by Lender.

C. Lender is willing to make the loan or otherwise extend credit to Borrower, but has conditioned the making of the loan or other extension of credit on Guarantor executing and delivering to Lender this Guaranty Agreement.

D. Guarantor benefits from the extension of credit to Borrower for the purposes stated above and desires to induce Lender to extend credit to Borrower.

NOW, THEREFORE, in consideration of the extension of credit to Borrower described above and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Lender to make the loan and to otherwise extend the credit requested by Borrower, Guarantor, jointly and severally, if more than one, hereby absolutely and unconditionally guarantees to Lender, its successors and assigns, each and all of the following (severally and collectively termed "**Obligations of Borrower**"):

(a) the punctual payment when due (whether by acceleration or otherwise) of all outstanding principal under Borrower's Promissory Note to Lender of even date herewith in the maximum principal amount of Ten Million and 00/100 Dollars (\$10,000,000.00) (as amended, modified and restated from time to time, the "**Note**"), together with all other indebtedness and covenants to Lender, however evidenced and arising, unpaid interest (to include post-default interest), finance charges, late payment fees and other fees and charges, breakage costs, prepayment costs and premiums, indebtedness arising out of "**Hedge Agreements**" and "**Rate Obligations**" (as defined in the Loan Agreement), and all costs and expenses (to include reasonable attorneys' fees and expenses), and all other indebtedness, now or later existing, however evidenced, of Borrower to Lender, including without limitation protective advances (collectively, the "**Obligations**");

(b) the punctual payment and performance by Borrower and other persons of all of their covenants, agreements and obligations under the Loan Agreement, any security agreements, deeds of trust, mortgages, security deeds, trust deeds, deeds to secure debt, pledge agreements, assignments, commitments, loan agreements and other agreements, statements and records executed and delivered to Lender or others on Lender's behalf in connection with the indebtedness described as and being part of the Obligations (the Loan Agreement and the other agreements and documents executed and delivered in connection with and given to secure the Loan Agreement and the Obligations shall be referred to herein collectively as the “**Loan Documents**”, and the Loan Documents may be in a written or tangible medium, electronic medium or other medium, and includes all renewals, extensions, amendments, modifications, replacements and substitutions thereof and therefor);

(c) the punctual payment of any and all sums advanced and paid by Lender, at its option, under the Loan Documents, including but not limited to sums advanced and paid by Lender for taxes and insurance premiums and sums advanced and paid by Lender to protect any collateral and other security given for the indebtedness evidenced by the Loan Documents;

(d) Borrower shall construct, equip and complete the Improvements in accordance with the Plans and Specifications and in accordance with the Loan Documents, on or before the date for completion set forth in the Loan Documents (the “**Completion Date**”);

(e) Borrower shall fully and punctually pay and discharge any and all liabilities, and costs and expenses, for or in connection with the construction, equipping and completion of the Improvements as the same may become due and payable, and also pay and discharge all proper claims and demands for labor, materials and services used for or in connection with the construction, equipping and completion of the Improvements; and

(f) the Property and the Improvements shall be and remain free and clear of all liens and encumbrances from any and all individuals, and from any and all corporations and other organizations, furnishing materials, labor or services in the construction of the Improvements, the equipping of the Improvements and generally in the completion of the Improvements.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees:

Section 1. Guaranty of Payment and Performance. This guaranty is and shall remain an unconditional guaranty of payment and performance and not a guaranty of collection, shall remain in full force and effect irrespective of any interruption in the business and other dealings and relations of Borrower with Lender and shall apply to and guarantee the due and punctual payment and performance of all Obligations of Borrower due by Borrower to Lender and as otherwise provided herein. To that end, Guarantor hereby expressly waives (1) any right to require Lender to bring any action against Borrower, (2) any right to require Lender to bring any action against any other person, (3) any right to require Lender to recover from any collateral and other security, (4) any right to notice of and/or consent to any and all future advances made to Borrower by Lender, (5) any right to require Lender to recover from any balance of any deposit or other account on the books of Lender in favor of Borrower or any other person through set-off, recoupment or otherwise. Without limiting the generality of the foregoing, Guarantor herewith expressly waives: (a) any right Guarantor otherwise might have or might have had under the provisions of any applicable law or regulation (including § 26-7 of the North Carolina General Statutes, *et seq.*, or any similar South Carolina laws) to require Lender to attempt to recover against Borrower and to realize upon any collateral and other security which Lender holds for the Obligations of Borrower; and (b) any defenses arising by reason of § 45-21.36 of the North Carolina General Statutes and any other “one-action” or “anti-deficiency” law or any other law which may prevent Lender from bringing any action or limit Lender’s recovery from Guarantor,

including a claim for deficiency against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale. The maximum liability, jointly and severally, of Guarantor under this Guaranty Agreement, at any one time outstanding, with respect to the aggregate principal amount of the Obligations of Borrower shall be UNLIMITED.

**Section 2. Guaranty Relating to Completion of Construction.** Subject to the limitations set forth in Section 1 above, in the event that the Improvements are not completed in accordance with the Loan Documents and paid for, and are not free of all liens, claims, demands and encumbrances upon the completion thereof (other than those liens and encumbrances in favor of Lender), as guaranteed herein: (i) Guarantor agrees to fully indemnify Lender and save Lender harmless from all damages and costs and expenses that Lender may suffer by reason thereof; (ii) in the event that Lender shall (a) cause any construction of the Improvements to be performed, (b) pay any costs in connection with the construction of the Improvements or (c) cause any such lien, claim, demand or encumbrance to be released or paid, then Guarantor agrees to reimburse Lender, upon demand by Lender, for all sums paid and all costs and expenses incurred by Lender in connection therewith; and (iii) Guarantor agrees, if requested by Lender, to promptly complete or cause the completion of the construction of the Improvements in accordance with the Loan Documents. Guarantor acknowledges and agrees that it will be impossible to measure and accurately determine the damages to Lender resulting from a breach of the covenant to complete or to cause the completion of the construction of the Improvements as set forth herein, that such a breach will cause irreparable injury to Lender and that Lender has no adequate remedy at law in respect of such breach and, as a consequence, agrees that such covenant shall be specifically enforceable against Guarantor, and Guarantor hereby waives and agrees not to assert any defense based on the denial of any of the foregoing in an action for specific performance of such covenant. The foregoing agreement of Guarantor is in addition to and not in limitation or substitution of Guarantor's other agreements in this Guaranty Agreement relating to the Obligations of Borrower. The monetary liability and obligations of Guarantor under this Section 2 shall be limited to the maximum amount of the obligations of Guarantor under Section 1.

**Section 3. Guaranties Not Dependent.** The obligation of any Guarantor executing this Guaranty Agreement is not dependent upon the subsequent execution hereof by any other person. The termination of this Guaranty by one or more Guarantors, or the release, settlement or compromise by Lender at any time with respect to any one or more Guarantors, shall not affect the obligations and liability of the remaining Guarantors hereunder, and as to such remaining Guarantors, this Guaranty Agreement shall continue in full force and effect.

**Section 4. Guaranty Not Diminished by Lender's Actions.**

4.1. **Failure to Perfect Liens.** Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect and continue perfection of (by filing, recording or otherwise) any lien and security interest it may now have or hereafter acquire in any property securing this Guaranty Agreement or the Obligations of Borrower.

4.2. **Release or Surrender of Rights.** Guarantor covenants and agrees that Lender may at any time, and from time to time, in its sole discretion, do or cause to be done any one or more of the following: (i) renew, extend and otherwise change the time, manner, place and terms of payment of any and all of the Obligations of Borrower, and otherwise modify the Obligations of Borrower; (ii) grant indulgences generally from time to time to Borrower and any other person liable for the Obligations of Borrower; (iii) exchange, release and surrender any and all of the collateral and other security, or any part thereof or interest therein, by whomsoever deposited, given or made, which is or may hereafter be held by Lender or others on its behalf, or in which it has a lien and security interest in connection with any and all of the Obligations of Borrower and any liabilities and obligations of Guarantor hereunder; (iv) sell and otherwise dispose of, and purchase all or parts of, or interests in, such collateral and other security at public and private sale, or

to or through any securities intermediary or other person, and after deducting all costs and expenses of every kind for collection, preparation for sale, sale and delivery, the net proceeds of any such sales and other dispositions may be applied by Lender toward payment and satisfaction of the Obligations of Borrower, in such order as Lender in its discretion may elect, or in such order as Lender may be required to apply the proceeds under applicable law, if applicable law directs a specific manner of application of proceeds; or (v) settle and compromise with Borrower, any insurance carrier and any other person liable thereon, any and all of the Obligations of Borrower, or subordinate the payment of all and any part of same to the payment of any other debts and claims which may at any time be due and owing to Lender or any other persons, all in such manner and upon such terms as Lender may deem proper or desirable, and without notice to or further assent from Guarantor, it being agreed that Guarantor shall be and remain bound by this Guaranty Agreement irrespective of the existence, value and condition of any collateral and other security, or the impairment of any collateral and other security (to include, without limitation, impairment due to any failure to perfect or continue perfection of a lien and a security interest and any other act or inaction by Lender or other persons relative to the administration of this Guaranty Agreement, the Obligations of Borrower and any collateral and other security), or the unenforceability of any of the Obligations of Borrower or the discharge and release of Borrower from liability for any of the Obligations of Borrower and notwithstanding any such change, exchange, settlement, compromise, surrender, release, failure to perfect or continue perfection and other act or inaction relative to administration, sale and other disposition, application, renewal or extension and notwithstanding also that the Obligations of Borrower may at any time exceed the aggregate principal sum hereinabove prescribed (if any such limiting sum appears). If Lender should request Guarantor to consent to any of the foregoing, such request by Lender or consent by Guarantor shall not constitute a waiver by Lender of the provisions of this Section which permit such actions without Guarantor's consent, nor of any other provision of this Guaranty Agreement relating to acts and inactions of Lender and such request or consent shall not create a course of dealing between Lender and Guarantor that would require the consent of Guarantor to any of the foregoing in the future. Furthermore, this Guaranty Agreement shall not be construed to impose any obligation on Lender to extend or continue to extend credit, to otherwise deal with Borrower at any time, or to take or refrain from taking any acts relative to the administration of any of the Obligations of Borrower and any collateral and other security for the Obligations of Borrower or this Guaranty Agreement.

4.3. Waiver of Default; Forbearance. No waiver by Lender of any default by Guarantor or Borrower, or forbearance with respect to any default by either, shall operate as a waiver of any other default or of the same default on a future occasion and no waiver or forbearance by Lender shall limit Guarantor's liability under this Guaranty Agreement or negatively affect the validity and enforceability of this Guaranty Agreement in accordance with its terms.

#### Section 5. Set-off; Application of Payments; Security.

5.1. Set-off on Service of Process. If any process is issued or ordered to be served upon Lender, seeking to seize Borrower's or Guarantor's rights or interests in any deposit account, such deposit account shall be deemed to have been and shall be set-off against any and all Obligations of Borrower or all obligations and liabilities of Guarantor hereunder, as applicable, as of the time of the issuance of any such writ or process, whether or not Borrower, Guarantor or Lender shall then have been served with notice thereof.

5.2. Application of Moneys and Other Value. All moneys and other things of value available to and received by Lender for application toward payment of (or reduction of) the Obligations of Borrower may be applied by Lender to such individual debts, liabilities, obligations and claims in such manner, and apportioned in such amounts and at such times, as Lender, in its sole discretion, may deem suitable or desirable, or in such order as Lender may be required to apply the money or other things of value under applicable law, if applicable law directs a specific manner of application.



5.3. Security; Set-off. As security for any and all liabilities of Guarantor hereunder, now existing and hereafter arising, Guarantor hereby grants Lender a security interest in any and all moneys, furniture, fixtures, equipment, inventory, documents, investment property, financial assets, promissory notes and other instruments, chattel paper, accounts, payment intangibles and other general intangibles, deposit accounts, supporting obligations, including guaranties, letters of credit and letters of credit rights and any and all other forms of property and things of value (real, personal or mixed) and any right, title and interest of Guarantor therein and thereto and the proceeds thereof, which have been and may hereafter be deposited or left with Lender (or with any agent or other third person acting on Lender's behalf) by or for the account or credit of Guarantor, including, without limitation, any property in which Guarantor may have an interest. Furthermore, where any obligation of Guarantor is due and unpaid hereunder, Lender is herewith authorized to exercise its right of set-off or "bank lien" as to any demand, checking, time, savings, and other deposit accounts of any nature maintained by Guarantor, without advance notice. Such right of set-off shall also be applicable and exercised by Lender, in its sole discretion, where Lender is indebted to any Guarantor by reason of any certificate of deposit, bond, instrument or otherwise.

Section 6. Financial Information on Guarantor; Lender's Records Controlling. Guarantor shall provide Lender with such financial information as Lender may from time to time request. Any statement of account or records that bind Borrower shall be binding against Guarantor and the records of Lender maintained in the ordinary course of its business with respect to the Obligations of Borrower shall be binding on Guarantor in all respects, including without limitation the extent and nature of the Obligations of Borrower and the liabilities of Guarantor under this Guaranty Agreement.

Section 7. Borrower's Organization; Status.

7.1. Authority of Borrower's Managers or Officers. Borrower is a limited liability company. This Guaranty Agreement covers all Obligations of Borrower created or undertaken on behalf of Borrower by a manager, officer, partner or other signatory or agent of Borrower.

7.2. Change in Legal Status. In the event of a change in, or amendment or modification of the legal status or existence of, Borrower, this Guaranty Agreement shall continue and shall also cover the indebtedness of Borrower under the new or amended status, according to the terms hereof guaranteeing the obligations of the original Borrower.

Section 8. Guarantor's Waiver of Rights.

8.1. Subordination of Borrower's Debts to Guarantor. In the event that Guarantor shall pay any sums under this Guaranty Agreement, or in the event that Borrower or any owner of property in which Lender has been granted a lien or security interest to secure the Obligations of Borrower is now or shall hereafter become indebted to Guarantor, Guarantor agrees (i) that the amount of such indebtedness and all interest thereon shall at all times be subordinate as to lien, times of payment and in all other respects to all sums at any time owing to Lender with respect to the Obligations of Borrower, (ii) that Guarantor shall not be entitled to enforce or receive payment on account of such other indebtedness until all sums owing to Lender have been paid in full and (iii) that to the extent Guarantor does enforce or receive payment in contravention of Guarantor's agreement hereunder, all moneys, property and other things of value received by Guarantor and others on Guarantor's behalf shall be held by Guarantor and such other persons in trust for Lender and for the account of Lender and the same shall be paid or delivered to Lender immediately upon request therefor by Lender.

8.2. Reinstatement of Obligations of Borrower. Guarantor agrees that in the event any judgment or any court order or any administrative order for turnover or recovery is entered against Lender (whether

by consent, compromise, settlement or otherwise) for, or Lender is required or agrees to repay (i) the amount of any monetary payment or transfer of any property (whether real, personal or mixed, tangible or intangible, or the value thereof) made to Lender by or on behalf of Borrower or Guarantor for credit to the Obligations of Borrower, or (ii) the amount of any set-off or recoupment exercised by Lender and credited to Obligations of Borrower, then in such event (and notwithstanding the prior discharge or satisfaction in whole or in part of any or all Obligations of Borrower due Lender or the written or notation of cancellation, release or satisfaction affixed to this Guaranty Agreement or any instrument of indebtedness evidencing the Obligations of Borrower, or any prior notice of the termination of this Guaranty Agreement as to future debts of Borrower) the amount or value of any such payments, property, set-off and recoupment recovered from Lender shall be deemed to be Obligations of Borrower and this Guaranty Agreement and the liabilities of Guarantor hereunder shall be automatically revived and reinstated and shall continue and remain in full force and effect as to the same, together with interest thereon from date of recovery at the rate applicable to the Obligations of Borrower to which any such payments, transfers and set-off were credited, costs of court, and the reasonable attorneys' fees incurred by Lender in connection therewith.

8.3. Waiver of Subrogation. Guarantor expressly waives, for Lender's benefit and the benefit of Borrower and any other guarantor, maker, endorser, obligor and debtor on the Obligations of Borrower, any and all rights of recourse against Borrower or any other guarantor, maker, endorser, obligor and debtor on the Obligations of Borrower, and property and assets of the same, arising out of any payment made under or pursuant to this Guaranty Agreement, including any claim of subrogation, reimbursement, exoneration, contribution and indemnity that Guarantor may have against Borrower, any other guarantor, maker, endorser, obligor or debtor on the Obligations of Borrower. Guarantor will not enter into any contract or agreement in violation of the provisions hereinabove, and any such purported contract or agreement shall be void *ab initio*.

#### Section 9. Events of Default; Remedies.

9.1. Events of Default. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances and conditions, or the occurrence of an event which, with the giving of notice or a lapse of time, or both, would become an event of default hereunder, to wit:

(a) default in payment within five (5) days after demand therefor (provided that Lender shall not be required to give written notice more than one time during any twelve (12) month period) or performance of any of the obligations or of any covenant, warranty or liability contained or referred to herein, or contained in any other contract, agreement or record of Borrower or Guarantor with Lender, whether now existing or hereafter arising within ten (10) days after written notice from Lender;

(b) any warranty, representation or statement made or furnished, or hereafter made or furnished, to Lender or others for the benefit of Lender, by or on behalf of Borrower or Guarantor, in connection with this Guaranty Agreement, or to induce Lender to extend credit or deal with Borrower or Guarantor or otherwise with respect to the Obligations of Borrower proving to have been false or inaccurate in any material respect when made or furnished;

(c) either: (i) the death or mental incompetency of a Guarantor or Borrower who is an individual, provided the personal representative for the estate of the deceased Guarantor or the guardian/attorney-in-fact for such Guarantor fails to submit within sixty (60) days from the date of his/her appointment a plan of payment of the Guaranty or a substitute guaranty that is satisfactory to Lender in its sole discretion (provided upon death of a Guarantor Lender may file an estate proof of claim for the full amount of the debt owed, pending resolution of the substitution arrangement proposed to Lender), or (ii) the dissolution, liquidation, termination of existence, merger or change in control of or in a Guarantor or

Borrower that is a registered organization or other organization, or (iii) the termination of any Guarantor that is a trust unless prior to such termination Lender consents in writing to a substitute Guarantor in Lender's sole and absolute discretion;

(d) the default in the payment or performance of any indebtedness or other obligation which is now owing to Lender or any indebtedness or other obligation which arises in the future and is owing to Lender by Borrower;

(e) a determination by Lender that a material adverse change in the financial condition of Borrower or any Guarantor has occurred; or

(f) any other "Event of Default" not cured within any applicable cure period, as described in the Loan Agreement.

9.2. Remedies. Upon the occurrence of any of the foregoing events, circumstances or conditions of default set forth in Section 9.1 above, at Lender's option, all of the obligations evidenced and created in this Guaranty Agreement and secured or guaranteed hereby shall immediately be due and payable without demand or notice. Furthermore, whether or not Lender accelerates the aforesaid obligations because of the occurrence of an event of default, Lender may exercise, and cause to be exercised by others on its behalf, all of the rights and remedies granted hereunder that may be exercisable by Lender upon the occurrence of an event of default, all of the rights or remedies of a secured party under the Uniform Commercial Code in the jurisdiction whose laws govern this Guaranty Agreement, as the same is in effect from time to time, and all rights and remedies otherwise afforded in law and in equity under other laws of the aforementioned jurisdiction.

#### Section 10. Miscellaneous.

10.1 Anti-Money Laundering and Anti-Terrorism. Guarantor represents, warrants and covenants to Lender as follows: (1) Guarantor (a) is not and shall not become a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) does not engage in and shall not engage in any dealings or transactions prohibited by Section 2 of such executive order, and is not and shall not otherwise become associated with any such person in any manner violative of Section 2 of such executive order, (c) is not and shall not become a person on the list of Specially Designated Nationals and Blocked Persons, and (d) is not and shall not become subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order; (2) Guarantor is and shall remain in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001); and (3) Guarantor has not and shall not use all or any part of the proceeds, advances or other amounts or sums constituting or evidenced by the Obligations of Borrower, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.2. No Effect on Other Guaranties. This Guaranty Agreement does not terminate, cancel, supersede, renew or substitute for any existing guaranty or other supporting obligation to Lender by any Guarantor, unless expressly provided herein, and the execution and delivery hereafter to Lender by any

Guarantor of a new guaranty and other supporting obligation shall not terminate, cancel, supersede or be a renewal or substitution for this Guaranty Agreement, unless expressly provided therein, and all rights and remedies of Lender hereunder, under any other existing guaranty agreement and other supporting obligation, and under any guaranty agreement and other supporting obligation hereafter given to Lender by any Guarantor shall be cumulative and may be enforced singly, successively, alternately and concurrently.

10.3. No Reliance by Guarantor on Lender. Guarantor warrants and covenants that Guarantor has made such inquiries as Guarantor deems necessary in order to ascertain the financial condition of Borrower, and has, in fact, ascertained the financial condition of Borrower and is satisfied with such financial condition, that Guarantor has adequate means to obtain from Borrower, on a continuing basis, information concerning the financial condition of Borrower, and that Guarantor has not relied, and will not rely, on Lender to provide such information, now or in the future. The relationship of Lender to Guarantor is that of a creditor to an obligor or debtor; and in furtherance thereof and in explanation thereof, Lender has no fiduciary, trust, guardian, representative, partnership, joint venture or other similar relationship to or with Guarantor and no such relationship shall be drawn or implied from: (i) this Guaranty Agreement and any security documents relative to this Guaranty Agreement; (ii) the Obligations of Borrower and any of the Loan Documents; and (iii) any of Lender's actions or inactions hereunder or thereunder, or with respect hereto or thereto. Lender has no obligation to Guarantor and any other person relative to administration of the Obligations of Borrower, the Loan Documents, this Guaranty Agreement and any collateral and other security for any of the foregoing, or any part or parts thereof or interests therein.

10.4. Credit Investigations; Sharing of Information. Lender is irrevocably authorized by Guarantor to make such credit investigations as it deems appropriate to evaluate Guarantor's credit, personal and financial standing and employment, and Guarantor authorizes Lender to share with consumer reporting agencies and creditors its experiences with Guarantor and other information in Lender's possession relative to Guarantor. Lender shall not have any obligation or responsibility to do any one or more of the following: (i) protect or preserve any collateral and other security given or to be given in connection herewith against the rights of third persons having an interest therein; (ii) provide information to third persons relative to the Obligations of Borrower, Lender's liens or security interests in any collateral and other security, this Guaranty Agreement or otherwise with respect to Guarantor; or (iii) subordinate its security interests in any collateral and other security to the interests of any third persons or to enter into control agreements relative to such collateral and other security.

10.5. Maintenance of Records by Lender. Lender is authorized to maintain, store and otherwise retain this Guaranty Agreement, any separate security documents and other agreements executed and delivered or to be executed and delivered by Guarantor and others on Guarantor's behalf to Lender in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form; and a record of this Guaranty Agreement and such other documents and agreements in a non-tangible medium which is retrievable in a perceivable form shall be the agreement of Guarantor and others on Guarantor's behalf, as applicable, to the same extent as if this Guaranty Agreement and such other documents and agreements were in their original, inscribed tangible medium and such a record shall be binding on and enforceable against Guarantor and such others notwithstanding the same are in a non-tangible form and notwithstanding the signatures of the signatories thereof are electronic, typed, printed, computer generated, facsimiles or other reproductions, representations or forms.

10.6. Financing Statements. Guarantor irrevocably authorizes Lender to file such financing statements as may be necessary to protect, in Lender's opinion, Lender's security interests and, to the extent Lender deems necessary or appropriate, to sign the name of Guarantor with the same force and effect as if signed by Guarantor and to make public in financing statements and other public filings such information regarding Guarantor as Lender deems necessary or appropriate.

10.7. Documentary and Intangibles Taxes. To the extent not prohibited by law and notwithstanding who is liable for payment of the taxes and fees, Guarantor shall pay, on Lender's demand, all intangible personal property taxes, documentary stamp taxes, excise taxes and other similar taxes assessed, charged or required to be paid in connection with this Guaranty Agreement.

10.8. Payment of Expenses. Without limiting any other provision of this Guaranty Agreement relating to Guarantor's payment of costs and expenses incurred by and on behalf of Lender, but in addition thereto, Guarantor shall pay to Lender on demand any and all costs and expenses of collection, including reasonable attorneys' fees actually incurred at standard hourly rates without regard to statutory presumption. Guarantor shall also pay all cost and expenses incurred or paid by and on behalf of Lender in protecting its interest in any collateral and other security securing this Guaranty Agreement and in enforcing and protecting its rights hereunder. All of the foregoing costs and expenses shall be paid with interest thereon at the contract rate at which interest accrues from time to time on the Obligations of Borrower, or if interest accrues at different contract rates, any one of the contract rates at which interest accrues as selected by Lender in its sole discretion, which rate may be fixed or variable, accruing from the earlier of the date paid, the date incurred or the date on which they become due until such costs and expenses are paid by Guarantor. All sums so paid and expended by Lender, and the interest thereon, shall be added to the amounts payable under this Guaranty Agreement.

10.9. Waiver of Notice and Presentment; Defenses. Guarantor hereby waives to the extent permitted by law: (i) notice of acceptance of this Guaranty Agreement; (ii) notice of extensions of credit and continuations of credit extensions to Borrower by Lender; (iii) notice of entering into and engaging in business transactions and contractual relationships and any other dealings between Borrower and Lender; (iv) presentment and demand for payment of any of the Obligations of Borrower; (v) protest and notice of dishonor or default to Guarantor and to any other person with respect to any of the Obligations of Borrower and with respect to any security therefor; (vi) all other notices to which Guarantor might otherwise be entitled; (vii) any demand for payment under this Guaranty Agreement, (viii) any defense of any kind which Borrower might have, including without limitation any defense arising by reason of any of the following: (a) any disability or any counterclaim or of set-off or other defense of Borrower, (b) any lack of authority of Borrower with respect to any of the Obligations or Loan Documents, (c) the invalidity, illegality or lack of enforceability of any of the Obligations or Loan Documents or any provision thereof from any cause whatsoever, including without limitation any action or inaction by Lender, (d) the failure of Lender to perfect or maintain perfection of any security interest in any collateral, (e) the cessation from any cause whatsoever of the liability of Borrower, (f) that any of the Obligations or Loan Documents shall be void or voidable as against Borrower or any of Borrower's creditors, including a trustee in bankruptcy of Borrower, by reason of any fact or circumstance, or (g) the delay or failure of Lender to exercise any of its rights and remedies against Borrower or any collateral or security for the Obligations or Loan Documents; (ix) any event or circumstance that might otherwise constitute a legal or equitable discharge of Guarantor's obligations hereunder, other than the due performance by Borrower of the Obligations; and (x) application of any other defenses available to Guarantor.

10.10. Jury, Venue, Jurisdiction. This Guaranty Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, excluding, however, the conflict of law and choice of law provisions thereof. Guarantor: (a) **to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Guaranty Agreement or any of the Obligations of Borrower;** (b) irrevocably submits to the jurisdiction of either (i) the state courts of the jurisdiction identified above in this Section or (ii) a United States District Court for any federal district in such jurisdiction over any action or proceeding arising from or related to this Guaranty Agreement or any of the Obligations of Borrower; and (c) irrevocably waives, to the fullest

extent Guarantor may effectively do so, the defense of improper venue or an inconvenient forum to the maintenance of any such action or proceeding. Nothing in this Section shall affect or impair Lender's right to serve legal process in any manner permitted by law or Lender's right to bring any action or proceeding against Guarantor or Guarantor's property in the courts of any other jurisdiction.

10.11. No Usury; No Illegal Provisions. Anything contained herein to the contrary notwithstanding, if for any reason the effective rate of interest on any of the Obligations of Borrower should exceed the maximum lawful contract rate, the effective rate of such obligations shall be deemed reduced to and shall be such maximum lawful contract rate. Any sums of interest which have been collected in excess of such maximum lawful contract rate shall be applied, at Lender's election, if permitted by applicable law, as a credit against the unpaid principal balance due on the Obligations of Borrower, or hereunder, or returned to the person who paid the interest that exceeded the maximum lawful contract rate. Wherever possible each provision of this Guaranty Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty Agreement shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty Agreement.

10.12. Joint and Several Liability; Use of Terms. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder provided, notwithstanding anything confirmed herein to the contrary, the maximum liability of Guarantor under this Guaranty shall not exceed the maximum amount set forth in Section 1 hereof. Further: (1) words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular numbered meaning include the plural number, and vice versa; (2) words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, trusts, business trusts, corporations and other organizations, including public and quasi-public bodies, as well as individuals; (3) as the context requires, the word "and" may have a joint meaning or a several meaning and the word "or" may have an inclusive meaning or an exclusive meaning; (4) the term "Guarantor", as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them"; (5) terms used in this Guaranty Agreement which are not defined herein shall have the meaning ascribed thereto in the Uniform Commercial Code in effect from time to time in the jurisdiction whose laws govern this Guaranty Agreement; (6) all references to "Guaranty Agreement" mean this Guaranty Agreement and all amendments, modifications, renewals, extensions, replacements and substitutions thereof and therefor; and (7) this Guaranty Agreement shall not be applied, interpreted and construed more strictly against a person because that person or that person's attorney drafted this Guaranty Agreement.

10.13. Successors and Assigns. This Guaranty Agreement shall be binding upon Guarantor and the heirs, executors, administrators, successors and assigns of Guarantor; it shall inure to the benefit of, and be enforceable by Lender and its successors, transferees and assigns; and Guarantor waives and will not assert against any transferee or assignee any claims, defenses, set-offs and rights of recoupment which Guarantor could assert against Lender, except defenses which Guarantor cannot waive. The death of Guarantor shall not terminate any liability hereunder. This Guaranty shall remain in force after Guarantor's death.

10.14. Entire Agreement. This Guaranty Agreement constitutes the entire agreement between Guarantor and Lender with respect to this guaranty, and no waivers and modifications shall be valid unless they are in writing and duly executed by the party to be charged thereby, and further expressly approved in writing by an authorized officer of Lender. Notwithstanding the foregoing, in the event any provision of this Guaranty Agreement should be left blank or incomplete, Guarantor hereby authorizes and empowers

Lender to supply and complete the necessary information to complete or fill in the blank provision and Lender, or any other holder hereof, may correct patent errors in this Guaranty Agreement.

10.15. Time of Essence; Notices. Time is of the essence under this Guaranty Agreement. All notices, certificates and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth herein. Guarantor and Lender may, by written notice given hereunder, designate a different address where communications should be sent. Lender may direct, by notice to Guarantor, that notices, requests and other communications shall be sent electronically or in some other non-tangible medium.

10.16. Swap Obligations. Notwithstanding anything to the contrary herein, if a Guarantor does not qualify as an Eligible Contract Participant (as defined in the Commodity Exchange Act, as amended) or does not otherwise qualify as an indirect proprietorship pursuant to the rules of the Commodity Futures Trading Commission, then such Guarantor shall not be deemed a party to any guaranty of any Rate Obligations with Lender entered into or modified on or after October 12, 2012, and shall not be liable for any Rate Obligations to Lender arising from such Rate Obligations. Such exclusion shall have no effect on any other Obligations under this Guaranty Agreement or any other Loan Document.

10.17. Guarantor's Acknowledgment. Guarantor acknowledges that Guarantor has read this Guaranty and fully understands the rights granted to Lender herein, and the waiver of rights of Guarantor. Guarantor further acknowledges that each of the terms contained herein is a material inducement to Lender to extend credit to Borrower and is necessary in order for Lender to fully realize the benefits of Lender's bargained for agreement with Borrower and Guarantor. Guarantor: (i) represents to Lender the information contained in this Guaranty Agreement is true, accurate and correct; (ii) agrees to promptly notify Lender in writing of any changes therein and any inaccuracies thereto, such notification to be addressed to Lender at Lender's address set forth herein; and (iii) acknowledges that Lender is relying upon the information being complete, accurate and correct and that Lender is under no obligation to make an independent investigation with respect to the accuracy and correctness thereof and has not made an independent investigation regarding same.


The undersigned has executed this Guaranty Agreement as of the day and year first above stated under seal and has adopted as his, her or its seal the word SEAL below.

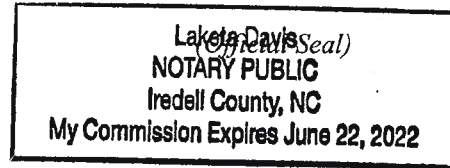
**GUARANTOR:**

 (SEAL)  
Eric Matthew Wood

STATE OF North Carolina  
COUNTY OF Iredell

I, Laketa Davis, a Notary Public of the County and State aforesaid, do hereby certify that Eric Matthew Wood personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the 15 day of December, 2021.

  
printed name: Laketa Davis, Notary Public  
My commission expires: June 22, 2022





## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("**Guaranty Agreement**"), entered into December 14, 2021, by the following ("**Guarantor**", whether one or more):

**ZENO BRENT HAWKINS**, a resident of the State of North Carolina, with a mailing address of 18328 Peninsula Club Drive, Cornelius, NC 28031-5106; to

**UNITED COMMUNITY BANK**, a South Carolina state-chartered bank ("**Lender**"), with a mailing address of 1001 Polk Street, Marietta, GA 30064.

### RECITALS

A. **NEST HOMES, LLC, a North Carolina limited liability company** ("**Borrower**", whether one or more) desires to obtain a loan or other extension of credit from Lender for the purpose of acquisition of developed residential lots and construction of single-family residential dwellings thereon (collectively, the "**Property**"), as set forth in the Master Residential Construction Line Agreement of even date herewith by and among Borrower and Lender (as amended, modified and restated from time to time, the "**Loan Agreement**").

B. The improvements to be constructed on the Property shall be constructed in accordance with plans and specifications (the improvements shall be referred to as the "**Improvements**" and the plans and specifications as the "**Plans and Specifications**") which have been or will be submitted by Borrower to Lender and accepted by Lender.

C. Lender is willing to make the loan or otherwise extend credit to Borrower, but has conditioned the making of the loan or other extension of credit on Guarantor executing and delivering to Lender this Guaranty Agreement.

D. Guarantor benefits from the extension of credit to Borrower for the purposes stated above and desires to induce Lender to extend credit to Borrower.

NOW, THEREFORE, in consideration of the extension of credit to Borrower described above and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Lender to make the loan and to otherwise extend the credit requested by Borrower, Guarantor, jointly and severally, if more than one, hereby absolutely and unconditionally guarantees to Lender, its successors and assigns, each and all of the following (severally and collectively termed "**Obligations of Borrower**"):

(a) the punctual payment when due (whether by acceleration or otherwise) of all outstanding principal under Borrower's Promissory Note to Lender of even date herewith in the maximum principal amount of Ten Million and 00/100 Dollars (\$10,000,000.00) (as amended, modified and restated from time to time, the "**Note**"), together with all other indebtedness and covenants to Lender, however evidenced and arising, unpaid interest (to include post-default interest), finance charges, late payment fees and other fees and charges, breakage costs, prepayment costs and premiums, indebtedness arising out of "**Hedge Agreements**" and "**Rate Obligations**" (as defined in the Loan Agreement), and all costs and expenses (to include reasonable attorneys' fees and expenses), and all other indebtedness, now or later existing, however evidenced, of Borrower to Lender, including without limitation protective advances (collectively, the "**Obligations**");

(b) the punctual payment and performance by Borrower and other persons of all of their covenants, agreements and obligations under the Loan Agreement, any security agreements, deeds of trust, mortgages, security deeds, trust deeds, deeds to secure debt, pledge agreements, assignments, commitments, loan agreements and other agreements, statements and records executed and delivered to Lender or others on Lender's behalf in connection with the indebtedness described as and being part of the Obligations (the Loan Agreement and the other agreements and documents executed and delivered in connection with and given to secure the Loan Agreement and the Obligations shall be referred to herein collectively as the "**Loan Documents**", and the Loan Documents may be in a written or tangible medium, electronic medium or other medium, and includes all renewals, extensions, amendments, modifications, replacements and substitutions thereof and therefor);

(c) the punctual payment of any and all sums advanced and paid by Lender, at its option, under the Loan Documents, including but not limited to sums advanced and paid by Lender for taxes and insurance premiums and sums advanced and paid by Lender to protect any collateral and other security given for the indebtedness evidenced by the Loan Documents;

(d) Borrower shall construct, equip and complete the Improvements in accordance with the Plans and Specifications and in accordance with the Loan Documents, on or before the date for completion set forth in the Loan Documents (the "**Completion Date**");

(e) Borrower shall fully and punctually pay and discharge any and all liabilities, and costs and expenses, for or in connection with the construction, equipping and completion of the Improvements as the same may become due and payable, and also pay and discharge all proper claims and demands for labor, materials and services used for or in connection with the construction, equipping and completion of the Improvements; and

(f) the Property and the Improvements shall be and remain free and clear of all liens and encumbrances from any and all individuals, and from any and all corporations and other organizations, furnishing materials, labor or services in the construction of the Improvements, the equipping of the Improvements and generally in the completion of the Improvements.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees:

Section 1. Guaranty of Payment and Performance. This guaranty is and shall remain an unconditional guaranty of payment and performance and not a guaranty of collection, shall remain in full force and effect irrespective of any interruption in the business and other dealings and relations of Borrower with Lender and shall apply to and guarantee the due and punctual payment and performance of all Obligations of Borrower due by Borrower to Lender and as otherwise provided herein. To that end, Guarantor hereby expressly waives (1) any right to require Lender to bring any action against Borrower, (2) any right to require Lender to bring any action against any other person, (3) any right to require Lender to recover from any collateral and other security, (4) any right to notice of and/or consent to any and all future advances made to Borrower by Lender, (5) any right to require Lender to recover from any balance of any deposit or other account on the books of Lender in favor of Borrower or any other person through set-off, recoupment or otherwise. Without limiting the generality of the foregoing, Guarantor herewith expressly waives: (a) any right Guarantor otherwise might have or might have had under the provisions of any applicable law or regulation (including § 26-7 of the North Carolina General Statutes, *et seq.*, or any similar South Carolina laws) to require Lender to attempt to recover against Borrower and to realize upon any collateral and other security which Lender holds for the Obligations of Borrower; and (b) any defenses arising by reason of § 45-21.36 of the North Carolina General Statutes and any other "one-action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action or limit Lender's recovery from Guarantor,

including a claim for deficiency against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale. The maximum liability, jointly and severally, of Guarantor under this Guaranty Agreement, at any one time outstanding, with respect to the aggregate principal amount of the Obligations of Borrower shall be UNLIMITED.

**Section 2. Guaranty Relating to Completion of Construction.** Subject to the limitations set forth in Section 1 above, in the event that the Improvements are not completed in accordance with the Loan Documents and paid for, and are not free of all liens, claims, demands and encumbrances upon the completion thereof (other than those liens and encumbrances in favor of Lender), as guaranteed herein: (i) Guarantor agrees to fully indemnify Lender and save Lender harmless from all damages and costs and expenses that Lender may suffer by reason thereof; (ii) in the event that Lender shall (a) cause any construction of the Improvements to be performed, (b) pay any costs in connection with the construction of the Improvements or (c) cause any such lien, claim, demand or encumbrance to be released or paid, then Guarantor agrees to reimburse Lender, upon demand by Lender, for all sums paid and all costs and expenses incurred by Lender in connection therewith; and (iii) Guarantor agrees, if requested by Lender, to promptly complete or cause the completion of the construction of the Improvements in accordance with the Loan Documents. Guarantor acknowledges and agrees that it will be impossible to measure and accurately determine the damages to Lender resulting from a breach of the covenant to complete or to cause the completion of the construction of the Improvements as set forth herein, that such a breach will cause irreparable injury to Lender and that Lender has no adequate remedy at law in respect of such breach and, as a consequence, agrees that such covenant shall be specifically enforceable against Guarantor, and Guarantor hereby waives and agrees not to assert any defense based on the denial of any of the foregoing in an action for specific performance of such covenant. The foregoing agreement of Guarantor is in addition to and not in limitation or substitution of Guarantor's other agreements in this Guaranty Agreement relating to the Obligations of Borrower. The monetary liability and obligations of Guarantor under this Section 2 shall be limited to the maximum amount of the obligations of Guarantor under Section 1.

**Section 3. Guaranties Not Dependent.** The obligation of any Guarantor executing this Guaranty Agreement is not dependent upon the subsequent execution hereof by any other person. The termination of this Guaranty by one or more Guarantors, or the release, settlement or compromise by Lender at any time with respect to any one or more Guarantors, shall not affect the obligations and liability of the remaining Guarantors hereunder, and as to such remaining Guarantors, this Guaranty Agreement shall continue in full force and effect.

**Section 4. Guaranty Not Diminished by Lender's Actions.**

4.1. **Failure to Perfect Liens.** Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect and continue perfection of (by filing, recording or otherwise) any lien and security interest it may now have or hereafter acquire in any property securing this Guaranty Agreement or the Obligations of Borrower.

4.2. **Release or Surrender of Rights.** Guarantor covenants and agrees that Lender may at any time, and from time to time, in its sole discretion, do or cause to be done any one or more of the following: (i) renew, extend and otherwise change the time, manner, place and terms of payment of any and all of the Obligations of Borrower, and otherwise modify the Obligations of Borrower; (ii) grant indulgences generally from time to time to Borrower and any other person liable for the Obligations of Borrower; (iii) exchange, release and surrender any and all of the collateral and other security, or any part thereof or interest therein, by whomsoever deposited, given or made, which is or may hereafter be held by Lender or others on its behalf, or in which it has a lien and security interest in connection with any and all of the Obligations of Borrower and any liabilities and obligations of Guarantor hereunder; (iv) sell and otherwise dispose of, and purchase all or parts of, or interests in, such collateral and other security at public and private sale, or

to or through any securities intermediary or other person, and after deducting all costs and expenses of every kind for collection, preparation for sale, sale and delivery, the net proceeds of any such sales and other dispositions may be applied by Lender toward payment and satisfaction of the Obligations of Borrower, in such order as Lender in its discretion may elect, or in such order as Lender may be required to apply the proceeds under applicable law, if applicable law directs a specific manner of application of proceeds; or (v) settle and compromise with Borrower, any insurance carrier and any other person liable thereon, any and all of the Obligations of Borrower, or subordinate the payment of all and any part of same to the payment of any other debts and claims which may at any time be due and owing to Lender or any other persons, all in such manner and upon such terms as Lender may deem proper or desirable, and without notice to or further assent from Guarantor, it being agreed that Guarantor shall be and remain bound by this Guaranty Agreement irrespective of the existence, value and condition of any collateral and other security, or the impairment of any collateral and other security (to include, without limitation, impairment due to any failure to perfect or continue perfection of a lien and a security interest and any other act or inaction by Lender or other persons relative to the administration of this Guaranty Agreement, the Obligations of Borrower and any collateral and other security), or the unenforceability of any of the Obligations of Borrower or the discharge and release of Borrower from liability for any of the Obligations of Borrower and notwithstanding any such change, exchange, settlement, compromise, surrender, release, failure to perfect or continue perfection and other act or inaction relative to administration, sale and other disposition, application, renewal or extension and notwithstanding also that the Obligations of Borrower may at any time exceed the aggregate principal sum hereinabove prescribed (if any such limiting sum appears). If Lender should request Guarantor to consent to any of the foregoing, such request by Lender or consent by Guarantor shall not constitute a waiver by Lender of the provisions of this Section which permit such actions without Guarantor's consent, nor of any other provision of this Guaranty Agreement relating to acts and inactions of Lender and such request or consent shall not create a course of dealing between Lender and Guarantor that would require the consent of Guarantor to any of the foregoing in the future. Furthermore, this Guaranty Agreement shall not be construed to impose any obligation on Lender to extend or continue to extend credit, to otherwise deal with Borrower at any time, or to take or refrain from taking any acts relative to the administration of any of the Obligations of Borrower and any collateral and other security for the Obligations of Borrower or this Guaranty Agreement.

4.3. Waiver of Default; Forbearance. No waiver by Lender of any default by Guarantor or Borrower, or forbearance with respect to any default by either, shall operate as a waiver of any other default or of the same default on a future occasion and no waiver or forbearance by Lender shall limit Guarantor's liability under this Guaranty Agreement or negatively affect the validity and enforceability of this Guaranty Agreement in accordance with its terms.

#### Section 5. Set-off; Application of Payments; Security.

5.1. Set-off on Service of Process. If any process is issued or ordered to be served upon Lender, seeking to seize Borrower's or Guarantor's rights or interests in any deposit account, such deposit account shall be deemed to have been and shall be set-off against any and all Obligations of Borrower or all obligations and liabilities of Guarantor hereunder, as applicable, as of the time of the issuance of any such writ or process, whether or not Borrower, Guarantor or Lender shall then have been served with notice thereof.

5.2. Application of Moneys and Other Value. All moneys and other things of value available to and received by Lender for application toward payment of (or reduction of) the Obligations of Borrower may be applied by Lender to such individual debts, liabilities, obligations and claims in such manner, and apportioned in such amounts and at such times, as Lender, in its sole discretion, may deem suitable or desirable, or in such order as Lender may be required to apply the money or other things of value under applicable law, if applicable law directs a specific manner of application.

5.3. Security; Set-off. As security for any and all liabilities of Guarantor hereunder, now existing and hereafter arising, Guarantor hereby grants Lender a security interest in any and all moneys, furniture, fixtures, equipment, inventory, documents, investment property, financial assets, promissory notes and other instruments, chattel paper, accounts, payment intangibles and other general intangibles, deposit accounts, supporting obligations, including guaranties, letters of credit and letters of credit rights and any and all other forms of property and things of value (real, personal or mixed) and any right, title and interest of Guarantor therein and thereto and the proceeds thereof, which have been and may hereafter be deposited or left with Lender (or with any agent or other third person acting on Lender's behalf) by or for the account or credit of Guarantor, including, without limitation, any property in which Guarantor may have an interest. Furthermore, where any obligation of Guarantor is due and unpaid hereunder, Lender is herewith authorized to exercise its right of set-off or "bank lien" as to any demand, checking, time, savings, and other deposit accounts of any nature maintained by Guarantor, without advance notice. Such right of set-off shall also be applicable and exercised by Lender, in its sole discretion, where Lender is indebted to any Guarantor by reason of any certificate of deposit, bond, instrument or otherwise.

Section 6. Financial Information on Guarantor; Lender's Records Controlling. Guarantor shall provide Lender with such financial information as Lender may from time to time request. Any statement of account or records that bind Borrower shall be binding against Guarantor and the records of Lender maintained in the ordinary course of its business with respect to the Obligations of Borrower shall be binding on Guarantor in all respects, including without limitation the extent and nature of the Obligations of Borrower and the liabilities of Guarantor under this Guaranty Agreement.

Section 7. Borrower's Organization; Status.

7.1. Authority of Borrower's Managers or Officers. Borrower is a limited liability company. This Guaranty Agreement covers all Obligations of Borrower created or undertaken on behalf of Borrower by a manager, officer, partner or other signatory or agent of Borrower.

7.2. Change in Legal Status. In the event of a change in, or amendment or modification of the legal status or existence of, Borrower, this Guaranty Agreement shall continue and shall also cover the indebtedness of Borrower under the new or amended status, according to the terms hereof guaranteeing the obligations of the original Borrower.

Section 8. Guarantor's Waiver of Rights.

8.1. Subordination of Borrower's Debts to Guarantor. In the event that Guarantor shall pay any sums under this Guaranty Agreement, or in the event that Borrower or any owner of property in which Lender has been granted a lien or security interest to secure the Obligations of Borrower is now or shall hereafter become indebted to Guarantor, Guarantor agrees (i) that the amount of such indebtedness and all interest thereon shall at all times be subordinate as to lien, times of payment and in all other respects to all sums at any time owing to Lender with respect to the Obligations of Borrower, (ii) that Guarantor shall not be entitled to enforce or receive payment on account of such other indebtedness until all sums owing to Lender have been paid in full and (iii) that to the extent Guarantor does enforce or receive payment in contravention of Guarantor's agreement hereunder, all moneys, property and other things of value received by Guarantor and others on Guarantor's behalf shall be held by Guarantor and such other persons in trust for Lender and for the account of Lender and the same shall be paid or delivered to Lender immediately upon request therefor by Lender.

8.2. Reinstatement of Obligations of Borrower. Guarantor agrees that in the event any judgment or any court order or any administrative order for turnover or recovery is entered against Lender (whether

by consent, compromise, settlement or otherwise) for, or Lender is required or agrees to repay (i) the amount of any monetary payment or transfer of any property (whether real, personal or mixed, tangible or intangible, or the value thereof) made to Lender by or on behalf of Borrower or Guarantor for credit to the Obligations of Borrower, or (ii) the amount of any set-off or recoupment exercised by Lender and credited to Obligations of Borrower, then in such event (and notwithstanding the prior discharge or satisfaction in whole or in part of any or all Obligations of Borrower due Lender or the written or notation of cancellation, release or satisfaction affixed to this Guaranty Agreement or any instrument of indebtedness evidencing the Obligations of Borrower, or any prior notice of the termination of this Guaranty Agreement as to future debts of Borrower) the amount or value of any such payments, property, set-off and recoupment recovered from Lender shall be deemed to be Obligations of Borrower and this Guaranty Agreement and the liabilities of Guarantor hereunder shall be automatically revived and reinstated and shall continue and remain in full force and effect as to the same, together with interest thereon from date of recovery at the rate applicable to the Obligations of Borrower to which any such payments, transfers and set-off were credited, costs of court, and the reasonable attorneys' fees incurred by Lender in connection therewith.

8.3. Waiver of Subrogation. Guarantor expressly waives, for Lender's benefit and the benefit of Borrower and any other guarantor, maker, endorser, obligor and debtor on the Obligations of Borrower, any and all rights of recourse against Borrower or any other guarantor, maker, endorser, obligor and debtor on the Obligations of Borrower, and property and assets of the same, arising out of any payment made under or pursuant to this Guaranty Agreement, including any claim of subrogation, reimbursement, exoneration, contribution and indemnity that Guarantor may have against Borrower, any other guarantor, maker, endorser, obligor or debtor on the Obligations of Borrower. Guarantor will not enter into any contract or agreement in violation of the provisions hereinabove, and any such purported contract or agreement shall be void *ab initio*.

#### Section 9. Events of Default; Remedies.

9.1. Events of Default. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances and conditions, or the occurrence of an event which, with the giving of notice or a lapse of time, or both, would become an event of default hereunder, to wit:

(a) default in payment within five (5) days after demand therefor (provided that Lender shall not be required to give written notice more than one time during any twelve (12) month period) or performance of any of the obligations or of any covenant, warranty or liability contained or referred to herein, or contained in any other contract, agreement or record of Borrower or Guarantor with Lender, whether now existing or hereafter arising within ten (10) days after written notice from Lender;

(b) any warranty, representation or statement made or furnished, or hereafter made or furnished, to Lender or others for the benefit of Lender, by or on behalf of Borrower or Guarantor, in connection with this Guaranty Agreement, or to induce Lender to extend credit or deal with Borrower or Guarantor or otherwise with respect to the Obligations of Borrower proving to have been false or inaccurate in any material respect when made or furnished;

(c) either: (i) the death or mental incompetency of a Guarantor or Borrower who is an individual, provided the personal representative for the estate of the deceased Guarantor or the guardian/attorney-in-fact for such Guarantor fails to submit within sixty (60) days from the date of his/her appointment a plan of payment of the Guaranty or a substitute guaranty that is satisfactory to Lender in its sole discretion (provided upon death of a Guarantor Lender may file an estate proof of claim for the full amount of the debt owed, pending resolution of the substitution arrangement proposed to Lender), or (ii) the dissolution, liquidation, termination of existence, merger or change in control of or in a Guarantor or

Borrower that is a registered organization or other organization, or (iii) the termination of any Guarantor that is a trust unless prior to such termination Lender consents in writing to a substitute Guarantor in Lender's sole and absolute discretion;

(d) the default in the payment or performance of any indebtedness or other obligation which is now owing to Lender or any indebtedness or other obligation which arises in the future and is owing to Lender by Borrower;

(e) a determination by Lender that a material adverse change in the financial condition of Borrower or any Guarantor has occurred; or

(f) any other "Event of Default" not cured within any applicable cure period, as described in the Loan Agreement.

9.2. Remedies. Upon the occurrence of any of the foregoing events, circumstances or conditions of default set forth in Section 9.1 above, at Lender's option, all of the obligations evidenced and created in this Guaranty Agreement and secured or guaranteed hereby shall immediately be due and payable without demand or notice. Furthermore, whether or not Lender accelerates the aforesaid obligations because of the occurrence of an event of default, Lender may exercise, and cause to be exercised by others on its behalf, all of the rights and remedies granted hereunder that may be exercisable by Lender upon the occurrence of an event of default, all of the rights or remedies of a secured party under the Uniform Commercial Code in the jurisdiction whose laws govern this Guaranty Agreement, as the same is in effect from time to time, and all rights and remedies otherwise afforded in law and in equity under other laws of the aforementioned jurisdiction.

## Section 10. Miscellaneous.

10.1 Anti-Money Laundering and Anti-Terrorism. Guarantor represents, warrants and covenants to Lender as follows: (1) Guarantor (a) is not and shall not become a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) does not engage in and shall not engage in any dealings or transactions prohibited by Section 2 of such executive order, and is not and shall not otherwise become associated with any such person in any manner violative of Section 2 of such executive order, (c) is not and shall not become a person on the list of Specially Designated Nationals and Blocked Persons, and (d) is not and shall not become subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order; (2) Guarantor is and shall remain in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001); and (3) Guarantor has not and shall not use all or any part of the proceeds, advances or other amounts or sums constituting or evidenced by the Obligations of Borrower, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.2. No Effect on Other Guaranties. This Guaranty Agreement does not terminate, cancel, supersede, renew or substitute for any existing guaranty or other supporting obligation to Lender by any Guarantor, unless expressly provided herein, and the execution and delivery hereafter to Lender by any

Guarantor of a new guaranty and other supporting obligation shall not terminate, cancel, supersede or be a renewal or substitution for this Guaranty Agreement, unless expressly provided therein, and all rights and remedies of Lender hereunder, under any other existing guaranty agreement and other supporting obligation, and under any guaranty agreement and other supporting obligation hereafter given to Lender by any Guarantor shall be cumulative and may be enforced singly, successively, alternately and concurrently.

10.3. No Reliance by Guarantor on Lender. Guarantor warrants and covenants that Guarantor has made such inquiries as Guarantor deems necessary in order to ascertain the financial condition of Borrower, and has, in fact, ascertained the financial condition of Borrower and is satisfied with such financial condition, that Guarantor has adequate means to obtain from Borrower, on a continuing basis, information concerning the financial condition of Borrower, and that Guarantor has not relied, and will not rely, on Lender to provide such information, now or in the future. The relationship of Lender to Guarantor is that of a creditor to an obligor or debtor; and in furtherance thereof and in explanation thereof, Lender has no fiduciary, trust, guardian, representative, partnership, joint venture or other similar relationship to or with Guarantor and no such relationship shall be drawn or implied from: (i) this Guaranty Agreement and any security documents relative to this Guaranty Agreement; (ii) the Obligations of Borrower and any of the Loan Documents; and (iii) any of Lender's actions or inactions hereunder or thereunder, or with respect hereto or thereto. Lender has no obligation to Guarantor and any other person relative to administration of the Obligations of Borrower, the Loan Documents, this Guaranty Agreement and any collateral and other security for any of the foregoing, or any part or parts thereof or interests therein.

10.4. Credit Investigations; Sharing of Information. Lender is irrevocably authorized by Guarantor to make such credit investigations as it deems appropriate to evaluate Guarantor's credit, personal and financial standing and employment, and Guarantor authorizes Lender to share with consumer reporting agencies and creditors its experiences with Guarantor and other information in Lender's possession relative to Guarantor. Lender shall not have any obligation or responsibility to do any one or more of the following: (i) protect or preserve any collateral and other security given or to be given in connection herewith against the rights of third persons having an interest therein; (ii) provide information to third persons relative to the Obligations of Borrower, Lender's liens or security interests in any collateral and other security, this Guaranty Agreement or otherwise with respect to Guarantor; or (iii) subordinate its security interests in any collateral and other security to the interests of any third persons or to enter into control agreements relative to such collateral and other security.

10.5. Maintenance of Records by Lender. Lender is authorized to maintain, store and otherwise retain this Guaranty Agreement, any separate security documents and other agreements executed and delivered or to be executed and delivered by Guarantor and others on Guarantor's behalf to Lender in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form; and a record of this Guaranty Agreement and such other documents and agreements in a non-tangible medium which is retrievable in a perceivable form shall be the agreement of Guarantor and others on Guarantor's behalf, as applicable, to the same extent as if this Guaranty Agreement and such other documents and agreements were in their original, inscribed tangible medium and such a record shall be binding on and enforceable against Guarantor and such others notwithstanding the same are in a non-tangible form and notwithstanding the signatures of the signatories thereof are electronic, typed, printed, computer generated, facsimiles or other reproductions, representations or forms.

10.6. Financing Statements. Guarantor irrevocably authorizes Lender to file such financing statements as may be necessary to protect, in Lender's opinion, Lender's security interests and, to the extent Lender deems necessary or appropriate, to sign the name of Guarantor with the same force and effect as if signed by Guarantor and to make public in financing statements and other public filings such information regarding Guarantor as Lender deems necessary or appropriate.



10.7. Documentary and Intangibles Taxes. To the extent not prohibited by law and notwithstanding who is liable for payment of the taxes and fees, Guarantor shall pay, on Lender's demand, all intangible personal property taxes, documentary stamp taxes, excise taxes and other similar taxes assessed, charged or required to be paid in connection with this Guaranty Agreement.

10.8. Payment of Expenses. Without limiting any other provision of this Guaranty Agreement relating to Guarantor's payment of costs and expenses incurred by and on behalf of Lender, but in addition thereto, Guarantor shall pay to Lender on demand any and all costs and expenses of collection, including reasonable attorneys' fees actually incurred at standard hourly rates without regard to statutory presumption. Guarantor shall also pay all cost and expenses incurred or paid by and on behalf of Lender in protecting its interest in any collateral and other security securing this Guaranty Agreement and in enforcing and protecting its rights hereunder. All of the foregoing costs and expenses shall be paid with interest thereon at the contract rate at which interest accrues from time to time on the Obligations of Borrower, or if interest accrues at different contract rates, any one of the contract rates at which interest accrues as selected by Lender in its sole discretion, which rate may be fixed or variable, accruing from the earlier of the date paid, the date incurred or the date on which they become due until such costs and expenses are paid by Guarantor. All sums so paid and expended by Lender, and the interest thereon, shall be added to the amounts payable under this Guaranty Agreement.

10.9. Waiver of Notice and Presentment; Defenses. Guarantor hereby waives to the extent permitted by law: (i) notice of acceptance of this Guaranty Agreement; (ii) notice of extensions of credit and continuations of credit extensions to Borrower by Lender; (iii) notice of entering into and engaging in business transactions and contractual relationships and any other dealings between Borrower and Lender; (iv) presentment and demand for payment of any of the Obligations of Borrower; (v) protest and notice of dishonor or default to Guarantor and to any other person with respect to any of the Obligations of Borrower and with respect to any security therefor; (vi) all other notices to which Guarantor might otherwise be entitled; (vii) any demand for payment under this Guaranty Agreement, (viii) any defense of any kind which Borrower might have, including without limitation any defense arising by reason of any of the following: (a) any disability or any counterclaim or of set-off or other defense of Borrower, (b) any lack of authority of Borrower with respect to any of the Obligations or Loan Documents, (c) the invalidity, illegality or lack of enforceability of any of the Obligations or Loan Documents or any provision thereof from any cause whatsoever, including without limitation any action or inaction by Lender, (d) the failure of Lender to perfect or maintain perfection of any security interest in any collateral, (e) the cessation from any cause whatsoever of the liability of Borrower, (f) that any of the Obligations or Loan Documents shall be void or voidable as against Borrower or any of Borrower's creditors, including a trustee in bankruptcy of Borrower, by reason of any fact or circumstance, or (g) the delay or failure of Lender to exercise any of its rights and remedies against Borrower or any collateral or security for the Obligations or Loan Documents; (ix) any event or circumstance that might otherwise constitute a legal or equitable discharge of Guarantor's obligations hereunder, other than the due performance by Borrower of the Obligations; and (x) application of any other defenses available to Guarantor.

10.10. Jury, Venue, Jurisdiction. This Guaranty Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, excluding, however, the conflict of law and choice of law provisions thereof. Guarantor: (a) **to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Guaranty Agreement or any of the Obligations of Borrower;** (b) irrevocably submits to the jurisdiction of either (i) the state courts of the jurisdiction identified above in this Section or (ii) a United States District Court for any federal district in such jurisdiction over any action or proceeding arising from or related to this Guaranty Agreement or any of the Obligations of Borrower; and (c) irrevocably waives, to the fullest

extent Guarantor may effectively do so, the defense of improper venue or an inconvenient forum to the maintenance of any such action or proceeding. Nothing in this Section shall affect or impair Lender's right to serve legal process in any manner permitted by law or Lender's right to bring any action or proceeding against Guarantor or Guarantor's property in the courts of any other jurisdiction.

10.11. No Usury; No Illegal Provisions. Anything contained herein to the contrary notwithstanding, if for any reason the effective rate of interest on any of the Obligations of Borrower should exceed the maximum lawful contract rate, the effective rate of such obligations shall be deemed reduced to and shall be such maximum lawful contract rate. Any sums of interest which have been collected in excess of such maximum lawful contract rate shall be applied, at Lender's election, if permitted by applicable law, as a credit against the unpaid principal balance due on the Obligations of Borrower, or hereunder, or returned to the person who paid the interest that exceeded the maximum lawful contract rate. Wherever possible each provision of this Guaranty Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty Agreement shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty Agreement.

10.12. Joint and Several Liability; Use of Terms. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder provided, notwithstanding anything confirmed herein to the contrary, the maximum liability of Guarantor under this Guaranty shall not exceed the maximum amount set forth in Section 1 hereof. Further: (1) words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular numbered meaning include the plural number, and vice versa; (2) words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, trusts, business trusts, corporations and other organizations, including public and quasi-public bodies, as well as individuals; (3) as the context requires, the word "and" may have a joint meaning or a several meaning and the word "or" may have an inclusive meaning or an exclusive meaning; (4) the term "Guarantor", as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them"; (5) terms used in this Guaranty Agreement which are not defined herein shall have the meaning ascribed thereto in the Uniform Commercial Code in effect from time to time in the jurisdiction whose laws govern this Guaranty Agreement; (6) all references to "Guaranty Agreement" mean this Guaranty Agreement and all amendments, modifications, renewals, extensions, replacements and substitutions thereof and therefor; and (7) this Guaranty Agreement shall not be applied, interpreted and construed more strictly against a person because that person or that person's attorney drafted this Guaranty Agreement.

10.13. Successors and Assigns. This Guaranty Agreement shall be binding upon Guarantor and the heirs, executors, administrators, successors and assigns of Guarantor; it shall inure to the benefit of, and be enforceable by Lender and its successors, transferees and assigns; and Guarantor waives and will not assert against any transferee or assignee any claims, defenses, set-offs and rights of recoupment which Guarantor could assert against Lender, except defenses which Guarantor cannot waive. The death of Guarantor shall not terminate any liability hereunder. This Guaranty shall remain in force after Guarantor's death.

10.14. Entire Agreement. This Guaranty Agreement constitutes the entire agreement between Guarantor and Lender with respect to this guaranty, and no waivers and modifications shall be valid unless they are in writing and duly executed by the party to be charged thereby, and further expressly approved in writing by an authorized officer of Lender. Notwithstanding the foregoing, in the event any provision of this Guaranty Agreement should be left blank or incomplete, Guarantor hereby authorizes and empowers

Lender to supply and complete the necessary information to complete or fill in the blank provision and Lender, or any other holder hereof, may correct patent errors in this Guaranty Agreement.

10.15. Time of Essence; Notices. Time is of the essence under this Guaranty Agreement. All notices, certificates and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth herein. Guarantor and Lender may, by written notice given hereunder, designate a different address where communications should be sent. Lender may direct, by notice to Guarantor, that notices, requests and other communications shall be sent electronically or in some other non-tangible medium.

10.16. Swap Obligations. Notwithstanding anything to the contrary herein, if a Guarantor does not qualify as an Eligible Contract Participant (as defined in the Commodity Exchange Act, as amended) or does not otherwise qualify as an indirect proprietorship pursuant to the rules of the Commodity Futures Trading Commission, then such Guarantor shall not be deemed a party to any guaranty of any Rate Obligations with Lender entered into or modified on or after October 12, 2012, and shall not be liable for any Rate Obligations to Lender arising from such Rate Obligations. Such exclusion shall have no effect on any other Obligations under this Guaranty Agreement or any other Loan Document.

10.17. Guarantor's Acknowledgment. Guarantor acknowledges that Guarantor has read this Guaranty and fully understands the rights granted to Lender herein, and the waiver of rights of Guarantor. Guarantor further acknowledges that each of the terms contained herein is a material inducement to Lender to extend credit to Borrower and is necessary in order for Lender to fully realize the benefits of Lender's bargained for agreement with Borrower and Guarantor. Guarantor: (i) represents to Lender the information contained in this Guaranty Agreement is true, accurate and correct; (ii) agrees to promptly notify Lender in writing of any changes therein and any inaccuracies thereto, such notification to be addressed to Lender at Lender's address set forth herein; and (iii) acknowledges that Lender is relying upon the information being complete, accurate and correct and that Lender is under no obligation to make an independent investigation with respect to the accuracy and correctness thereof and has not made an independent investigation regarding same.

The undersigned has executed this Guaranty Agreement as of the day and year first above stated under seal and has adopted as his, her or its seal the word SEAL below.

**GUARANTOR:**

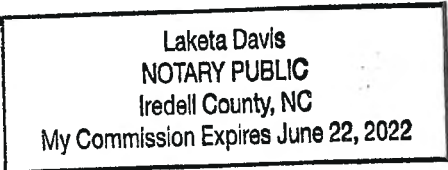
[Signature] (SEAL)  
Zeno Brent Hawkins

STATE OF North Carolina  
COUNTY OF Iredell

I, Laketa Davis, a Notary Public of the County and State aforesaid, do hereby certify that Zeno Brent Hawkins personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the 15<sup>th</sup> day of December, 2021.

[Signature]  
printed name: Laketa Davis, Notary Public  
My commission expires June 22, 2022

(Official Seal)



# EXHIBIT D

**VIA CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED, AND FIRST CLASS MAIL**

**Moore & Van Allen**

May 29, 2024

Eric Matthew Wood  
129 Homer Lane  
Mooresville, North Carolina 28117-8403

Zeno Brent Hawkins  
18328 Peninsula Club Drive  
Cornelius, North Carolina 28031-5106

**James R. Langdon**  
Attorney at Law

T 704 331 3705  
F 704 339 5855  
jimlangdon@mvalaw.com

Moore & Van Allen PLLC

100 North Tryon Street  
Suite 4700  
Charlotte, NC 28202-4003

**Re: Notice of Default and Demand for Payment**

Messrs. Wood and Hawkins:

As counsel to United Community Bank ("Lender"), I write regarding (i) that certain Master Residential Construction Line Agreement dated December 14, 2021 (as amended by that certain Master Residential Construction Line Loan Modification Agreement dated October 6, 2022, as further amended by that certain Master Residential Construction Line Loan Modification Agreement dated March 21, 2023 and as may be further amended, restated, supplemented, or otherwise modified in writing from time to time, the "Loan Agreement") made by Nest Homes, LLC ("Borrower") in favor of Lender; (ii) that certain Promissory Note dated December 14, 2021 in the face principal amount of Ten Million and no/100s Dollars (\$10,000,000) (as amended by that certain Amended and Restated Promissory Note dated October 6, 2022 in the face principal amount of Twelve Million and no/100s Dollars (\$12,000,000) and as may be further amended, restated, supplemented, or otherwise modified in writing from time to time, the "Promissory Note") made by Borrower in favor of Lender; (iii) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated December 15, 2021 and recorded December 16, 2021 at Book 36876, Pages 324 – 348 of the Mecklenburg County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender; (iv) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated December 20, 2021 and recorded December 21, 2021 at Book 3120, Pages 78 - 102 of the Lincoln County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender, (v) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated January 20, 2022 and recorded January 20, 2022 at Book 2889, Pages 1595 - 1619 of the Iredell County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender, (vi) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated March 3, 2022 and recorded March 4, 2022 at Book 03728, Pages 0956 – 0980 of the Catawba County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender; and (vii) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated March 22, 2022 and recorded March 24, 2022 at Book 1398, Page 293 of the Rowan County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender. Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Loan Agreement.

You have each guaranteed all obligations of Borrower to Lender in an unlimited amount, including without limitation all obligations under the Promissory Note, pursuant to those certain Continuing Guaranty agreements each dated December 14, 2021 (the "Guarantees").

Charlotte, NC  
Charleston, SC

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Certain Defaults have occurred under the Promissory Note, including (i) Borrower's failure to pay the Obligations under loan number 6000223252 advanced under the Promissory Note on its May 2, 2024 maturity date, (ii) Borrower's failure to pay the Obligations under loan number 6000223112 advanced under the Promissory Note on its April 27, 2024 maturity date; (iii) Borrower's failure to pay the Obligations under loan number 6000223120 advanced under the Promissory Note on its April 27, 2024 maturity date; (iv) the Borrower's failure to pay regularly scheduled payments of principal and interest on all other loans due on April 15, 2024 (and for loans 6000196854 and 6000179819 principal and interest due on February 28, 2024 as well); and (v) the Borrower's use of the Facility to pay expenses unrelated to acquisition or development of the Units (including the Borrower's intentional diversion of funds advanced for reimbursement of expenses of providers of materials and subcontractors) in violation of Section 2 of the Loan Agreement and Section 5.2 of the Loan Agreement (collectively, the "Existing Defaults").

In accordance with its rights under the Guarantees, Lender hereby demands payment in full of the balance of principal, accrued interest and other amounts owing and payable under the Note. As of May 28, 2024, the amount outstanding under the Promissory Note (exclusive of attorneys' fees and other costs of collection) was not less than **\$4,126,101.57**, consisting of a principal balance of \$4,042,698.00, accrued interest in the amount of \$80,793.06, and late fees in the amount of \$2,610.51 (the "Indebtedness"). Each day after May 28, 2024, the Indebtedness increases by \$1,066.83. In addition to the Indebtedness, Borrower must pay Lender all costs incurred in collecting the Indebtedness, including attorneys' fees ("Costs of Collection") which will increase if Borrower fails to immediately pay the Indebtedness.

Further inquiries about the debt may be directed to the undersigned or to Mr. Scott Ernest, with Lender (scott\_ernest@ucbi.com).

Please be advised that Lender hereby reserves any and all of the rights, powers, privileges and remedies available it under the Guarantees and applicable law as a result of the existence of the Existing Defaults and any other default or event of default under the Guarantees or the Loan Documents that may now exist or hereafter arise. Such rights, powers, privileges and remedies include, without limitation, the right to proceed against collateral in accordance with the Loan Documents.

Any forbearance, delay or inaction by the Lender in the exercise of its rights and remedies, any continuing performance by Lender or you under the Guarantees or any acceptance by Lender of any further payments to the extent that they do not represent full payment of all amounts then due under the Loan Documents shall not constitute either (i) a modification or an alteration of the terms, conditions or covenants of the Guarantees or any of the Loan Documents, all of which remain in full force and effect, or (ii) a waiver, release or limitation upon the exercise by Lender of any of its rights and remedies under the Guarantees or any of the Loan Documents, all of which are hereby expressly reserved.

We look forward to the prompt payment of the Indebtedness and Costs of Collection.

Regards,

MOORE & VAN ALLEN PLLC



James R. Langdon

cc: Nest Homes, LLC  
236 Raceway Drive, Suite 7  
Mooresville, North Carolina 28117-6518

Bob Head (via email)  
Gary Guthrie (via email)  
Scott Ernest (via email)



**VIA CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED, AND FIRST CLASS MAIL**

**Moore & Van Allen**

May 29, 2024

Nest Homes, LLC  
236 Raceway Drive, Suite 7  
 Mooresville, North Carolina 28117-6518

**James R. Langdon**  
Attorney at Law

T 704 331 3705  
F 704 339 5855  
jimlangdon@mvalaw.com

Moore & Van Allen PLLC

100 North Tryon Street  
Suite 4700  
Charlotte, NC 28202-4003

**Re: Notice of Default and Demand for Payment**

Ladies and Gentlemen:

As counsel to United Community Bank ("Lender"), I write regarding (i) that certain Master Residential Construction Line Agreement dated December 14, 2021 (as amended by that certain Master Residential Construction Line Loan Modification Agreement dated October 6, 2022, as further amended by that certain Master Residential Construction Line Loan Modification Agreement dated March 21, 2023 and as may be further amended, restated, supplemented, or otherwise modified in writing from time to time, the "Loan Agreement") made by Nest Homes, LLC ("Borrower") in favor of Lender; (ii) that certain Promissory Note dated December 14, 2021 in the face principal amount of Ten Million and no/100s Dollars (\$10,000,000) (as amended by that certain Amended and Restated Promissory Note dated October 6, 2022 in the face principal amount of Twelve Million and no/100s Dollars (\$12,000,000) and as may be further amended, restated, supplemented, or otherwise modified in writing from time to time, the "Promissory Note") made by Borrower in favor of Lender; (iii) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated December 15, 2021 and recorded December 16, 2021 at Book 36876, Pages 324 – 348 of the Mecklenburg County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender; (iv) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated December 20, 2021 and recorded December 21, 2021 at Book 3120, Pages 78 - 102 of the Lincoln County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender, (v) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated January 20, 2022 and recorded January 20, 2022 at Book 2889, Pages 1595 - 1619 of the Iredell County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender, (vi) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated March 3, 2022 and recorded March 4, 2022 at Book 03728, Pages 0956 – 0980 of the Catawba County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender; and (vii) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Assignment of Contracts and Plans dated March 22, 2022 and recorded March 24, 2022 at Book 1398, Page 293 of the Rowan County, North Carolina Register of Deeds, executed by Borrower, as grantor, for the benefit of Lender. Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Loan Agreement.

Certain Defaults have occurred under the Promissory Note, including (i) Borrower's failure to pay the Obligations under loan number 6000223252 advanced under the Promissory Note on its May 2, 2024 maturity date, (ii) Borrower's failure to pay the Obligations under loan number 6000223112 advanced under the Promissory Note on its April 27, 2024 maturity date; (iii) Borrower's failure to pay the Obligations under loan number 6000223120 advanced under the Promissory Note on its April 27, 2024 maturity date; (iv) the Borrower's failure to pay regularly scheduled payments of principal and interest on all other loans due on April 15, 2024 (and for loans 6000196854 and 6000179819 principal and interest due on February

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28, 2024 as well); and (v) the Borrower's use of the Facility to pay expenses unrelated to acquisition or development of the Units (including the Borrower's intentional diversion of funds advanced for reimbursement of expenses of providers of materials and subcontractors) in violation of Section 2 of the Loan Agreement and Section 5.2 of the Loan Agreement (collectively, the "Existing Defaults").

As a result of the occurrence of the Existing Defaults, Lender has elected to accelerate the balance of the Obligations in accordance with Section 11.2 of the Loan Agreement and hereby demands payment in full of the balance of principal, accrued interest and other amounts owing and payable under the Promissory Note. As of May 28, 2024, the amount outstanding under the Promissory Note (exclusive of attorneys' fees and other costs of collection) was not less than **\$4,126,101.57**, consisting of a principal balance of \$4,042,698.00, accrued interest in the amount of \$80,793.06, and late fees in the amount of \$2,610.51 (the "Indebtedness"). Each day after May 28, 2024, the Indebtedness increases by \$1,066.83. In addition to the Indebtedness, Borrower must pay Lender all costs incurred in collecting the Indebtedness, including attorneys' fees ("Costs of Collection") which will increase if Borrower fails to immediately pay the Indebtedness.

The Lender, through its undersigned counsel, hereby provides notice pursuant to N.C. Gen. Stat. § 6-21.2 that the Borrower has five days from the mailing of this notice to pay the entire outstanding indebtedness due pursuant to the Promissory Note without attorneys' fees. If the Borrower pays the entire indebtedness due pursuant to the Promissory Note in five days, then the Borrower's obligations thereunder to pay the Lender's attorneys' fees shall be void. If the Lender does not receive full payment within five days, the Lender will be entitled to enforce the provisions of the Promissory Note requiring the Borrower to pay the Lender's attorneys' fees and the Borrower will become liable for those attorneys' fees.

Further inquiries about the debt may be directed to the undersigned or to Mr. Scott Ernest, with Lender (scott\_ernest@ucbi.com).

Please be advised that Lender hereby reserves any and all of the rights, powers, privileges and remedies available it under the Loan Documents and applicable law as a result of the existence of the Existing Defaults and any other Default or event of default under the Loan Documents that may now exist or hereafter arise. Such rights, powers, privileges and remedies include, without limitation, the right to proceed against collateral in accordance with the Loan Documents.

Any forbearance, delay or inaction by Lender in the exercise of its rights and remedies, any continuing performance by Lender or Borrower under any of the Loan Documents or any acceptance by Lender of any further payments to the extent that they do not represent full payment of all amounts then due under the Loan Documents shall not constitute either (i) a modification or an alteration of the terms, conditions or covenants of any of the Loan Documents, all of which remain in full force and effect, or (ii) a waiver, release or limitation upon the exercise by Lender of any of its rights and remedies under any of the Loan Documents, all of which are hereby expressly reserved.

We look forward to your prompt payment of the Indebtedness and Costs of Collection.

Regards,

MOORE & VAN ALLEN PLLC



James R. Langdon

cc: Eric Matthew Wood  
129 Homer Lane  
 Mooresville, North Carolina 28117-8403

Zeno Brent Hawkins  
18328 Peninsula Club Drive  
Cornelius, North Carolina 28031-5106

Bob Head (via email)  
Gary Guthrie (via email)  
Scott Ernest (via email)